



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES

(Updated-May2023)



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GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023



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	CONTENT	
	DESCRIPTION	PAGE NO.
	Procurement Glossary	1-5
Chapter-1	Introduction to Procurement of Works and Services including Turnkey Contracts	6-16
1.1	Procurement Rules and Regulations; and this Manual	6
1.2	Applicability of this Manual	6
1.3	Authorities competent to procure Works, Consultancy and other Services and their Purchase Powers	6
1.4	Basic Aims of Procurement – Five R's of Procurement	6-7
1.5	Fundamental Principles of Public Procurement	7
1.6	Standards (Canons) of Financial Propriety	7-8
1.7	Public Procurement Infrastructure	8
1.8	Preferential/Mandatory Purchase from certain sources	8-15
1.9	The Law of Agency	15-16
1.10	Proactive Information Disclosures	16
Chapter-2	General Guidelines	17-34
Chapter-3	e-PROCUREMENT FOR WORKS AND SERVICES	35-92
	Part-I	35-58
	Part-II	59-87
	Annexure-I	88
	Annexure-II	89-91
	Annexure-III	92
Appendix 1	Basic Aims and Fundamental Principles of Public Procurement	93-107
1.1	Basic Aims of Procurement – the Five Rs of Procurement	93-94
1.2	Refined Concepts of Cost and Value – Value for Money	94-96
1.3	Fundamental Principles of Public Procurement	96-107
Appendix- 2	Legal Aspects of Public Procurement	108-115
1.0	Relevant Provisions of the Constitution of India	108
1.1	Equality for Bidders	108
1.2	Persons Authorised to Make and Execute Contracts on Behalf of Governments	108
1.3	Other Mercantile Laws	108
2.0	Salient Features of the Indian Contract Act	109-115
Appendix-3	Electronic Procurement (e-Procurement)	116-118
1.0	Electronic procurement (e-procurement)	116
2.0	Service Provider	116
3.0	The e-Procurement Process	116-118
Appendix-4	Types of Contracts, Mode of tendering and system of selection	119-141
1.0	Definition of Contract.	119
2.0	Section 10 of the Indian Contract Act, 1872	119-121
3.0	Types of Contract:	121-127
4.0	Bidding Systems	127-131
5.0	Pre-Notice Inviting Tender (NIT) Conference	131-132
6.0	Fixed Budget-based Selection (FBS) for consultancy services	132-133
7.0	Mode of Tendering	133-136
8.0	Various Selection Methods	136-140
9.0	Tenders for Turnkey contracts	140-141
Appendix-5	Concurrent application of PPP-MSE Order,2012 & PPP-MII Order,2017	142-145



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

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COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Procurement Glossary

- i) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers.
- ii) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a **consortium / Joint Venture** (that is an association of several persons, or firms or companies), participating in a procurement process with a Procuring Entity.
- iii) "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RFP documents in certain contexts) means a document issued by the Procuring Entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement.
- iv) "Bidder empanelment/enlistment document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of empanelment/enlistment proceedings and includes the invitation to empanelment/enlistment.
- v) "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the tender documents.
- vi) "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017.
- vii) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017.
- viii) "Competent Authority" means the officer(s) who have been delegated powers to approve the decision.
- ix) "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants, Advisory and project related Consultancy Services and include, for example: feasibility studies, project management, engineering services, Architectural Services, finance and accounting services, training and development. It may include small works



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Procurement Glossary

or supply of goods or non-Consultancy services which are incidental or consequential to such services.

- x) "Enlisted Contractor" means any contractor who is on a list of enlisted contractors of the procuring entity.
- xi) "Enlisting authority" means an authority which enlists bidders for different categories of procurement.
- xii) "Enlistment" means including the name of the contractor in the list after verification of credentials.
- xiii) "e-Procurement" means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures.
- xiv) "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), 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.
- xv) "Indenter" (or the term 'User (Department)' in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the Procuring Entity to procure goods, works or services specified therein.
- xvi) "Inventory" means any material, component or product that is held for use at a later time.
- xvii) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders.
- xviii) "Invitation to Enlist" means a document including any amendment thereto published by the procuring entity inviting offers for bidder enlistment from prospective bidders.
- xix) "Invitation to register" means a document including any amendment thereto published by the Procuring Entity inviting offers for bidder registration from prospective bidders.
- xx) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
- xxi) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Procurement Glossary

that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017.

- xxii) "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the Procuring Entity, which informs the potential bidders that it intends to procure goods, services and/or works.
- xxiii) "Other services" (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. other services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc.
- xxiv) "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services (Non-consultancy Services) which were traditionally being done in-house by the employees of Coal India Limited and its subsidiaries(e.g. OB removal, coal extraction, Loading of coal, Coal Transportation and other related services for mining activities, Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). Besides outsourcing, other services also include procurement of short-term stand-alone services.
- xxv) "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement.
- xxvi) "Pre-qualification document" means the document including any amendment thereto issued by a Procuring Entity, which sets out the terms and conditions of the pre-qualification bidding and includes the invitation to pre-qualify.
- xxvii) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly.
- xxviii) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for other services' under certain contexts), means an agreement relating to the subject matter of procurement, entered into between the



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Procurement Glossary

Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term “contract” will also include “rate contract” and “framework contract”.

The agreement shall include the notice inviting tender, the tender/bid as accepted by the company, the work order issued to the contractor, and the formal contract agreement executed between the company and the contractor together with the documents referred to therein including general terms and conditions, special conditions, if any, frozen terms and conditions/technical parameters/scope of work and revised offer, if any, specifications, drawings, including those to be submitted during progress of work, schedule of quantities with rates and amounts.

Until the formal agreement is signed between the Owner and contractor, LOA/Work order together with contract document accepted by the bidder (i.e., bid/ tender/ proposal/ offer) shall constitute the contract.

- xxix) “(Public) Procurement Guidelines” means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; IT Act and other laws as relevant to the context); ii) Rules & Regulations; Delegation of Financial Power Rules and any other regulation so declared by CIL and its subsidiaries’ and any other circular relevant to the context.
- xxx) “Procurement process” means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract.
- xxxi) “Procuring Entity” (including Procuring Authority or Employer) means CIL or its subsidiaries or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated.
- xxxii) “Project” means one-time, short-term expenditure resulting in creation of capital assets, which could yield financial or economic returns or both. A project may comprise one or more related but independent task-oriented ‘Works’. Projects may either be approved as individual projects within an approved scheme envelope or on a stand-alone basis. They may be executed through budgetary, extra-budgetary resources, or a combination of both.
- xxxiii) “Prospective bidder” means anyone likely or desirous to be a bidder.
- xxxiv) “Public Private Partnership” means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Procurement Glossary

- xxxv) "Rate contract " (or the term 'framework agreement' in certain contexts) means an agreement between a Procuring Entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition.
- xxxvi) "Registration/enrolment" means simply registering the bidder/ supplier/ service provider/ contractor, without any verification, say on e-procurement website etc.
- xxxvii) "Registered Supplier/Service Provider" means any supplier who is on a list of registered suppliers of the Procuring Entity.
- xxxviii) "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the Procuring Entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids.
- xxxix) "service" is defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services'.
- xl) "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

1.1 Procurement Rules and Regulations

- i) Coal India Limited & its Subsidiaries or a unit thereof assigned to procure (Procuring entities) spend a sizeable amount of their budget on procurement of works and services to discharge the duties and responsibilities assigned.
- ii) Common use Goods and Services available on GeM are required to be procured mandatorily through GeM.
- iii) To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of contractor/bidders/service providers, there are statutory provisions; rules; financial, vigilance, security, safety, counter-trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.
- iv) At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India. The Constitution also enshrines Fundamental Rights (In particular Article 14 – Right to Equality before law and Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872, Arbitration and Conciliation Act, 1996 (as amended in 2015); Competition Act, 2002; Information Technology Act, 2000 etc (and amendments thereto) are major legislations governing contracts for procurement (both private and public) in general. There are in addition guidelines issued by Central Vigilance Commission (CVC) relating to Governance issues which are applicable to Public Procurement also. There is no law exclusively governing public procurement. (For details please see Appendix- 2)
- v) However, comprehensive Rules and Regulations in this regard are available in Government orders regarding purchase preference like Public Procurement (Preference to Make in India), Order 2017 or other facilities to Micro and Small Enterprises etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.
- vi) These guidelines are applicable to CIL and its Subsidiaries for tendering for works and Services.

1.2 Applicability of this Manual

This manual is applicable to Works and Services including Turnkey Projects.

1.3 Authorities competent to procure Works, Consultancy and other Services and their Purchase Powers

As per DoP circulated by CIL/ subsidiaries from time to time.

1.4 Basic Aims of Procurement – Five R's of Procurement

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning five parameters called the five Rs of procurement. The entire process of procurement (from the time that need for an item, facility or services is identified till the need is satisfied) is designed to achieve following basic aims. Although couched in jargon of



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

procurement of Goods, it's equally applicable to procurement of works and Consultancy and other services. The term 'Right' is used here in the sense of being optimal:

- i) Right quality;
- ii) Right quantity;
- iii) Right price;
- iv) Right time and place; and
- v) Right source.

(For more details on basic aims of procurement, please refer Appendix 1).

1.5 Fundamental Principles of Public Procurement

Over and above the basic aims of procurement, the obligations of procuring authorities can be grouped into following five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

- i) Transparency principle;
- ii) Professionalism principle;
- iii) Broader obligations principle;
- iv) Extrinsic legal principle; and
- v) Public accountability principle.

(For more details on basic aims of procurement, please refer Appendix 1).

1.6 Standards (Canons) of Financial Propriety

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

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

- i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- ii) The expenditure should not be prima facie more than the occasion demands.
- iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

a claim for the amount could be enforced in a Court of Law, or
the expenditure is in pursuance of a recognized policy or custom.

- v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.
- vi) While discharging the duties of financial concurrence of any public expenditure, such authorities subsequent to such decision, shall not be involved in any future financial/audit/payment responsibilities which may create conflict of interest.

1.7 Public Procurement Infrastructure

Coal India Limited has got its own portal for public procurement developed by NIC with domain name <https://coalindiatenders.nic.in> for works, goods and services. The tenders published on this portal are auto mirrored on Central Public Procurement Portal (CPPP).

Procurements of services through GeM shall be governed by clause 14 of Chapter-2.

1.8 Preferential/Mandatory Purchase from certain sources

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

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

1.8.1 Procurement Preference to Make in India (Applicable for both Works and Services)

Preference to Make in India (as applicable) vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020, issued by Govt. of India as amended from time to time shall be applicable. In terms of the above said policy, purchase preference shall be given to Class-I local supplier. In terms with the above said policy, Class-I local suppliers and Class-II local suppliers shall be eligible to bid.

The definitions of Class-I Local Supplier, Class-II local supplier, Non-Local supplier, Local Content and Margin of Purchase Preference as per above mentioned Order are as follows: -

- A. 'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under said order.
- B. 'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 20% but less than 50%, as defined under said order.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

- C. 'Non-Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than 20% as defined under said order
- D. 'Local Content' means the amount of value added in India which shall be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
- E. '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. The margin of purchase preference is 20%.

In terms of the above said policy, purchase preference shall be given to local suppliers in the following manner:

In terms of the above said policy, purchase preference shall be given to local suppliers in the following manner:

- I. In the procurement of works which are divisible in nature, the following procedure shall be followed: -
 - i) Among all qualified bids, the lowest bid will be termed as L-1. If L-1 is from a Class-I local supplier, the contract for full quantity will be awarded to L-1 at L-1 price by the Purchaser.
 - ii) If L-1 is not a Class-I local supplier, 50% of the order quantity shall be awarded to L-1. Thereafter, the lowest Bidder among the Class-I local suppliers will be invited to match the L-1 price for the remaining 50% quantity subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract for that quantity shall be awarded to such local supplier subject to his matching the L-1 price. In case such lowest eligible Class-I supplier fails to match the L-1 price or accept less than the offer quantity, the next higher Class-I local supplier within the margin of purchase preference shall be invited to match the L-1 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 supplier, then such balance quantity may also be ordered on L-1 Bidder.
- II. In the procurement of works which are not divisible, and in procurement of services where the bid is evaluated on price alone, the following procedure shall be followed: -
 - i) Among all qualified bids, the lowest bid will be termed as L-1. If L-1 is from a Class-I local supplier, the contract will be awarded to L-1.
 - ii) If L-1 is not from a Class-I local supplier, the lowest Bidder among the Class-I local suppliers, will be invited to match the L-1 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 L-1 price.
 - iii) In case such lowest eligible Class-I local supplier fails to match the L-1 price, the Class-I local supplier with the next higher bid within the margin of purchase



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

preference shall be invited to match the L-1 price and so on and contract shall be awarded accordingly. In case none of the Class-I local suppliers within the margin of purchase preference matches the L-1 price, then the contract may be awarded to the L-1 Bidder.

Note: The confirmation from the bidder regarding matching of L1 price may be taken in confirmatory document link of e-Procurement portal by recycling 'Any other document' link.

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 margin of purchase preference of the L1 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 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 margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

IV. **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



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

procurement solicitation and shall not be varied during a particular procurement transaction.

V. **Specifications in Tenders and other procurement solicitations-**

- a) CIL/ Subsidiary 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) CIL/ Subsidiary 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/contractor

VI. **Verification of local content:**

- a) If the estimated value of Procurement is less than Rs. 10 crores, all the Bidders at the time of bidding shall submit self-certification indicating the percentage of local content in the offered items. They shall also give details of the location(s) at which the local value addition is made, if applicable.
- 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 with UDIN 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, 2020 (amended from time to time) shall be taken by TAA limited to the CMD of CIL/Subsidiaries to the procuring entity.
- d) CIL/Subsidiary 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) False declarations will be debarring of the bidder or its successors for a period up to two years as per Guidelines on debarment of firms from bidding along with such other action as may be permissible under law.
- f) 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 below.
- g) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - 1. 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;



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

2. 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);
3. In respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

Note (For departmental users & not to be part of Tender Document):

- In case of procurement of all goods, services or works in respect of which the Nodal Ministry of department has communicated that there is a sufficient local capacity and local competition, only Class-I local supplier as defined under the said order, shall be eligible to bid irrespective of purchase value.
- In procurement of all goods, services or works, not covered by sl. No.1 above and with estimated value of purchases less than Rs.200 crore in accordance to Rule 161 (iv) of GFR 2017, Global tender enquiries shall not be issued except with competent approval as designated by Department of Expenditure. Only Class-I local supplier and Class-II local supplier as defined under the order, shall be eligible to bid in procurements undertaken by procuring entities, except when global tender enquiries have 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.
- Procurements where the estimated value is less than Rs. 5 lakhs, shall be exempted 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.

VII. 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/Departments* 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



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

also necessarily have the above provisions for items identified by nodal Ministry/ Department.

4. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- a) **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 CMD of CIL/Subsidiary.
- b) CIL/Subsidiary *whose procurement exceeds Rs. 1000 Crore per annum* shall notify/ update their procurement projections every year, for the next 5 years on their respective website (**Note:** To be monitored by Project Monitoring Division).

VIII. **Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, it shall be dealt as per CDA rules.

IX. **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. CIL/Subsidiary 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. CIL/ Subsidiary 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

1.8.2 **Public Procurement Policy for Micro and Small Enterprises (MSEs)** shall be applicable for Service Tenders in accordance to the notification of Govt. of India and including its amendment(s) as notified by Gol from time to time

- i) Subject to meeting terms and conditions stated in the tender document including but not limiting to prequalification criteria, 25% of the work will be awarded to MSE as defined in MSE Procurement Policy issued by Department



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

of Micro, Small and Medium Enterprises (MSME) for the tendered work/item. Where the tendered work can be split, MSE quoting a price within a price band of $L1 + 15\%$ shall be awarded at least 25% of total tendered work provided they match L1 price. In case the tendered work cannot be split, MSE shall be awarded full work provided their quoted price is within a price band of $L-1 + 15\%$ and they match the L-1 price.

- ii) In case of more than one such MSEs are in the price band of $L-1 + 15\%$ and matches the L-1 price, the work may be shared proportionately if the job can be split.

If the job cannot be split, then the opportunity to match the L-1 rate of the tender shall be given first to MSE who has quoted lowest rate among the MSEs and the total job shall be awarded to them after matching the L-1 price of the tender, in case the L-1 is other than MSE. If MSE is a L1 Bidder, full work will be awarded to such Bidder. If the MSE who have quoted lowest rate among the MSEs in the price band of $L-1 + 15\%$ do not agree to match the rate of L-1 of the tender, then the MSE with next higher quoted rate in the price band of $L-1 + 15\%$ shall be given chance to match the rate of L-1 for award of the complete job. This process to be repeated in till work is awarded to MSE or MSE Bidders are exhausted.

- iii) Out of the 25% target of annual procurement from micro and small enterprises 3(three) percent shall be earmarked for procurement from micro and small enterprises owned by women. In the event of failure of such MSEs to participate in the tender process or meet the tender requirements and L-1 price, 3(three) percent sub-target so earmarked shall be met from other MSEs.
- iv) Out of the 25% target of annual procurement from micro and small enterprises 4(four) percent shall be earmarked for procurement from micro and small enterprises owned by Scheduled Caste & Scheduled Tribe entrepreneurs. In the event of failure of such MSEs to participate in the tender process or meet the tender requirements and L-1 price, four percent sub-target so earmarked shall be met from other MSEs.
- v) To qualify for entitlement as SC/ST owned MSE, the SC/ST certificate issued by District Authority must be submitted by the Bidder in addition to certificate of registration with anyone of the agencies mentioned in paragraph (I) above. The Bidder shall be responsible to furnish necessary documentary evidence for enabling CIL to ascertain that the MSE is owned by SC/ST. MSE owned by SC/ST is defined as:
- In case of proprietary MSE, proprietor(s) shall be SC /ST
 - In case of partnership MSE, the SC/ST partners shall be holding at least 51% shares in the enterprise.
 - In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

vi) Classification of Micro and Small Enterprise are as under:

- a. Micro Enterprise -Enterprise where the investment in Plant and Machinery or Equipment does not exceed One Crore Rupees and Turnover does not exceed Five Crore Rupees.
- b. Small Enterprise- Enterprise where the investment in Plant and Machinery or Equipment does not exceed Ten Crore Rupees and Turnover does not exceed Fifty Crore Rupees.

vii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.

viii) The MSEs are required to submit copy of documentary evidence, issued by their registering authority whether they are small enterprise or micro enterprise as per provisions of Public Procurement Policy for Micro and Small Enterprise (MSEs) Order, 2012 with latest guidelines/clarifications provided by MoMSME.

ix) If a bidder participates as a joint Venture (JV), the benefits as per Public Procurement Policy for MSEs Order-2012 shall not be applicable to them (Note: Applicable for Tenders for Services).

Note: Not to be a part of tender document

- a) MSEs shall be allowed to participate in Service tenders in accordance to the notification of Govt. of India and including its amendment(s) as notified by Gol from time to time.
- b) As per clarification received from Ministry of MSME vide F.No.21(12)/2016-MA dated 15th June 2018 Works contract are not covered under PP Policy:

Quote

Subject: Clarification regarding Public Procurement Policy-Applicability to Works Contract reg.

Kindly refer to your e-mail dated 13.06.2018 along with letter No. GAIL/ND/C&P/CO/MSME /2018-19/01/Rem on the subject cited above.

In this context, it is to inform that Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 supersedes all previous order/circular/letter issues by this office relating procurement of goods and services and also to inform you that as per PP Policy-2012, Works contract are not covered under PP Policy.

Unquote

1.9 The Law of Agency

The Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) and hence there exists a Principal/ Procuring Entity and Agent relationship between Procuring Entity and such Contractor/ consultant/ service provider. As per this law, the Procuring Entity is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances. There is a need to be



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 1: Introduction to Procurement Policies

aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.10 Proactive Information Disclosures

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

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

[NOTE: Appendices have been attached for General Understanding of different concepts, procedures and methods.]



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

1. PREFACE: This document containing broad guidelines for e-Procurement for Works and Services has been framed with an objective that it should help all concerned in adopting the proposed automated, web-based e-Procurement System with the objective of online evaluation and thereby reducing the human intervention in evaluation of tender and reduction of cycle time of procurement. The system is based on the facts and figures obtained from National Informatics Centre (NIC) and other internal sources. However, any improvement to these guidelines may be adopted by CIL with the approval of Chairman, CIL for the purposes like:

- a. Improvement in the System functionality
- b. Enhanced convenience to the users of the System
- c. Compliance of Govt. directives and policies related to e-Procurement.
- d. Changes in Manuals of CIL

Note:

- FDs of CIL is authorized to approve any modifications arising out of operation constraints/difficulties in the provisions of CMM/MCEW/e-procurement guidelines for Works and Services of CIL subject to intimation to CIL Board in its next meeting (approved in 400th meeting of Board of Directors of Coal India Limited held on 12th March 2020).
- Director (Technical), CIL is authorized to approve consequential changes arising out of the above and other amendments approved since last publication of CMM and e-Procurement guidelines and for updation of all Chapters of CMM by incorporating all the amendments approved till date since the last publication of Manual.

2. The e-Procurement portal shall be in compliance with IT Act 2000 and its subsequent amendments and it shall comply with the relevant circulars of CVC and other statutory bodies.

3. SCOPE: - The e-Procurement system will cover the following:

- a. All the Open and Limited Open (Open tender for all the eligible Bidders with intimation to some short-listed vendors) tenders having Estimated Value of Rs. 2.00 lakhs and above.

This threshold limit may be reduced further by Chairman, CIL/CMD of the Subsidiaries, as per requirement.

- c. The single cover system without technical and financial eligibility and without reverse auction for Works and Services with estimated value put to Tender below Rupees 50 Lakhs.

(Note: FDs of CIL in its 228th meeting vide item no. 228.13 approved to include pre-qualification criteria (experience criteria) for safety and production related works to be decided by the Subsidiary for estimated value of tender below Rs.50 lakh.)

- d. The two-part tendering system without reverse auction for Works and Services with estimated value put to Tender Rupees 50 Lakhs and above.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

- e. All the steps starting from hosting of Tenders (based on approved and financially concurred estimate/indent) till decision of L-1 Bidder is covered in the e-Procurement system. This includes Creating and Hosting of NIT, Downloading and submission of bids, Opening of Tender and Evaluation of bids including uploading of work order/supply order online on a dedicated e-Procurement portal of the Company with validation of Tender Committee at nodal stages only. The e-Procurement Portal also generates Reports required for the MIS/Decision Support System of CIL/Subsidiary.
- f. The other Terms and Conditions of NIT and any other offline process (including evaluation of bids, if any) not covered under e-Procurement Manual of CIL, will be as per the following Manuals of Coal India Limited:
 - i. Contract Management Manual (for Mining and Turnkey Contracts)
 - ii. Manual for Civil Engineering Works (for Civil/E&M works/Services other than Turnkey Contracts and other than tenders pertaining to Goods Procurement)

The above Manuals are available on CIL website www.coalindia.in.

4. THE ORGANISATIONAL SETUP

An e-Procurement Cell will be at Company Headquarter under direct control of Director (Technical) to function as the nodal department for e-Procurement in CIL/Subsidiary. The executives from various disciplines will be posted in the e-Procurement Cell. Responsibility of the e-Procurement cell at CIL/Subsidiary HQ will be:

- a. To co-ordinate and correspond with NIC, Bidders, User Departments and other concerned authorities such as Banks, Auditors etc. for the effective and efficient implementation of e-Procurement.
- b. To facilitate customization of the Portal and to bring about continuous improvement in the system to suit the requirement of the Company.
- c. Arrangement of Training to Bidders and Departmental Users for adoption of automated web-based e-Procurement mode.
- d. To coordinate for the infrastructure development for the proper implementation of the e-Procurement system.
- e. To create a helpdesk for online and offline support to different stakeholders of the system.
- f. To arrange and update the Digital Signature Certificate for departmental users.
- g. To arrange Publicity and facilitate change management for smooth migration from manual system of tendering to electronic mode.
- h. To guide the user departments for preparation of different formats or documents etc. for the e-Procurement system.

To Administer the e-Procurement Application and Online User Management.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

5. REGISTRATION/ENROLLMENT OF BIDDER ON E-PROCUREMENT PORTAL OF CIL:

In order to submit the Bid, the Bidders have to get themselves registered online on the e-Procurement portal of CIL (<https://coalindiatenders.gov.in>) with valid Digital Signature Certificate (DSC) issued from any agency authorized by Controller of Certifying Authority (CCA), Govt. of India and which can be traced up to the chain of trust to the Root Certificate of CCA. The online Registration of the Bidders on the portal will be free of cost and one time activity only. The registration should be in the name of Bidder, whereas DSC holder may be either Bidder himself or his duly authorized person.

The Digital Signature Certificates have to be obtained for CIL/Subsidiary users from any agency authorized by CCA (Controller of Certifying Authority), Govt. of India. The Bidders will have to obtain the Digital Signature Certificate from any certifying agency which is authorized by CCA (Controller of Certifying Authority) of Govt. of India which can be traced up to the chain of trust to the root certificate of CCA.

6. UNDERTAKINGS TO BE furnished ON-LINE BY THE BIDDER USER PORTAL AGREEMENT

e-Tender Portal User Agreement

In order to create a user account and use the e-Tender portal you must read and accept this e-Tender portal User Agreement.

A. UNDERTAKINGS TO BE FURNISHED ONLINE BY THE BIDDER

I DO HEREBY UNDERTAKE

1. That all the information being submitted by me/us is genuine, authentic, true and valid on the date of submission of tender and if any information is found to be false at any stage of tendering or contract period I/We will be liable to the following penal actions apart from other penal actions prescribed elsewhere in the tender document.
 - a. Cancellation of my/our bid/contract (as the case may be)
 - b. Forfeiture of EMD
 - c. Punitive action as per tender document
2. That I/we accept all terms and condition of NIT, including General Terms and Condition and Special/Additional Terms and Condition as stated there in the tender document as available on the website.
3. That I/we accept the Integrity Pact as given in the tender document (if applicable).
4. That I/we am/are giving my/our consent for e-payment and submitting/shall submit the mandate form for e-payment in the format as prescribed in the document in case, the work is awarded to us.
5. That I/we do authorize CIL/Subsidiary for seeking information/clarification from my Bankers having reference in this bid.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

6. That I/we will upload original/certified photo/scanned of all the relevant documents as prescribed in the tender document in support of the information and data furnished by me/us online.
7. I/We confirm that I/We have not been banned or de-listed by any Govt. or Quasi Govt. agencies or PSUs. In case, we are banned or delisted this information shall be specifically informed to the tender issuing authority.
8. That I/We accept all the undertakings as specified elsewhere in the tender document.
9. That this online agreement will be a part of my bid and if the work is awarded to me/us, this will be a part of our agreement with CIL/Subsidiary Company.

B. TERMS AND CONDITIONS OF E-TENDER SERVICES AGREEMENT

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YOU MAY NOT MODIFY, COPY, REPRODUCE, REPUBLISH, UPLOAD, POST, TRANSMIT, OR DISTRIBUTE, IN ANY MANNER, THE MATERIAL ON THE SITE, INCLUDING TEXT, GRAPHICS, CODE AND/ OR SOFTWARE.

You may print and download portions of material from the different areas of the website solely for your own non-commercial use provided that you agree that you shall not change or delete any copyright or proprietary materials from the site.

www.coalindiatenders.nic.in is an e-procurement portal of Coal India Limited/it's Subsidiary.

THIS E-TENDER PORTAL AND RELATED SERVICES SUBJECT TO YOUR COMPLIANCE WITH THE USER'S TERMS AND CONDITIONS SET FORTH BELOW.

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY. YOU MAY NOT COMPLETE YOUR REGISTRATION AND USE THE E-TENDER PORTAL WITHOUT AGREEING TO COMPLY WITH ALL OF THE TERMS AND CONDITIONS SET FORTH BELOW.

BY REGISTERING THE USER NAME AND PASSWORD, YOU AGREE TO ABIDE BY ALL THE TERMS AND CONDITIONS SET FORTH BELOW.

Bidder Registration, Password and Security

Upon successful completion of Registration online, User ID and Password will be registered. You can login, only by giving valid User ID and Password and then signing with your valid Digital Signature Certificate.

The Online registration/enrollment of Bidder on the portal should be done in the name of the Bidder.

The person whose DSC is attached to the Registered Bidder should be either the Bidder himself Or, duly authorized by the Bidder.

User ID and password are strictly personal to each Authorised User and non-transferable. The User shall ensure that its Authorised Users do not divulge or disclose their user ID or password to third parties. In the event that the Authorised User comes to know that the User ID/ Password has been/might



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

have been divulged, disclosed or discovered by any third party, user or its authorized user shall immediately modify the password using “Change password” option. CIL/Subsidiary will have no responsibility or obligation in this regard.

At the time of enrollment in the e-Tendering portal of CIL/its Subsidiaries, the Bidders should ensure that the status of DSC is active on this site. The activation of newly issued DSC may take 24 hrs or more. Hence Bidders who are obtaining new DSC should register at least 24 hrs before the submission of Bid.

By registering in this portal you forthwith assume the responsibility for maintaining the confidentiality of the Password and account, and for all activities that occur under your Password or Account. You also agree to (a) immediately notify by e-mail to Application Administrator/Nodal officer, of any unauthorized use of your Password or Account or any other breach of security, and (b) ensure that you log-out from your account at the end of each session. CIL/its Subsidiaries shall not be liable for any loss or damage caused to you due to your failure to comply with the foregoing.

Registered user can modify or update some of the information in their profile as and when required at their own discretion. However, some information such as “User ID” are protected against changes by Bidder after enrollment and some other information such as “Bidder Name” etc are protected against changes by Bidder after bid submission.

❖ **Modification of software**

With consent of Project Advisory Committee, e-procurement of CIL, the Administrator of e-Tender portal, reserves the right to modify, add, delete and/or change the contents, classification and presentation of the information on the marketplace at any time as it may in its absolute discretion find to be expedient and without giving any notice. It is the users responsibility to refer to the terms and/or any change or addition to the same while accessing the site.

Coal India Limited reserves right to interrupt/suspend the availability of the e-Tender system without any notice to the users.

❖ **System Requirements**

It is the users responsibility to comply with the system requirements: hardware, software, Internet connectivity at user premises to access the e-Tender portal as mentioned in the home page in the link ‘resources required’.

Under any circumstances, CIL shall not be liable to the Users for any direct/indirect loss incurred by them or damages caused to them arising out of the following:

- (a) Incorrect use of the e-Tender System, or;
- (b) Internet Connectivity failures in respect of the equipment used by the Users or by the Internet Service Providers, or;
- (c) Inability of the Bidder to submit their bid due to any DSC related problems, hardware, software or any other factor which are personal/ special/ local to the Bidder.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023 Chapter 2: General Guidelines

Contents of Tender Information

Tenders shall be published by the authorized Tender Inviting Authorities of the respective Tendering entities of CIL/Subsidiary. In case of any clarifications arising out of the tenders, the users have to contact the respective Tender Inviting Authority.

Bid Submission Acknowledgement

The User should complete all the processes and steps required for Bid submission. The successful Bid submission can be ascertained once acknowledgement is given by the system through Bid Submission number i.e. Bid ID, after completion of all the processes and steps. Coal India Limited/Subsidiary is not responsible for incomplete bid submission by users. Users may also note that the incomplete bids will not be saved by the system and so the same will not be available to the Tender Inviting Authority for processing.

The acknowledgment is the only confirmation of submission of bid, which the Bidder can show as a proof of participating in the tender. Other than this acknowledgement, no proof will be considered as a confirmation to the submission of a bid. If the Bidder fails to produce this acknowledgement required for verification in case of dispute, his claim for submission of bid may not be considered.

Upload files

The Bidders have to ensure that the files being uploaded by them are free from all kinds of viruses and contain only the relevant information as stated by the Tender Inviting Authorities for the particular tender. It is not obligatory on the part of CIL/Subsidiary to read each and every document uploaded by the Bidder. If any Bidder / company has uploaded / attached irrelevant data, bogus or fabricated certificates towards his qualification requirements to the respective tender then their User account will be liable for termination permanently or temporarily by CIL/Subsidiary without any prior notice.

User Conduct

You agree that all information, data, text, software, photographs, graphics, messages or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content is originated. This means that you are entirely responsible for all Content that you upload, post, email or otherwise transmit via the e-Tender portal.

CIL/Subsidiary does not control the Content posted via the e-Tender portal and, as such, does not guarantee the accuracy, integrity or quality of such Content. Hence under no circumstances, CIL/Subsidiary is liable in any manner for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, e-mailed or otherwise transmitted via the Site.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

❖ Amendments to a tender published:

You agree that the CIL/ Subsidiary companies reserves the right to re-tender / cancel a tender or extend the closing date or amend the details of tender at any time by publishing corrigendum as applicable.

🌐 **Special Admonitions for International Use:**

Recognizing the global nature of the Internet, you agree to comply with all local rules regarding online content and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data to and from India or the country in which you reside.

❖ **Links**

The Site may provide, links to other World Wide Web sites or resources. Because CIL/Subsidiary has no control over such sites and resources, you acknowledge and agree that the CIL/Subsidiary is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that the CIL/Subsidiary shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, Goods or Services available on or through any such site or resources.

❖ **Miscellaneous**

This Agreement shall all be governed and construed in accordance with the laws of India & applicable to agreements made and to be performed in India. The e-Tender portal's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement. CIL/Subsidiary may assign its rights and duties under this Agreement to any party at any time without notice to you. Any rights not expressly granted herein are reserved.

🌐 **Governing Law**

Terms shall be governed by, and construed in accordance with, Indian law. The parties agree that the principal civil court of the place where the registered office of Coal India/Subsidiary Company is situated shall have non-exclusive jurisdiction to entertain any dispute with Coal India/Subsidiary Company. In case of dispute being with a regional Institute of CMPDIL, the principle Civil Court where the said regional Institute is situated shall be place of suing.

CIL/Subsidiary reserves the right to initiate any legal action against those Bidders violating all or any of the above-mentioned terms & conditions of e-Tender services agreement.

❖ **Modification of terms of Agreement**

CIL/its Subsidiaries reserves the right to add to or change/modify the terms of this Agreement. Changes could be made by us after the first posting to the Site and you will be deemed to have accepted any change if you continue to access the Site after that time. CIL/its Subsidiaries reserves the right to modify,



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

suspend/cancel, or discontinue any or all services/ make modifications and alterations in any or all of the content, at any time without prior notice.

Policy and Security

○ General Policy

CIL/its Subsidiaries is committed to protecting the privacy of our e-Tender site visitors. CIL/Subsidiary does not collect any personal or business information unless you provide it to us voluntarily when conducting an online enrolment, bid submission etc. or any other transaction on the Site.

○ Information Collected

When you choose to provide personal or business information to us to conduct an online transaction, we use it only for the purpose of conducting the specific online transaction that you requested. The information is also used for the purpose of vendor searches. For each online transaction, we require only a minimum amount of personal and business information required to process your transaction.

When you visit our portal to browse, read pages, or download information, we automatically collect and store only the following information:

- The Internet domain and IP address from which you access our portal;
- The date and time you access our portal;
- The pages you visit

This information would help us to make our site more useful to visitors and to learn about the number of visitors to our site and the types of technology our visitors use.

We do not give, share, sell or transfer any personal information to a third party unless required to do so by law. If you do not want any personal or business information to be collected, please do not submit it to us; however, without this required information we will be unable to process your online bid submission or any other on line transaction. Review, update and correction of any personal or business information can be done directly on the Site.

○ Use of Cookies

When you choose to enter into an online transaction, we use cookies to save the information that you input while progressing through the transaction. A cookie is a very small amount of data that is sent from our server to your computer's hard drive. By enabling this feature, the cookie will remember the data entered by you and next time when you visit this site, the data stored in the cookie will be available in future.

○ Security

The Site has security measures in place to protect against the loss, misuse and alteration of information under our control.

7. PREPARTION AND APPROVAL OF NIT

- 7.1 **Standard NIT:** There will be standard NIT format for each department which will be framed in compliance with the e-Procurement Manual and shall be uniformly followed across all the Areas & Headquarter of CIL/Subsidiary. The standard NIT will be framed by HoD of the concerned tender inviting department at CIL/Subsidiary HQ in consultation with e-Procurement Cell regarding conformity with e-procurement portal software. The standard NIT format shall be approved by concerned Director of CIL/Subsidiary companies



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

and will be circulated to all Areas of CIL/Subsidiary by the concerned HoDs at CIL/Subsidiary HQ.

7.2 In case standard NIT is prepared and circulated by CIL, it should be followed uniformly throughout all the Subsidiary Companies. The minor changes as per the requirement of Subsidiary Companies or incorporation of subsequent modification in manuals/circulars/guidelines may be made with approval of concerned Director of Subsidiary Companies.

7.3 The works for which standard NIT is not applicable, a fresh NIT will be framed by HoD of the concerned tender inviting department at CIL/Subsidiary in consultation with e-Procurement Cell regarding conformity with e-procurement portal software Concerned Technical Department (CTD). Such NIT will be approved by concerned Director of CIL/Subsidiary Companies.

Pre-Tender activities

a) Architectural and structural drawings: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence, approved architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules / laws, including byelaws, such as local authorities.

b) Pre-Notice inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend.

c) Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

7.4 The Tenders for Turnkey Contract shall be dealt as per "Works" tenders with two part system and customized NITs shall be made by user department as per need. If required Technical Parameter sheets (TPS) can be used additionally for these tenders. TPS can also be used in any other Works or Service tender as per specific requirement of the tender with the approval of Competent Authority as per this clause as explained above.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

7.5 There will be standard GTE Templates available on the e-Procurement portal which will be uniformly followed across all the Areas & Headquarter of CIL/Subsidiary. The standard GTE Templates will be framed by the tender inviting department at CIL/Subsidiary, HQ in consultation with e-Procurement Cell and shall be circulated to all Areas of CIL/Subsidiary by the concerned HoDs at CIL/Subsidiary HQ.

7.6 Tender documents:

- a) The 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 payment terms, obligations of the procuring entity and the contractor, timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/quality of the work, dispute resolution. Provisions/clauses in the tender document should be clear to avoid differences in interpretation of possible time overrun, cost overrun and a quality compromise. Comprehensive survey & soil investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and, made part of tender document. Model Tender Documents issued by the Coal India Ltd (CIL) may be used, with due customisation.
- b) 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.
- c) Identification of milestones may be done in as optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.
- d) Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.
- e) Any approval of deviations, variations and changes in the scope of the contract shall be dealt as per relevant DoP.
- f) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- g) Quality Assurance Plan (QAP) may be incorporated in the tender document/contract. Schedule of visit by various levels of officials should also form part of the QAP.
- h) 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



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

of the right type of bidders in public interest, balancing considerations of quality, time and cost.

- i) Open online tendering should be the default method to ensure efficiency of procurement. Public authorities CIL/ Subsidiary should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate
- j) 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 newspaper publication.

Special Conditions of Contract/Special Terms and Conditions of Contract (SCC/STC):

Any additions, deletions, or variations to the GCC/GTC felt necessary for a particular project shall be done by an appropriate entry in the SCC/STC. 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/STC, the circumstances warranting them shall be duly considered, including but not limited to the following:

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

8. THE DUTIES AND RESPONSIBILITIES:

The following *Roles* have been identified for the departmental users, which are to be executed with valid Digital Signature Certificate:

- a. **CREATOR OF TENDER:** The role of CREATOR will be assigned to the tender dealing officer. The CREATOR will have the privilege of online creation of Tender on the e-Procurement portal of CIL, based on the approved and financially concurred Estimate/Indent. CREATOR will be responsible for timely and accurate creation of tender on the e-Procurement portal with his Digital Signature Certificate.
- b. **PUBLISHER OF TENDER:** The role of PUBLISHER will be assigned to the HoD (Head of the Department) of the tender inviting department. The PUBLISHER will have the privilege of online publication of the tenders created on the e-Procurement portal of CIL, based on the approved and financially concurred Estimate/Indent. PUBLISHER will be responsible for timely publish of tender after due scrutiny of created tenders on the e-Procurement portal with his Digital Signature Certificate.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

- c. **OPENERS OF TENDER:** The role of OPENER will be assigned to the members of Tender Committee only. The tender will be decrypted and opened with the Digital Signatures Certificate of Bid Openers as identified during creation of the tender. OPENERS will be responsible for decryption and opening of tender on the pre-scheduled date & time, on the e-Procurement portal with his Digital Signature Certificate.
- d. **EVALUATOR OF TENDER:** The role of EVALUATOR will be assigned to the member of Tender Committee from the tender inviting department. The Evaluator will have the privilege to enter and upload the decision of the Tender Committee in the e-Procurement portal. EVALUATOR will be responsible for timely and accurate evaluation of tender on the e-Procurement portal in compliance with the decision of Tender Committee, with his Digital Signature Certificate.
- e. **AUDITOR OF TENDER:** The role of AUDITOR will be assigned to all the departmental users. The AUDITOR will have the privilege of online viewing of the entire tendering process after opening of bid till award of contract. AUDITOR can only view the tender information and documents but cannot do any editing.
- f. **SYSTEM ADMIN/ APPLICATION ADMIN/ NODAL OFFICER:** The role of SYSTEM ADMIN, APPLICATION ADMIN & NODAL OFFICER will be assigned to the executives of e-Procurement Cell for online User Management and Administration of e-Procurement Application.
- g. **SUPPORT ADMIN:** This new role of "Support Admin" will be granted to the executives of Finance Dept who will be responsible for maintaining the accounts related to refund of EMD. He will operate the Central Pool account of CIL/Subsidiary. This role will have the following roles and privileges:
 - i. Access to Reports relating to transactions of Pool account
 - ii. Access to Reports relating to the refund transactions initiated from Pool account.
 - iii. Access to Reports relating to the EMD transfers from Pool account to Dept Account
 - iv. Access to Reports relating to the status of refund transactions made through Axis Bank.
 - v. Access to Reports relating to the EMD transactions received from Bidders after online rejection of the Bidder
 - vi. Privilege to transfer EMD amount from Pool Account to Department Account.
 - vii. Privilege to authorize refund of the transactions which could not be processed automatically at the time of rejection.

Note:

- i. The departmental users will be responsible for timely renewal of their DSC.
- ii. For Tender management, one Individual may have multiple Roles (Creator/ Publisher/ Opener/ Evaluator/ Auditor).
- iii. For User management, one Individual will have single Role (System Admin/Application Admin/Nodal Officer)
- iv. Officials of e-Procurement Cell may be assigned with the role of Creator/Publisher/Opener/Evaluator /Auditor/ Bidder for the limited purpose of testing and training to the departmental users and Bidders.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

9. SPECIAL SITUATIONS:

- a. **User on Leave/Tour:** If an executive is on Leave/Tour, his/her DSC will not be used by any other person. It is advisable that “Two out of Three” or “Two out of Four” option for Bid Openers should be selected in general, so that the bid opening process does not get suffered due to temporary absence of any Bid Opener. However, the concerned executive, on his/her discretion may use his/her DSC for decryption and opening of bid from the place of stay during such period of his/her leave/tour.
- b. **Transfer of User:** If an executive is transferred to a new place, he will carry his/her DSC to the new place of posting and his/her organizational place will be reallocated by e-Procurement Cell on a written request from the executive concerned. It will be the responsibility of the executive concerned to inform the e-Procurement Cell, immediately after his/her joining at the new place of posting, for mapping of his/her profile to new location. However, if the executive is having some pending job of Bid opening for any tender floated from his/her previous place of posting, he/she will be responsible to open such tenders at scheduled date from his/her new place of posting.
- c. **Superannuation of User:** If an executive is superannuated, he/she will carry his/her DSC with him. However, if the executive is having some pending role of bid Opener for any tender in CIL/Subsidiary, he/she will be responsible to open such tenders at scheduled date from his/her place of residence. After opening of all such tenders, the profile of User will be blocked in the e-procurement portal of CIL.
- d. **Loss of DSC:** In case the Digital Signature Certificate is lost or misplaced, FIR/Diary should be lodged/made by the concerned executive and e-Procurement cell should be informed immediately with a copy of FIR/Diary. Effort will be made to obtain another copy of DSC from the DSC provider and till such period the date of opening of Tenders in which he/she has already been assigned the role of Bid Opener will have to be extended, if required. In case it is not possible to prepare a copy of the DSC due to any reason, then the Tender, which are yet to be opened may have to be cancelled and re-tendered, if other bid openers also fail to open the bid.
- e. **Change of Role:** For any change of role of departmental user, a written request by the HOD of the concerned department shall be sent to e-Procurement cell/Nodal officer.

10. SYSTEM OF ONLINE COLLECTION AND AUTO RESETTLEMENT/REFUND OF EMD:

1. EMD will be collected centrally at one account at CIL/Subsidiary HQ viz. Pool Account.
2. Bidder will be allowed to submit his/her bid only after his/her EMD is received by CIL/Subsidiary.
3. EMD of rejected Bidders will be refunded at any stage directly to the account from where it had been received (except the Bidders whose EMD is to be forfeited). Refund will be made by an automatic process triggered by the online rejection of bids by the system/evaluator. The Bidders should be given enough precaution in the NIT that Bidder should make payment from their own account



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

and any claim for non-receipt of the refund in any account other than the one from which payment of EMD is made, will not be entertained.

4. If the refund of EMD is not received by the Bidder in the account from which the EMD has been made due to any technical reason then it will be paid through e-payment as per the prevalent manual system.
 5. At appropriate stage of tender evaluation the EMD which is to be retained will be resettled to the respective Area Account by the system automatically.
 6. EMD will be received through online modes only.
 7. In case of online payment the Evaluator will not have option to override the evaluation done by the system w.r.t. EMD receipt.
 8. Cash Book and other financial accounting will be done based on the system generated reports/ Reports from user department/ Bank statements.
 9. Suitable modifications in the standard NITs will be required to accommodate these changes.
- 11. Standard Operative Procedure (SOP) for managing the cases of Withdrawal of Bids in e-Procurement System of CIL/Subsidiary**
- I. **The Mode of Withdrawal:**
 - A. **Online Withdrawal of Bids:**
 - a. The system of online withdrawal is available on the portal up to end date of bid submission, where any Bidder can withdraw his/her bid which will attract no penal action from department side.
 - b. The system of online withdrawal beyond end date of bid submission and till award of contract is also available but not fully functional and under development stage. Once it is developed and implemented only online withdrawal shall be considered except for some exceptional cases as mentioned in clause below.
 - B. **Offline Withdrawal of Bids:**
 - a. A partner of Bidder (in case of JV and partnership firms) whose DSC is registered on the e-Procurement portal can access the portal for online withdrawal but when there is a split in the business relationship, the partners whose DSC is not registered on the portal do not have the option of online withdrawal of bid. Hence such partners may opt to use offline method of withdrawal of his/her offer (or express his disassociation from the Bidder organization).
 - b. Till a fully functional system of online withdrawal of bid (beyond end date of bid submission and till award of contract) is not developed and implemented, offline withdrawal shall also be considered.
 - II. **Acceptance of withdrawal by Tender Committee:**
 - A. Every case of withdrawal under Clause I-(A)(b) and Clause I-(B) shall be put up to Tender Committee for deliberation and further course of action.
 - B. The Tender Committee shall apply its due diligence to decide:



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

- a. Whether the request for withdrawal of offer has been received from right source and authentic. For this purpose a letter is to be sent by registered post/speed post to the Bidder on the address as given by him in the enrollment page of e-Procurement portal, allowing 10 days' time to confirm the withdrawal. If the Bidder does not confirm the withdrawal within the stipulated period then it should be construed that there is no withdrawal of bid. In case the withdrawal/disassociation from the firm (Joint Venture or Partnership firm) has been submitted by any other partner then also the confirmation has to be sought from the Bidder and if Bidder wants to deny the withdrawal/disassociation from the JV or the partnership firm then the Bidder shall be required to furnish a legally acceptable document signed by all the partners of the firm to substantiate his claim.
 - b. Whether the withdrawal is due to the reason other than to support any mala fide intention of any participating Bidder such as participating or supporting a cartel formation etc.
 - c. If the mala fide intentions in the withdrawal are apprehended then the tender should be cancelled apart from other penal action as per e-Procurement Manual for works and services of CIL and other guidelines/manuals of CIL.
 - d. If no mala fide intentions in the withdrawal are apprehended then the penal action in line with the prescriptions of the e-Procurement Manual for works and services of CIL will be applicable.
 - e. The Tender Committee may also obtain the opinion of legal department in order to ascertain the legal course of action in case of Clause II-(B)(b) and II-(B)(c) above.
- III.** The SOP shall be a part of e-Procurement Manual for Works and Services and the NIT documents shall be framed in line with the SOP
- 12.** The verification of Document from source shall be done only in case of complaints received or on suspicion. This should be done either through speed post or through electronic communication. No anonymous/pseudonymous complaints shall be entertained.
- 13.** Guidelines on Debarment of firms from Bidding-
CIL and its Subsidiary Companies shall follow the following guidelines for effecting 'Debarment of firms from Bidding' with a contracting entity in respect of Works and Services Contracts.
1. Observance of Principle of Natural Justice before debarment of firm from Bidding.
 2. The Bidder/Contractor may be debarred in the following circumstances:
 - i) If Bidder backs out after notification of opening of price bid and if that Bidder is found to be L-1.
 - ii) If L-1 Bidder fails to submit PSD, if any and/or fails to execute the contract within stipulated period.
 - iii) If L-1 Bidder fails to start the work on scheduled time.
 - iv) In case of failure to execute the work as per mutually agreed work schedule.



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

- v) Continued and repeated failure to meet contractual Obligations:
 - a. In case of partial failure on performance, agency shall be debarred from future participation in tenders keeping his present contract alive.
 - b. On termination of contract.
 - vi) Willful suppression of facts or furnishing of wrong information or manipulated or forged documents by the Agency or using any other illegal/unfair means.
 - vii) Formation of price cartels with other contractors with a view to artificially hiking the price.
 - viii) The contractor fails to maintain/repair/redo the work up to the expiry of performance guarantee period, when it is specifically brought to his notice.
 - ix) Contractor fails to use Mobilisation advance given to him for the purpose it was intended.
 - x) Contractor fails to renew the securities deposited to the department.
 - xi) The contractor fails to rectify any lapse(s) in quality of the work done within defect liability period.
 - xii) Transgression of any clause(s) relating to Contractor's obligation defined in the Integrity Pact wherever such Pact exists.
 - xiii) Any other breach of Contract or misdeed which may cause financial loss or commercial disadvantage to the Company.
3. Such 'Debarment of firms from Bidding, if and when effected, shall be with prospective effect only. The effect of 'Debarment of firms from Bidding' shall be for future tenders from the date of issue of such Order. However, if any contracting entity is debarred after online notification of opening of Price Bid, such a debarment will not be effective for that work.
4. The debarment shall be for a minimum period of one year and shall be effective for the concerned Subsidiary for the tenders invited at Subsidiary level. Similarly, in case of tenders of CIL HQ, debarment shall be for CIL HQ. However, if such 'Debarment of firms from Bidding' has to be made effective for entire CIL and its Subsidiaries then approval of Chairman, CIL shall be required. In case of clause 13 (2)(vi) above, minimum period of debarment shall be 05 (Five) years for work covered under Chapter 3 & 6 of CMM.
5. Once a contracting entity is debarred, it shall be extended to the constituents of that entity, all partners in case of Joint Venture, all the partners in case of Partnership Firm, owner/proprietor in case of Proprietorship Firm and all the Directors in case of Limited Company. If such debarred owner/Proprietor/ Partner/Director make/form different Firms/entity and attempts to participate in tenders, the same will not be entertained during the currency of such debarment.
6. The above 'Debarment of firms from Bidding' shall be in addition to other penal provisions of NIT/Contract document.
7. Approving Authority: The 'Debarment of firms from Bidding' of a contracting entity shall be done with the approval of the Competent Authority as per the details below:



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

- a) In case the Accepting Authority of the work is Board or Empowered Committee or FDs or CMD of CIL/Subsidiary Company, then the Competent Authority for debarring shall be CMD of CIL/Subsidiary Company.
 - b) In case the Accepting Authority of the work is up to the level of Director of CIL/Subsidiary Company, then the Competent Authority for debarment shall be Director of CIL/Subsidiary Company.
8. Appellate Authority shall be one Rank higher than the Competent Authority meant for 'Debarment of firms from Bidding'. In case the debarment is done with the approval of CMD of the Subsidiary Company then Chairman, CIL shall be the Appellate authority.
Any change on the above may be done with approval of FDs of CIL.
9. All the orders of debarment or orders passed in appeal shall be marked to GM (CMC) / Civil / concerned HODs of CIL/Subsidiary Company. Further, all such orders will be uploaded in Coal India site as well website of the Subsidiary Company.
10. Efforts shall be made by the concerned Department so that such order is linked to e tender portal of Coal India Limited.

14. Procurement through GeM for Services

- i) The guidelines issued by GeM/Gol from time to time through Notification/ Circular/ Office Memorandum will be followed for procurement through GeM, even if the same are either not specially indicated in the Contract Management Manual (CMM) Chapter - 2, 3 & 6 and Manual for Civil Engineering Works (MCEW) of CIL or not in line with the provisions of CIL's CMM Chapter - 2, 3 & 6 and MCEW.
- ii) The other provisions which are not mandated by GeM portal shall be guided as per respective Manuals/ Guidelines.
- iii) The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM.
- iv) 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 Past Transaction Summary will be provided, where available. "GeMAR&PTS" shall be a pre-requisite for arriving at a decision by the competent authority for procurement of required goods and services by floating a bid outside GeM and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published.

15. 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



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

Chapter 2: General Guidelines

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 clause 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.

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:

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



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

1. CREATION OF TENDER

- 1.1 Tender** for the approved and financially concurred estimates will be created online by tender dealing officer (CREATOR) of the concerned tender inviting department indicating all the salient details such as description of work, estimated value, period of work, bid validity period, date of pre-bid meeting (if required), start date and last date & time of submission of bid, period for seeking clarifications online by the Bidder, date and time of opening of Technical bid, etc. and by uploading Notice Inviting Tender (NIT) and Terms & Conditions of contract. The User Portal Agreement (Refer Cl. No.7 of Chapter-I) shall be a part of NIT and will be uploaded under NIT document during online creation of tender. The format of "Letter of Bid (LoB)" will also be uploaded under NIT document during online creation of tender. For tenders of Estimated Cost Value (ECV) below Rs.50 Lakh shall be created as Single Stage Single Part Single Cover Tendering Process (In case of Auto Tendering Process (ATP) mode it may be Single Part Two Cover) and for tenders having ECV Rs.50 Lakh & above shall be created as normal tendering process as Single Stage Two-Part Two Cover Tendering Process. For Two Stage tendering in special case, e-Procurement Cell has to be consulted for creating such provision.
- 1.2 GTE Templates:** There will be tender specific standard GTE Templates available on the e-Procurement portal. While creating a tender the latest and appropriate GTE template is to be selected.
- 1.3 Bid Openers:** While creating the tender the "Bid Openers" will be identified who will be essentially from the Tender Committee. The maximum number of bid opener will be four and the minimum number will be two. It is advisable that "Two out of Three" or "Two out of Four" option for Bid Openers should be selected in general. In case of Tenders floated by any department at CIL/Subsidiary HQ, the Bid Openers will be the executives posted at CIL/Subsidiary HQ only. In case of Tenders floated by Area, the Bid Openers will be the executives posted at Area office only and in case of Tenders floated by Project, the Bid Openers will be the executives posted at Project office only.
- 1.4 Pre bid Meeting:** Pre-bid meeting in compliance with different manuals of CIL may take place, if required, after publication of Tender but in any case at least 1 (one) day before the start date of Bid submission. After the pre-bid meeting, Minutes of the pre-bid meeting including all the questions and replies shall be prepared and approved by the tender inviting authority. The minutes of the Pre-Bid meeting shall be uploaded on the Portal, before start date of bid submission which can be viewed by all interested Bidders.

Note (Not to be part of tender document): -

Any significant change in condition necessitated from Pre-Bid meeting shall require approval of respective FDs and subsequently, Document download date, Bid submission end date and bid opening date shall be shifted to a date 15 days beyond the date on which changed condition is uploaded. The seek clarification end date shall be adjusted as per e-Procurement Manual for works and services of CIL.

For procurement of highly technological and complex works, tender submission dates may be extended by CIL/Subsidiaries in order to reply queries in the pre-bid meetings or any other justifiable reason.

- 1.5 Independent External Monitor (IEM):** In each tender having estimated value above a threshold limit, an Independent External Monitor (IEM) is to be nominated as per



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

Integrity Pact. IEM's name and address is to be given in the NIT as well as in the online creation of tender and the Integrity Pact will be a part of the NIT document. (the threshold limit for integrity pact will be decided as per the existing policy of the Company)

1.6 Start date & End date of Bid submission: The bid submission will start from the next day of e-publication of NIT, but if there is a pre-bid meeting, bid submission will start on the next day of pre-bid meeting. For online submission of bid the Bidders should get minimum 15 (fifteen) days time (15x24 hours) for the tenders having ECV of Rs.50 lakhs & above and minimum 10 days time (10x24 hours) for the tenders having ECV of less than Rs.50 Lakhs. For the Global tenders this period will be minimum 30 days (30x24 hours). For the Single/Limited Tender Enquiries this period will be minimum of 7 days (7 X 24 Hours)."

If number of bids received online is found to be less than three on end date of bid submission then the following critical dates of the Tender will be automatically extended for a period of four days ending at 17.00 hrs:

- Last date of submission of Bid
- Last date of receipt of EMD
- Date of opening of Tender

If any of the above extended Dates falls on Holiday i.e. a non-working day as defined in the e-Procurement Portal then the same is to be rescheduled to the next working day.

This extension will be also applicable in case of receipt of zero bid.

Notes:

1. The validity period of tender should be decided based on the final end date of submission of bids.
2. The auto extension shall work on the basis of number of bids received only. (It may so happen that any of these bids may be eventually rejected during Tender Opening, Technical evaluation or further process of evaluation resulting the total number of valid bids becoming less than three.)
3. After extension, the tender shall be opened irrespective of available number of bids on the extended date of opening of tender.
4. For Two Part System, the date of opening of Bid of Part-I and Part-II shall be mentioned in the NIT. However, in case opening of Part-II is not possible on pre-defined date as mentioned in the NIT then approval of TAA shall be taken.

(When TAA is CMD then with the approval of concerned Director and in case the TAA is above CMD (i.e. FDs/Empowered Committee/Board) then with the approval of CMD. In case TAA is below CMD, then approval of respective TAA is required.)

1.6 Bid Validity Period: Bid Validity Period for "Works and Services" tenders will be 120 days from the End Date of bid submission.

(Not to be part of Tender Document)

Reasons for seeking extension of bid validity should be recorded by the Tender Inviting Authority.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

1.7 Seeking Clarification by Bidder: The Bidder may seek clarification online within the specified period. The identity of the Bidder will not be disclosed by the system. The department will clarify as far as possible the relevant queries of Bidders. The clarifications given by department will be visible to all the Bidders intending to participate in that tender. The clarifications may be asked from the day of e-Publication of NIT. The period for seeking clarification by Bidder will be up to 7 (seven) days before the end date of bid submission. The replies to clarifications sought by Bidders should be given by the department at least 2 (two) days before the end date of bid submission.

In exceptional cases where a large number of queries from Bidders are expected, the period for seeking clarification may be kept maximum upto 15 (fifteen) days before the end date of bid submission, but the minimum period given to the Bidders for seeking clarification should not be less than 10 (ten) days in such cases.

The Tender Inviting Authority will be responsible for replying/responding to the clarifications online within the prescribed time frame. However, if the Tender Inviting Authority feels that the query is of such a nature that advice of tender committee or any other authority is required to give clarification, he may do so to reply the queries within the prescribed time limit. The queries of Bidders clarified online and also unanswered queries of Bidders shall be referred in the TCR.

1.8 Format of Letter of Bid: There will be standard format of "Letter of Bid" in which the Name of work, NIT No. & Tender Id will be entered by Tender Creator and the same will be uploaded as a separate NIT document during online creation of tender.

1.9 Format of Price bid: Standard templates of "Price-bid/BoQ" for Item Rate and Percentage Rate tenders will be available on the e-Procurement portal. Here the Bidder will have to quote for all the tendered items and L-1 will be decided on overall quoted value. The Price-bid will be framed in the standard latest BoQ template downloaded from e-Procurement portal and the same will be protected with Password and will be uploaded during online creation of tender.

1.10 Downloading of Tender document: The Tender document can be downloaded by any prospective Bidder from the e-Procurement portal free of cost. The download of tender document may start immediately after e-Publication of NIT and shall continue till the last date and time of bid submission.

1.11 Tender ID: After creation of tender a unique Tender Id is automatically generated by the system. This Tender Id will be referred in all future correspondence or Reports of the tender. This Tender Id should be indicated in the format of "Letter of Bid" uploaded by the Creator.

2. PUBLICATION OF TENDER

2.1 Tender for the approved and financially concurred estimates will be published on the e-Procurement portal by authorized executives of CIL/Subsidiary with Digital Signature Certificate (DSC). The authorized executive for this purpose will normally be the HoD of the concerned tender inviting department.

2.2 The created tenders shall be published on the dedicated e-Procurement portal of CIL and the details will be mirrored in the Central Public Procurement Portal (<http://eprocure.gov.in>) of Govt. of India.

2.3 Publication of individual tenders in newspaper and other print media is dispensed with and one common window advertisement by CIL(HQ) and/or Subsidiary HQs may be



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

published in national dailies, regional and local newspapers, once in a fortnight, indicating that all the tenders issued by CIL and its Subsidiaries for procurement of Goods, Works and Services are available on the above portals and that procurement is also done through GeM portal.

Publication of the following Common Window Advertisement in National dailies, regional and local newspapers on fortnight basis may be arranged and also arrange for scrolling of the same on the respective Subsidiary website.

“All the tenders issued by CIL and its Subsidiaries for procurement of Goods, Works and Services are available on website of Coal India Ltd. www.coalindia.in, respective Subsidiary Company, CIL e-Procurement portal <https://coalindiatenders.nic.in> and Central Public Procurement Portal <https://eprocure.gov.in>. In addition, procurement is also done through GeM portal <https://gem.gov.in>.”

3. CORRIGENDUM TO NIT

Corrigendum should be issued only in exceptional cases. Pre-ponement of date for any event is not permitted.

Issue of Corrigendum shall be guided by circular of CVO CIL vide reference CIL/VIG/2015/33011/01/526 Dated 11.06.2015(available at CIL website under circulars). However, if any significant change in condition is necessitated from Pre-Bid meeting, it shall require approval of respective FDs and subsequently, Tender schedule shall be shifted to a date 15 days beyond the date on which changed condition is uploaded.

If date of submission of tender is to be extended, then the last date of submission of the tender should be suitably extended with reasonable extension of time and to be notified well in advance to allow the intending tenderers adequate/reasonable time period for submission of their tender offers within the notified extended time period.

In case of extension of Bid Submission, the minimum period of extension shall be of tendays.

The maximum extension of period shall be limited as follows:

With the approval of	Maximum Extension w.e.f original end date of bid submission
Tender Inviting Authority	10 to 15 days
Concerned Director	Up to 30 days
Concerned FD	For any significant change in condition necessitated from Pre-Bid meeting, Tender schedule shall be shifted to a date 15 days beyond the date on which changed condition is uploaded.

However, in exceptional situations in case of any disruption of service in eProcurement portal infrastructure or EMD payment infrastructure, for a considerable period, an extension of end date of Bid submission for a period of 1-3 working days may be done after normal resumption of services. Bid opening date will correspondingly be extended. This extension shall be effected by Application Administrator or by the Portal Service



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

Provider for all the tenders which are affected or likely to be affected due to such disruption of services/infrastructure

The Corrigendum Notice will be published in e-procurement portal only and NIT shall include provision in this respect.

4. SUBMISSION OF BID:

4.1 The Bidder will submit their bid online. No off-line bid shall be accepted.

4.2 The Bidders will have to accept unconditionally the online User Portal Agreement which contains the acceptance of all the Terms and Conditions of NIT including General and Special Terms & Conditions, Integrity Pact and other conditions, if any, along with online undertaking in support of the authenticity of the declarations regarding the facts, figures, information and documents furnished by the Bidder online in order to become an eligible Bidder. No conditional bid shall be allowed/accepted. This User Portal Agreement (Refer Cl. No.7 of Chapter-I) will be a part of NIT/Contract Document.

4.3 The Bidders will have to accept unconditionally in GTE (General Technical Evaluation) the Undertaking regarding Genuineness of the information furnished by him on-line & authenticity of the scanned copy of documents uploaded by him on-line in support of his eligibility criteria, declaration w.r.t Make in India order and compliance w.r.t procurement from Bidder of a country which shares a land border with India etc. and Letter of Bid. All such undertakings requiring unconditional acceptance and where no input from Bidder is required in the undertaking shall be included in the GTE Template and shall be accepted by the Bidder during Bid submission.

In the undertaking given by Bidder online through acceptance in GTE, there will be provision for penal action, if any information/declaration furnished online by the Bidder against eligibility criteria is found to be wrong at any stage which changes the eligibility status of the Bidder.

4.4 The Bidder will have to make the payment of EMD through online mode only.

In Online mode the Bidder can make payment of EMD either through net-banking from designated Bank/s or through NEFT/RTGS from any Scheduled Bank. In case of payment through net-banking the money will be immediately transferred to CIL/Subsidiary's designated Account. In case of payment through NEFT/RTGS the Bidder will have to make payment as per the Challans generated by system on e-Procurement portal and will have to furnish online the UTR Numbers before submission of bid. Bidder will be allowed to submit his/her bid only when the EMD is successfully received in CIL/Subsidiary account and the information flows from Bank to e-Procurement system.

In case of exemption of EMD the scanned copy of document in support of exemption will have to be uploaded by the Bidder during bid submission. However, this option is to be enabled only in those cases where the exemption of EMD to some Bidders is allowed as per NIT.

4.5 The EMD for Mining tenders and Tenders for Turnkey Contracts will be as per Contract Management Manual and EMD for Civil, E&M and other tenders will be as per Manual of Civil Engineering Works of CIL and the existing policy of CIL.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

- 4.6 The qualification in bid will also be subject to the receipt and acceptance of EMD (except in case of EMD exempted Bidder) within schedule date and time as mentioned in the NIT.
- 4.7 The information will be provided by the Bidder by filling up relevant data through a form in an objective and structured manner. The software will use the information provided by the Bidders to evaluate the technical bid automatically.
- 4.8 For online submission of tender the Bidders will have to upload the following-
1. For One/Single Part System- All the confirmatory documents as prescribed in the NIT and TPS (if applicable) in Cover-I and Price bid in Cover-I/ Cover-II as specified (Both are to be decrypted simultaneously).
 2. For Two Part System- All the confirmatory documents as prescribed in the NIT and TPS (if applicable) in Cover-I and "Price-bid" in Cover-II (Both are to be decrypted separately).

In case of EMD exemption, one more document in support of the claim of EMD exemption will have to be uploaded by the Bidder at specified folder.

- i). **Letter of Bid:** The Letter of Bid addressed to the Tender Inviting Authority (TIA) will be given in Tender document containing name of the work, NIT No., Tender ID. This will be the covering letter of the Bidder for his submitted bid. The Bidders have to accept unconditionally the Letter of Bid in GTE (General Technical Evaluation) at the time of bid submission. This online acceptance during bidding through GTE shall be construed as submission of LOB by bidder.
- ii). **Technical Parameter Sheet (TPS) (If applicable as per standard NIT and compatible with the e-procurement portal):** The Technical Parameter Sheet containing the technical specification parameters for the tendered work/service will be in Excel format (password protected) and will be uploaded during tender creation. This will be downloaded by the Bidder and he will furnish all the required information on this Excel file. Thereafter, the Bidder will upload the same Excel file during bid submission in General Technical Evaluation (GTE). The Technical Parameter Sheet which is incomplete and not submitted as per instruction given above will be rejected.
- iii). **Confirmatory Documents:** All the confirmatory documents as enlisted in the NIT in support of online information submitted by the Bidder are to be uploaded in Cover-I or through "My Document" link in Bidder space by the Bidder while submitting his/her bid.
- iv). **Price bid:** The Price bid containing the Bill of Quantity will be in .xls format (password protected) and will be uploaded during tender creation. This will be downloaded by the Bidder and he will quote the rates for all items on this Excel file. Thereafter, the Bidder will upload the same Excel file during bid submission in Cover-I/ Cover-II, as specified for One Part system and in Cover-II for Two Part system. The Price-bid will be in Item Rate or Percentage Rate BOQ or Mixed Rate BOQ format and the Bidder will have to quote for all the tendered items and the L-1 will be decided on overall quoted value (i.e. Cost to company). The Price-bids of the tenderers will have no condition. The Price Bid which is incomplete and not submitted as per instruction given above will be rejected. If a firm quotes NIL



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

charges/ consideration, the bid shall be treated as unresponsive and will not be considered.

- v). However, in case of tenders having provision for exemption of EMD, the Bidder claiming for exemption will have to upload the requisite document as specified in NIT in support of their claim for exemption of EMD.

4.9 Deleted

- 4.10 Modification and withdrawal of Bid:** Modification of the submitted bid shall be allowed online only before the deadline of submission of tender and the Bidder may modify and resubmit the bid online as many times as he may wish.

Bidders may withdraw their bids online within the end date of bid submission and their EMD will be refunded. However, if the Bidder once withdraws his bid, he will not be able to resubmit the bid in that particular tender. For withdrawal of bid after the end date of bid submission, the Bidder will have to make a request in writing to the Tender Inviting Authority. Withdrawal of bid may be allowed till issue of work order/LOA with the following provision of penal action:

I. For One Part System-

The penal actions are-

1. The EMD will be forfeited and
2. The Bidder will be debarred for minimum one year from participating in tenders in CIL/Subsidiary.

The Price-bids of all eligible Bidders including this Bidder will be opened and action will follow as under:

- i). If the Bidder withdrawing his bid is other than L-1, the tender process shall go on.
- ii). If the Bidder withdrawing his bid is L-1, then re-tender will be done.

II. For Two Part System-

The penal actions are-

1. If the request of withdrawal is received before online notification for opening of price bid, the EMD will be forfeited and Bidder will be debarred for minimum one year from participating in tenders in CIL/Subsidiary. The Price-bid of remaining Bidders will be opened and the tender process shall go on
2. If the request of withdrawal is received after online notification for opening of price bid, the EMD will be forfeited and the Bidder will be debarred for minimum 1 (one) year from participating in tenders in CIL/Subsidiary. The Price-bids of all eligible Bidders including this Bidder will be opened and action will follow as under:
 - i). If the Bidder withdrawing his bid is other than L-1, the tender process shall go on.
 - ii). If the Bidder withdrawing his bid is L-1, then re-tender will be done.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

Note:

- i. In case of above, a letter will be issued to the bidder by Tender Inviting Authority with the approval of Tender Accepting Authority (in case Board is Tender Accepting Authority then with the approval of CMD), stating that the EMD of bidder is forfeited, and this bidder is debarred for one year from participating in tenders in CIL/Subsidiary. This letter will be circulated to all Areas and CIL/Subsidiary HQ and the updated list will be maintained by all Tender Inviting Authority/Evaluators.

Penal action against clauses above will be enforced from the date of issue of such order.

- 4.11 Tender Status:** It will be the Bidder's responsibility to check the status of their Bid online regularly, after the opening of bid till award of contract. Additionally, information shall also be sent by system generated e-mail and SMS at nodal points (Date of bid opening, Requisition for Clarification on Confirmatory document from L-1 Bidder, award of work etc.). No separate communication will be required in this regard. Non-receipt of e-mail and SMS will not be accepted as a reason of non-submission of Confirmatory documents within prescribed time. This will be specifically mentioned in the NIT. The Tender Status will be in public domain and anyone visiting the site can view it by identifying the tender.

5. OPENING OF BID:

5.1 For One Part System-

- 5.1.1 The tender will be opened one day after the Bid submission end date or next working day whichever is later. Tender will be decrypted and opened online by the "Bid Openers" with their Digital Signature Certificates on the prescheduled date & time of Tender Opening.
- 5.1.2 All the documents uploaded by L1-Bidder including EMD exemption documents (if any) and the Evaluation sheets generated by the system online shall be downloaded after opening of bid.

5.2 For Two Part System- Opening of Technical Bid-

- 5.2.1 The Technical bid (Cover-I) will be opened one day after the Bid submission end date or next working day whichever is later. Technical bid (Cover-I) will be decrypted and opened online by the "Bid Openers" with their Digital Signature Certificates on the prescheduled date & time of Tender Opening.
- 5.2.2 All the documents uploaded by Bidder(s) including EMD exemption documents (if any) and the Evaluation sheets generated by the system online shall be downloaded after opening of Technical bid (Cover-I). After decryption and opening of Technical bid (Cover-I) the "technical bid opening summary" will be uploaded on the same day
- 5.3 The e-Procurement System will evaluate the Technical bids automatically on the basis of relevant data provided by Bidder through a form in an objective and structured manner while submitting bid. If the parameter given by Bidder in objective and structured manner does not confirm to required eligibility criteria as specified in the tender document then the bid will be either automatically rejected by the system or shown as non-complied bid which shall be rejected by the evaluator.
- 5.4 Acceptance of Bidder in a general form of online declaration will be recognized and accepted as the certification regarding authenticity of all the information and



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

documents furnished by them online and acceptance of all terms and conditions of the bid document, since such acceptance by Bidder with Digital Signature Certificate is legally tenable.

6. EVALUATION OF TENDER:

6.1 After opening of Tender/ Technical bid (as the case may be), it will be evaluated by the constituted Tender Committee.

6.2 Evaluation of Tender-

I. For One Part System:

A. After opening of bid, the documents submitted by L-1 Bidder in cover I as enlisted in the NIT will be downloaded by the Evaluator and shall be put up to the Tender Committee. The Tender Committee will examine the uploaded documents against information/declarations furnished by the L-1 Bidder online. If it confirms to all of the information/ declarations furnished by the Bidder online and does not change the eligibility status of the Bidder then the Bidder will be considered eligible for award of Contract.

B. In case the Tender Committee finds that there is some deficiency in uploaded documents corresponding to the information furnished online or in case corresponding document have not been uploaded by Bidder(s) then the same will be specified online by Evaluator clearly indicating the omissions/shortcomings in the uploaded documents and indicating start date and end date allowing 7 days (7 x 24 hours) time for online re-submission by Bidder(s). The Bidder(s) will get this information on their personalized dashboard under "Upload confirmatory document" link. Additionally, information shall also be sent by system generated email and SMS, but it will be the Bidder's responsibility to check the updated status/information on their personalized dash board regularly after opening of bid. No separate communication will be required in this regard. Non-receipt of e-mail and SMS will not be accepted as a reason of non-submission of documents within prescribed time. The Bidder(s) will upload the scanned copy of all those specified documents in support of the information/ declarations furnished by them online within the specified period of 7 days. No further clarification shall be sought from Bidder.

Note: 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. 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 work order document related to a particular contract without its completion/ performance certificate, the certificate can be asked for and considered. However, no work order for new contract should be asked for so as to qualify the bidder.

C. The tender will be evaluated on the basis of documents uploaded by L-1 Bidder online. The L-1 Bidder is not required to submit hard copy of any document through offline mode. Any document submitted offline will not be given any cognizance in the evaluation of tender.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

- D.** In case the L-1 Bidder submits requisite documents online as per NIT, then the Bidder will be considered eligible for award of Contract.
- E.** In case the L-1 Bidder fails to submit requisite documents online as per NIT or if any of the information/declaration furnished by L-1 Bidder online is found to be wrong by Tender Committee during evaluation of scanned documents uploaded by Bidder, which changes the eligibility status of the Bidder, then his bid shall be rejected and EMD of L-1 Bidder will be forfeited.
- F.** Deleted
- G.** In case the L1 Bidder is technically eligible but rejection is due to high rate quoted by him/her then the tender shall be cancelled and retendered.
- H.** In case the L1 Bidder is rejected due to noncompliance of confirmatory documents then the L-2 Bidder will become L-1 Bidder and confirmatory documents of this Bidder shall be evaluated by TC and the process shall be followed as mentioned in Clause No. A to G above.
- I.** The process as mentioned at **H** shall be repeated till the work is either awarded or all the eligible Bidders are exhausted.
- J.** In case none of the Bidder complies the technical requirement, then re-tender will be done (with the same or different quantity, as per the instant requirement).
- K.** The verification of Document from source shall be done only in case of complaints received or on suspicion. This should be done either through speed post or through electronic communication. No anonymous/pseudonymous complaints shall be entertained.
- L.** It is responsibility of Bidders to upload legible/clearly readable scanned copy of all the required documents as mentioned above.

II. For Two Part System:

- A.** After opening of Technical bid, the documents submitted by Bidder(s) in Cover I as enlisted in the NIT will be downloaded by the Evaluator and shall be put up to the Tender Committee. The Tender Committee will examine the uploaded documents against information/declarations furnished by the Bidder(s) online. If it confirms to all of the information/ declarations furnished by the Bidder online and do not change the eligibility status of the Bidder then the Bidder will be considered eligible for opening of price bid.
- B.** In case the Tender Committee finds that there is some deficiency in uploaded documents corresponding to the information furnished online or in case corresponding document have not been uploaded by Bidder(s) then the same will be specified online by Evaluator clearly indicating the omissions/shortcomings in the uploaded documents and indicating start date and end date allowing 7 days (7 x 24 hours) time for online re-submission by Bidder(s). The Bidder(s) will get this information on their personalized dashboard under "Upload confirmatory document" link. Additionally, information shall also be sent by system generated email and SMS, but it will be the Bidder's responsibility to check the updated status/information on their personalized dash board regularly after opening of bid. No separate communication will be required in this regard. Non-receipt of e-mail and SMS will not be accepted as a reason of non-submission of documents within



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

prescribed time. The Bidder(s) will upload the scanned copy of all those specified documents in support of the information/ declarations furnished by them online within the specified period of 7 days. No further clarification shall be sought from Bidder.

Note: 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. 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 work order document related to a particular contract without its completion/ performance certificate, the certificate can be asked for and considered. However, no work order for new contract should be asked for so as to qualify the bidder.

- C. It is responsibility of Bidders to upload legible/clearly readable scanned copy of all the required documents as mentioned above.
- D. The tender will be evaluated on the basis of documents uploaded by Bidder(s) online. The Bidder(s) is/are not required to submit hard copy of any document through offline mode. Any document submitted offline will not be given any cognizance in the evaluation of tender.
- E. In case the Bidder(s) submit(s) requisite documents online as per NIT, then the Bidder(s) will be considered eligible for opening of Price Bid.
- F. Seeking clarification shall be restricted to confirmation of submitted document/online information only and it should be only for one time for a period of upto 7 days. The clarification shall be taken in online mode in the e-Procurement portal of CIL only.
- G. The verification of Document from source shall be done only in case of complaints received or on suspicion. This should be done either through speed post or through electronic communication. No anonymous/pseudonymous complaints shall be entertained.

Note: Not to be part of tender document

- H. In case Bidder(s) fails to confirm the online submitted information(s)/ declaration(s) by the submitted documents as (B) above, their/his bid shall be rejected; however, if the confirmatory documents do not change eligibility status of the Bidder in connection his submitted online information(s)/declaration(s), then his/their bid will be accepted for opening of Price Bid.
- I. The price Bid of eligible Bidder in Technical Bid shall be opened with the approval of Tender Approving Authority (TAA*) based on recommendation of Tender Committee.

(Note: 'I' above not to be part of tender document.)

*When TAA is CMD then with the approval of concerned Director and in case the TAA is above CMD level (i.e. FDs/Empowered Committee/Board) then with the approval of CMD. In case TAA is below CMD level, then approval of respective TAA is required.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

- J.** After Technical evaluation of tender, “Technical Evaluation Summary” will be uploaded by the Evaluator and price bid shall be opened on preschedule date and time mentioned in the NIT online in the e-Procurement portal of CIL. However, in case there is any extension of date and time of price bid opening, it shall be notified online and price bid shall be opened online on e-Procurement portal of CIL at rescheduled date and time.
- K.** In case none of the Bidder(s) complies the technical eligibility criteria as per NIT, then Bidder(s) will be rejected online and re-tender (if required) will be done (with the same or different quantity, as per the instant requirement).

III. The following clauses are applicable for both One Part and Two Part Systems:

A. Public Procurement Policy for Micro and Small Enterprises (MSEs) shall be applicable for Service Tenders in accordance to the notification of Govt. of India and including its amendment(s) as notified by Gol from time to time

- i) Subject to meeting terms and conditions stated in the tender document including but not limiting to prequalification criteria, 25% of the work will be awarded to MSE as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) for the tendered work/item. Where the tendered work can be split, MSE quoting a price within a price band of $L1 + 15\%$ shall be awarded at least 25% of total tendered work provided they match L1 price. In case the tendered work cannot be split, MSE shall be awarded full work provided their quoted price is within a price band of $L-1 + 15\%$ and they match the L-1 price.

- ii) In case of more than one such MSEs are in the price band of $L-1 + 15\%$ and matches the L-1 price, the work may be shared proportionately if the job can be split.

If the job cannot be split, then the opportunity to match the L-1 rate of the tender shall be given first to MSE who has quoted lowest rate among the MSEs and the total job shall be awarded to them after matching the L-1 price of the tender, in case the L-1 is other than MSE. If MSE is a L1 Bidder, full work will be awarded to such Bidder. If the MSE who have quoted lowest rate among the MSEs in the price band of $L-1 + 15\%$ do not agree to match the rate of L-1 of the tender, then the MSE with next higher quoted rate in the price band of $L-1 + 15\%$ shall be given chance to match the rate of L-1 for award of the complete job. This process to be repeated in till work is awarded to MSE or MSE Bidders are exhausted.

- iii) Out of the 25% target of annual procurement from micro and small enterprises 3(three) percent shall be earmarked for procurement from micro and small enterprises owned by women. In the event of failure of such MSEs to participate in the tender process or meet the tender requirements and L-1 price, 3(three) percent sub-target so earmarked shall be met from other MSEs.

- iv) Out of the 25% target of annual procurement from micro and small enterprises 4(four) percent shall be earmarked for procurement from micro and small enterprises owned by Scheduled Caste & Scheduled Tribe



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

entrepreneurs. In the event of failure of such MSEs to participate in the tender process or meet the tender requirements and L-1 price, four percent sub-target so earmarked shall be met from other MSEs.

- v) To qualify for entitlement as SC/ST owned MSE, the SC/ST certificate issued by District Authority must be submitted by the Bidder in addition to certificate of registration with anyone of the agencies mentioned in paragraph (I) above. The Bidder shall be responsible to furnish necessary documentary evidence for enabling CIL to ascertain that the MSE is owned by SC/ST. MSE owned by SC/ST is defined as:
- In case of proprietary MSE, proprietor(s) shall be SC /ST
 - In case of partnership MSE, the SC/ST partners shall be holding at least 51% shares in the enterprise.
 - In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.
- vi) Classification of Micro and Small Enterprise are as under:
- a. Micro Enterprise -Enterprise where the investment in Plant and Machinery or Equipment does not exceed One Crore Rupees and Turnover does not exceed Five Crore Rupees.
 - b. Small Enterprise- Enterprise where the investment in Plant and Machinery or Equipment does not exceed Ten Crore Rupees and Turnover does not exceed Fifty Crore Rupees.
- vii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
- viii) The MSEs are required to submit copy of documentary evidence, issued by their registering authority whether they are small enterprise or micro enterprise as per provisions of Public Procurement Policy for Micro and Small Enterprise (MSEs) Order, 2012 with latest guidelines/clarifications provided by MoMSME.
- ix) If a bidder participates as a joint Venture (JV), the benefits as per Public Procurement Policy for MSEs Order-2012 shall not be applicable to them. (Note: Applicable for Tenders for Services).

Note: Not to be a part of tender document

- a) MSEs shall be allowed to participate in Service tenders in accordance to the notification of Govt. of India and including its amendment(s) as notified by Gol from time to time.
- b) As per clarification received from Ministry of MSME vide F.No.21(12)/2016-MA dated 15th June 2018 Works contract are not covered under PP Policy:

Quote

Subject: Clarification regarding Public Procurement Policy-Applicability to Works Contract reg.

Kindly refer to your e-mail dated 13.06.2018 along with letter No. GAIL/ND/C&P/CO/MSME /2018-19/01/Rem on the subject cited above.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

In this context, it is to inform that Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 supersedes all previous order/circular/letter issues by this office relating procurement of goods and services and also to inform you that as per PP Policy-2012, Works contract are not covered under PP Policy.

Unquote

B. Preference to Make in India.

Preference to Make in India (as applicable) vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020, issued by Govt. of India as amended from time to time shall be applicable. In terms of the above said policy, purchase preference shall be given to Class-I local supplier. In terms with the above said policy, Class-I local suppliers and Class-II local suppliers shall be eligible to bid.

The definitions of Class-I Local Supplier, Class-II local supplier, Non-Local supplier, Local Content and Margin of Purchase Preference as per above mentioned Order are as follows: -

- A. 'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under said order.
- B. 'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 20% but less than 50%, as defined under said order.
- C. 'Non-Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than 20% as defined under said order
- D. 'Local Content' means the amount of value added in India which shall be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
- E. '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. The margin of purchase preference is 20%.

Preference to Make in India (as applicable) vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020, issued by Govt. of India as amended from time to time shall be applicable. (NOT APPLICABLE WHERE ESTIMATED COST PUT TO TENDER IS LESS THAN 5 LAKHS.)

In terms with the above said policy, Class-I local suppliers and Class-II local suppliers shall be eligible to bid. Non-local supplier is not eligible to bid. The purchase preference shall be given to Class-I local supplier only.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

In terms of the above said policy, purchase preference shall be given to local suppliers in the following manner:

I. In the procurement of works which are divisible in nature, the following procedure shall be followed: -

- i) Among all qualified bids, the lowest bid will be termed as L-1. If L-1 is from a Class-I local supplier, the contract for full quantity will be awarded to L-1 at L-1 price by the Purchaser.
- ii) If L-1 is not a Class-I local supplier, 50% of the order quantity shall be awarded to L-1. Thereafter, the lowest Bidder among the Class-I local suppliers will be invited to match the L-1 price for the remaining 50% quantity subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract for that quantity shall be awarded to such local supplier subject to his matching the L-1 price. In case such lowest eligible Class-I supplier fails to match the L-1 price or accept less than the offer quantity, the next higher Class-I local supplier within the margin of purchase preference shall be invited to match the L-1 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 supplier, then such balance quantity may also be ordered on L-1 Bidder.

II. In the procurement of works which are not divisible, and in procurement of services where the bid is evaluated on price alone, the following procedure shall be followed: -

- i) Among all qualified bids, the lowest bid will be termed as L-1. If L-1 is from a Class-I local supplier, the contract will be awarded to L-1.
- ii) If L-1 is not from a Class-I local supplier, the lowest Bidder among the Class-I local suppliers, will be invited to match the L-1 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 L-1 price.
- iii) In case such lowest eligible Class-I local supplier fails to match the L-1 price, the Class-I local supplier with the next higher bid within the margin of purchase preference shall be invited to match the L-1 price and so on and contract shall be awarded accordingly. In case none of the Class-I local suppliers within the margin of purchase preference matches the L-1 price, then the contract may be awarded to the L-1 Bidder.

Note: The confirmation from the bidder regarding matching of L1 price may be taken in confirmatory document link of e-Procurement portal by recycling 'Any other document' link.

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



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

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 margin of purchase preference of the L1 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 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 margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

IV. 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.

V. Verification of local content:

- a) If the estimated value of Procurement is less than Rs. 10 crores, all the Bidders at the time of bidding shall submit self-certification indicating the percentage of local content in the offered items. They shall also give details of the location(s) at which the local value addition is made, if applicable.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

- 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 with UDIN 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, 2020 (amended from time to time) shall be taken by TAA limited to the CMD of CIL/Subsidiaries to the procuring entity.
- d) CIL/Subsidiary 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) False declarations will attract debarring of the bidder or its successors for a period up to two years as per Guidelines on debarment of firms from bidding along with such other action as may be permissible under law.
- f) 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 below.
- g) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - 1. 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;
 - 2. 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);
 - 3. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

Note (For departmental users & not to be part of Tender Document):

- In case of procurement of all goods, services or works in respect of which the Nodal Ministry of department has communicated that there is a sufficient local capacity and local competition, only Class-I local supplier as defined under the said order, shall be eligible to bid irrespective of purchase value.
- In procurement of all goods, services or works, not covered by sl. No.1 above and with estimated value of purchases less than Rs.200



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

crore in accordance to Rule 161 (iv) of GFR 2017, Global tender enquiries shall not be issued except with competent approval as designated by Department of Expenditure. Only Class-I local supplier and Class-II local supplier as defined under the order, shall be eligible to bid in procurements undertaken by procuring entities, except when global tender enquiries have 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.

- Procurements where the estimated value is less than Rs. 5 lakhs, shall be exempted 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.

VI. 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/Departments* 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. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
 - a) 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 CMD of CIL/Subsidiary.
 - b) CIL/Subsidiary *whose procurement exceeds Rs. 1000 Crore per annum* shall notify/ update their procurement projections every year, for the next 5 years on their respective website (**Note:** To be monitored by Project Monitoring Division).



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

VII. 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. CIL/Subsidiary 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. CIL/ Subsidiary 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.

C. Procurement from Startups shall be applicable for Works/Service Tenders in accordance to the notification of Govt. of India and including its amendment(s) as notified by Gol from time to time.

- i. Prior experience and prior turnover shall be relaxed for Startup Bidders as recognized by Department for Promotion of Industry and Internal Trade (DPIIT) for the category of Work/Services in which they are registered, subject to meeting of quality and technical specifications.
- ii. This shall be applicable in Works/Service tenders having innovation, development or improvement of products or processes of services. Such Works/Services need to be examined at Subsidiary level on case to case basis to decide for keeping the provision for Startups. The routine/pre-engineered works/Services shall be excluded from the Startups Clause.
- iii. To waive off the requirement of experience and turnover criteria for Startups, the details of work Experience and Financial Turnover during bidding on the portal, a pre-defined input shall be prescribed in the NIT to be filled up by startups so that they comply the portal logic. A confirmatory document for being a Startups shall be prescribed in the NIT which shall be a certificate for being a Startups issued by DPIIT in the category of work and/or Service for which they are registered. This provision shall continue till e-Procurement portal is customized to take care of Bidder wise evaluation.
- iv. The existing working capital eligibility criteria shall be kept enabled for all the participating Bidders including Startups.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

6.3 The Tender Committee will recommend for award of work to the successful Bidder after evaluating their technical eligibility based on the system-generated evaluation sheets followed by evaluation of the scanned documents uploaded by Bidder in support of the information furnished by them online and after evaluation of the reasonableness of L-1 rates. The reasonableness of rates will be evaluated as per the provisions of Manual of CIL and other guidelines issued from time to time.

The tender accepting authority i.e. Competent Authority shall approve the award of work after concurrence of associate finance. The timeline for clearing of proposal by associate finance shall be 03(three) working days. The approval for award of work to L-1 Bidder will be accorded by the Competent Authority as per Delegation of Power based on the TC recommendation. In any approval for acceptance of tender, the responsibility of the Competent Authority is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring (through his associate Finance), whether:

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

6.4 After competent approval and financial concurrence of TCR, the work order to the L-1 Bidder will be issued and the scanned copy of the LOA/Work Order will be uploaded on the e-Procurement portal. The Bidder, whose Bid has been accepted, will be notified /communicated by the Employer electronically through e-procurement portal of CIL to the successful bidder and it shall make the binding Contract with the Company. The offline communication of LOA, shall not be mandatory.

After the approval of competent authority for award of work and during uploading of financial evaluation summary the deliberation of the TC, except the portion that may divulge third party technical/ commercial confidential information, should normally be uploaded within three working days.

6.5 (A) **Logical End of online created Tender:** Any tender hosted on the e-Procurement site must be logically concluded i.e. either Award of work is issued at AOC page on e-Procurement portal in online mode or the tender is cancelled/ retendered online through corrigendum.

6.5 (B) If L-1 Bidder backs out (i.e. Techno commercially established L-1 Bidder), the EMD will be forfeited and the Bidder will be debarred for minimum one (1) year from participating in tenders in CIL/Subsidiary.

Note (Not part of tender document):-

- a) In case the Accepting Authority of the work is Board or Empowered Committee or FDs or CMD of CIL/Subsidiary Company, then the Competent Authority for forfeit of EMD and debarment shall be CMD of CIL/Subsidiary Company.
- b) In case the Accepting Authority of the work is up to the level of Director of CIL/Subsidiary Company, then the Competent Authority for forfeiture of EMD and debarment shall be Director of CIL/Subsidiary Company.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

However, debarment shall be done as per Guidelines on Debarment of Firms from Bidding.

6.6 EMD Refund:

- a. If EMD is paid by the Bidder in online mode (Direct Debit/NEFT/RTGS) then the EMD of rejected Bidders will be refunded at any stage directly to the account from where it had been received (except the cases where EMD is to be forfeited).
- b. No claim from the Bidders will be entertained for non-receipt of the refund in any account other than the one from where the money is received.
- c. If the refund of EMD is not received by the Bidder in the account from which the EMD has been made due to any technical reason then it will be paid through conventional system of e-payment. For this purpose, if required, Tender Inviting Authority will obtain the Mandate Form from the Bidder.
- d. In case the tender is cancelled then EMD of all the participating Bidders will be refunded unless it is forfeited by the department.
- e. If the Bidder withdraws his/her bid online (i.e. before the end date of submission of tender) then his/her EMD will be refunded automatically after the opening of tender.
- f. The EMD of successful Bidder (on Award of Contract) will be retained by CIL/Subsidiary and will be adjusted to Performance Security Deposit at the option of the Bidder.

6.7 Handling Dissent among Tender Committee (Not to be part of Tender Document)

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. Competent Authority can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

In cases where the Competent Authority 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 Competent Authority, sticks to its own earlier recommendations, the tender accepting authority can finally decide as deemed fit, duly recording detailed



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

reasons. He will be responsible for such decisions. However, such situations should be rare.

Independence, Impartiality, Confidentiality and ‘No Conflict of Interest’ at all Stages of Evaluation of Bids-

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest 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.

TC should give an undertaking at the appropriate time that “None of the members has any personal interest in the companies/ agencies participating in the tender process”.

Any member having an interest in any company should refrain from participating in the TC. Some members of a TC may be subordinate to or related others in a strictly hierarchical organisation, so that they are not free to express independent views – such a situation must be avoided when constituting the TC.

7. REVOCATION OF TENDER PROCESS:

The online evaluation of tender must be performed by the Evaluator with utmost care and diligence. The Evaluator of tender must ensure that the decision of Tender Committee is correctly uploaded on the e-Procurement portal.

However, there may be situation when the decision of Tender Committee may have to be changed subsequently on account of a Court’s verdict. Also, there may be circumstances when online evaluation of tender is not done correctly due to mistake by the Evaluator or due to technical error in the system, which may lead to cancellation of tender.

In order to avoid the cancellation of tender in such cases, the tender process needs be reverted back to appropriate stage (i.e. bid Opening stage etc.) to comply with the Court’s verdict or to rectify the error committed by the Evaluator. This provision in the e-Procurement system has been introduced with an objective to abide by the Court’s verdict or to ensure that the tender process should not suffer due to any mistake committed by an individual or due to any technical error in the system.

Revocation of Tender process back to Technical-bid opening stage or Price-bid opening stage from an advanced stage shall be done under the following circumstances:

- a. To comply with the directives of Hon’ble Court of Law.
- b. If the Evaluator makes a mistake in online evaluation of tender, which is not in line with the Tender Committee decision.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

- c. If there is an error in the online evaluation of tender due to technical error in the system.

Revocation of Tender process will be done with the specific approval of the concerned Director.

In all such cases the Tender Revocation Notice must contain the details of the circumstances leading to revocation of tender process.

The Revocation of Tender on the e-Procurement portal can be done by way of creation and publication of corrigendum. However, since Revocation of Tender, in true sense, is not a Corrigendum to NIT, the Tender Revocation Notice will be uploaded only on the e-Procurement portal.

In case of revocation of Tender at any stage the auto-refund of EMD may not work properly and in such case it may be required that Tender Inviting Authority to arrange refund of EMD through conventional system of refund of EMD.

8. CANCELLATION OF TENDER:

Any tender published on the e-Procurement portal must be concluded to its logical end i.e. either "Award of Contract" or "Cancellation of Tender" or "Retender".

It will be the responsibility of the Publisher of tender to conclude the published tenders to its logical end within the original bid validity period.

Tenders should be cancelled only under exceptional cases with due approval of Tender Approving Authority. In case of tenders where Board of Directors/ CFD of CIL/Subsidiary is the Tender Approving Authority, in such cases the approval of Chairman/CMD, CIL/Subsidiary will be required. However, for cancellation of Tender due to non-receipt of any bid, no approval will be required.

In all such cases the Tender Cancellation Notice must contain the details of the circumstances leading to cancellation of tender.

The Cancellation of Tender on the e-Procurement portal can be done by way of creation and publication of corrigendum. However, since Cancellation of Tender, in true sense, is not a Corrigendum to NIT, the Tender Cancellation Notice will be uploaded only on the e-Procurement portal.

The CIL/Subsidiary may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below-

- 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 tender documents;
- c. none of the technical Proposals meets the minimum technical qualifying score (if any);
- d. If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART I

- e. the Bids'/ Proposals' prices are substantially higher than the estimated/ updated/ justified cost.
- 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 CIL/Subsidiary shall re-tender the case as per the requirement.

- g. Due to non-receipt of any bid

In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described above. 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.

Approval for re-tendering should be accorded by the Competent Authority after recording the reasons/ proper justification in writing. In case a procurement is re-tender more than once, approval of one level above the Competent Authority may be taken. 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.

- 9. All the details of technical bid and price bid will be kept preserved in the archives for auditing purposes and the same can be accessed with special authorization. The IP address of all the Bidders who has participated in the bid along with timing and date will also be kept preserved in the system.
- 10. The processes for entering into the Agreement with the successful Bidder will be done offline as per the prevailing manual system. However, the documents required to be submitted by Contractor for executing the Agreement will be specified in the Tender document.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

A. ELIGIBILITY CRITERIA

1. SERVICES TENDER (For tenders covered under Chapter 3 & Chapter 6 of CMM) :

(The Work Experience and Working Capital criteria as per Clause No. 1(a) and 1(b) shall also be applicable for AMC Contracts as per MCEW and Clause 1(b) is applicable for tenders for Turnkey Contracts as per CMM Chapter 2)

a. Work Experience (Not Applicable for tenders with ECV below Rs.50 lakhs**):**

The Bidder must have experience of works (includes completed / ongoing) of similar nature valuing 50 % of the annualized estimated value of the work put to tender (for period of completion over 1 year) / 50 % of the estimated value of the work (for completion period up to one year) put to Tender in any year (consecutive 365 days) during last 7(seven) years ending last day of month previous to the one in which bid applications are invited.

(For transportation works i.e. Tenders under Chapter 3 of CMM of CIL, similar nature of works shall mean: *Loading and / or Transportation of coal/Excavation and / or Transportation of Coal / Overburden/ Shale/Extraneous materials/Sand / ore / Minerals etc. by mechanized means*)

(For tenders OB removal and OB removal & coal extraction etc under Chapter 6 of CMM of CIL, similar nature of works shall mean: *Excavation & transportation of coal/soil/ overburden/ shale/ ore/ minerals etc. by mechanized means.*)

However, Works of similar nature may be suitably defined by respective Subsidiaries based on its own necessity.

**** Work experience can be taken as eligibility criteria for tenders of ECV below Rs.50 Lakhs in case of Services pertaining to Production and Safety as decided by Subsidiary Companies.

“Annualised value” of the work shall be calculated as the “Estimated value/Period of completion in Days x 365”.

The value of executed works shall be given a simple weightage to bring them at current price level by adding 7% for each completed year (total number of days/365) after the end date of experience till the last day of month previous to one in which e-Tender has been invited [**Note: Configuration of the portal to 7% is required**].

The above qualification criteria shall be met collectively by JV partners or JV itself.

The qualifying criteria parameter e.g., Work Experience of the individual partners of the J.V will be added together towards fulfillment of qualification criteria related to experience.

Note:

1. The definition of Similar Work to be given in the NIT should be broader, unambiguous, explicit and it should contain the predominant nature of tendered work. There should not be any scope for different interpretation by Bidder and the department w.r.to “similar nature of work” defined in the NIT.
2. Till the time of changes in the e-procurement portal regarding weightage from 5% to 7% is configured in the portal, the 5% weightage shall be considered for work experience for floating of tender on NIC portal.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

Data to be furnished by Bidder on-line:

- i. Start date of the year for which work experience of Bidder is to be considered for eligibility.
- ii. Start date & end date of each qualifying experience (similar nature)
- iii. Work Order Number/Agreement Number of each experience
- iv. Name & address of Employer/Work Order Issuing authority of each experience
- v. Percentage (%) share of each experience (In case the experience has been earned by the Bidder as a partner in a Joint Venture firm/Partnership firm then the proportionate value of experience in proportion to actual share of Bidder in that Joint Venture firm/ Partnership firm will be considered against eligibility else it shall be taken as 100%).
- vi. Executed Value of work against each experience
- vii. In case the Bidder is a Joint Venture, the work experience of any one, two or three of the individual partners of JV or the JV itself may be furnished as the work experience of the Bidder.

Technical evaluation by the System:

- i. The system shall calculate the end date by adding 365 days to the start date of experience (provided by Bidder). End date shall not be later than the last date (last day of month previous to the month in which NIT has been published on e-procurement portal).
- ii. The system shall check the Start & End date of each experience and accept it as a qualifying experience if it falls within the year selected by the Bidder (as calculated by adding 365 days to the start date restricted to the 'last date')
- iii. The system shall calculate the value of each qualifying experience by multiplying the value with the % share of experience and adding 7% for each completed year (total No. of days/365) after the end date of experience of work till the last date of month previous to one in which the NIT has been published on e-Procurement portal.
- iv. The system shall calculate the value of all qualifying experiences taken together for each Bidder and grade him as 'Eligible' if it meets the minimum requirements (50% of Annualised Value or estimated value whichever is less) or else as 'Ineligible'.
- v. In case any of the experiences does not fall in the selected period of 365 days (continuous), such experiences will be excluded from evaluation. Hence the Bidder shall have to furnish the value of work executed only during the selected period of 365 days (continuous).
- vi. The weightage of 7% every year will be on simple rate and will not be compounded on yearly basis for the purpose of calculating the value of each qualifying experience."
- vii. The work experience of the Bidder may be an ongoing work and the executed value of work shall be considered for evaluation.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

- viii. In case the experience has been earned by the Bidder as an individual or proprietor of a Proprietorship firm, then 100% value of the experience will be considered against eligibility. But if the experience has been earned by the Bidder as a partner in a Joint Venture firm/Partnership firm then the proportionate value of experience in proportion to the actual share of Bidder in that Joint Venture firm/Partnership firm will be considered against eligibility.

Scanned copy of documents to be uploaded by Bidders (CONFIRMATORY DOCUMENT):

For work experience, Bidders are required to submit Work Experience Certificate issued by the employer against the experience of similar work containing all the information as sought on-line.

Work order, BOQ, TDS etc. may be sought during clarification or along with deficient documents, if felt necessary by the Tender Committee.

Note: A Sample Checklist for Work Experience Certificate is enclosed below.

SAMPLE CHECKLIST OF WORK EXPERIENCE CERTIFICATE

THIS IS A SAMPLE CHECKLIST FOR WORK EXPERIENCE CERTIFICATE. (FOR REFERENCE PURPOSE ONLY).

The Work Experience Certificate issued by Employer (Principal Employer as applicable) should contain the following important parameters in line with the information furnished by the bidder online:

1. Name of Work: (Should be as per the Similar Nature of Work and should be matching with the Name of work mentioned in Work Order or Agreement).
2. Work Experience Certificate Reference No.: (should contain Reference No. and issuing date.)
3. Work Order Ref Number: (Work Order Reference Number should be clearly mentioned).
4. Agreement Ref Number: (Agreement Reference Number should be clearly mentioned) (As applicable).
5. Name of Contractor: (In case of a JV, Share of each JV Partner).
6. Name & Address of Employer/Work Order Issuing authority of experience.
7. Start Date & End Date of Qualifying Experience: (Should be maximum consecutive 365 days and should be within the period [1 year (consecutive 365 days)] declared online for consideration of eligibility).
8. Executed Value of Work: (Should be for the period as declared online)

NOTE:

1. For eligibility Total Amount of Work Experience (adding all the Experience Value during the consecutive 365 days declared online) should be at least 50% of the Annualized value or estimated value whichever is less.
2. In case of JV, above documents of partner(s) shall be submitted and Work Experience shall be met collectively by all the partner/ members.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

b. Working Capital (Not Applicable for tenders with ECV below Rs.50 lakhs):

Evidence of possessing adequate working capital (at least 20% of the “Annualized value or Estimated value whichever is less” of this work) inclusive of access to lines of credit and availability of other financial resources to meet the requirement. The Bidder should possess the working capital within three months prior to the date of opening of tender.

In case of JV, the requirement of Working Capital under this clause shall be met as per following proportion:

- a. The lead member shall have to possess at least 50% share in the required Working Capital in order to qualify in this tender.
- b. All other members shall have to possess at least 25% share in the required Working Capital, in order to qualify in this tender.

Data to be furnished by Bidder on-line:

- i. Amount of available Working Capital inclusive of lines of credit and availability of other financial resources
- ii. Date on which the Bidder possesses the required working capital
- iii. Name of the Chartered Accountant (CA)
- iv. Membership Number of CA who certifies the Bidder's working capital on a particular date.
- v. Date of Issue of Certificate

In case the Bidder is a Joint Venture, the working capital of the individual partners of the JV will be added together.

Technical evaluation by the System:

- i. The system shall check that the date on which the Bidder possesses the required working capital as well as the date of issue of certificate is within 3 months of the date of opening of tender.

The value of working capital as certified by the CA is greater than or equal to the minimum requirement.

Note: The proportion of required Working Capital possessed by Lead Member and other members shall have to be evaluated offline by the Tender Committee till it is configured in the portal.

Scanned copy of documents to be uploaded by Bidders (CONFIRMATORY DOCUMENT):

Certificate of Working Capital issued by a Practicing Chartered Accountant having a membership number with Institute of Chartered Accountants of India containing the information as furnished by Bidder on- line with UDIN.

Note: A Sample Checklist for Working Capital Certificate is enclosed.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II
SAMPLE CHECKLIST OF WORKING CAPITAL CERTIFICATE

THIS IS A SAMPLE CHECKLIST FOR WORKING CAPITAL CERTIFICATE. (FOR REFERENCE PURPOSE ONLY).

The Working Capital Certificate issued by CA should contain the following important parameters in line with the information furnished by the bidder online:

1. Name of Bidder:
2. Amount of Available Working Capital inclusive of lines of credit and availability of other financial resources:

SI No.	Particulars	Value in Rs.
(1)	(2)	(3)
1	Current Asset (CA)	
2	Current Liability (CL)	
3	Working Capital (1-2)	
4	Access to lines of credit and availability of other financial resources	
5	Working Capital inclusive of Access to lines of credit and availability of other financial resources (3+4)	

Note: For eligibility Amount should be at least 20% of the Annualized value or Estimated value whichever is less.

3. Date on which bidder possess working capital: (Should be within 3 months prior to the date of opening of tender).
4. Name of Chartered Accountant (CA) with Membership No.:
5. Date of issue of Certificate: (Should be within 3 months prior to the date of opening of tender).
6. Certificate should be issued by Practicing CA (having Membership No.) containing UDIN No.

NOTE:

1. Access to line of Credit and availability of other financial resources shall imply the Net availability of Funds* towards Working Capital, as on the date on which bidder possesses working capital.
* The net availability of funds is the availability of unutilized fund.
2. In case of JV Bidder needs to submit the Working Capital Certificate of individual Partners and the requirement of Working Capital shall be met as per following proportion:
 - i. The lead member shall have to possess at least 50% share in the required Working Capital in order to qualify in this tender.
 - ii. All other members shall have to possess at least 25% share in the required Working Capital, in order to qualify in this tender.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

- c. Fleet Requirement:** The Bidder is required to accept unconditionally in GTE (General Technical Evaluation) to deploy matching equipment/tippers/pay loaders as per NIT either owned or hired.

Data to be furnished by Bidder on-line:

Confirmation in the form of YES/NO regarding acceptance to deploy matching equipment/tippers/pay loaders as per NIT either owned or hired

Technical evaluation by the System:

The system will evaluate “Yes” as eligible and “No” as not eligible.

- d. Permanent Account Number:** The Bidder should possess a Permanent Account Number (PAN) issued by Income tax Department.

Data to be furnished by Bidder on-line:

Confirmation in the form of YES/NO regarding possessing of PAN

Technical evaluation by the System:

The system will evaluate “Yes” as eligible and “No” as not eligible.

Scanned copy of documents to be uploaded by Bidders (BIDDER SPACE/ MY DOCUMENT):

PAN CARD of the Bidder

In case of JV, PAN card for each Indian partner of JV and Verifiable Tax Residency Certificate of respective country for each foreign partner or JV itself.

- e. Goods and Services Tax (Not Applicable for Exempted Services)**

The Bidder should be either GST Registered Bidder under regular scheme

OR

GST Registered Bidder under composition scheme

OR

GST unregistered Bidder

In respect of the above eligibility criteria the Bidder is required to furnish the following information online:

- i). Confirmation in the form of Yes/No regarding possessing of required document as enlisted in NIT with respect to GST status of the Bidder.

Scanned copy of documents to be uploaded by Bidders in Bidder space/ My Document

The following documents depending upon the status w.r.to GST as declared by Bidder in the BOQ sheet:

- a) Status: GST registered Bidder under regular scheme

Document: GST Registration Certificate (i.e. GST identification Number) issued by appropriate Authority of India.

- b) Status: GST registered Bidder under composition scheme



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

Document: GST Registration Certificate (i.e. GST identification Number) issued by appropriate Authority of India

c) Status: GST unregistered Bidder:

Document: A Certificate with UDIN from a practicing Chartered Accountant having membership number with Institute of Chartered Accountants of India certifying that the Bidder is GST unregistered Bidder in compliance with the relevant GST rules of India.

(In case of JV, Bidder should submit scanned copy of GST status of Lead Partner or GST Registration Certificate of JV].

Note:

1. In case the work/service is awarded to a Joint Venture participating in the tender they have to submit PAN, GST registration (as applicable in the tender and for the Bidder status) etc. in the name of the Joint Venture after Award of Work/Service at the time of execution of Agreement/ before the payment of first running on account bill.
2. If turnover of Bidder exceeds exemption limit, the Bidder must have GST registration as per GST Act and rules.
3. During evaluation of GST Registered Bidders the confirmation of their status shall be verified from the relevant Govt. website (Not to be kept as a part of NIT).

f. Purchase Preference under 'Make in India' Policy for "Local supplier".

Preference to Make in India (as applicable) vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020, issued by Govt. of India as amended from time to time shall be applicable.

In terms of the above said policy, purchase preference shall be given to Class-I local supplier.

In terms with the above said policy, Class-I local suppliers and Class-II local suppliers shall be eligible to bid.

The definitions of Class-I Local Supplier, Class-II local supplier, Non-Local supplier, Local Content and Margin of Purchase Preference as per above mentioned Order are as follows: -

- A. 'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under said order.
- B. 'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 20% but less than 50%, as defined under said order.
- C. 'Non-Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than 20% as defined under said order
- D. '*Local Content*' means the amount of value added in India which shall be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

E. '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. The margin of purchase preference is 20%.

In respect of the above eligibility criteria the Bidder is required to furnish the following information online:

i). Confirmation in the form of Yes/No regarding possessing of required document indicating percentage of local content as enlisted in NIT.

Scanned copy of documents to be uploaded by Bidder(s) in support of information / declaration furnished online by the Bidder against Eligibility Criteria as Confirmatory Document.

- I. If the estimated value of Procurement is less than Rs.10 crores, all the Bidders at the time of bidding shall submit either self-certification indicating the percentage of local content in the offered items. They shall also give details of the location(s) at which the local value addition is made, if applicable.
- II. If the estimated value of procurement is more than Rs.10 crores, all the Bidders shall submit along with its bid a certificate with UDIN from the statutory auditor or cost auditor of the company (in case of companies) or from a practicing cost accountant or practicing chartered account (in respect of suppliers other than companies) giving the percentage of local content.

2. WORKS TENDER (CIVIL AND E&M DEPARTMENT):

a. Work Experience(Not Applicable for tenders with ECV below Rs.50 lakhs**):**

The Intending Bidder must have in its name or proportionate share as a member of Joint Venture/ Partnership firm experience of having successfully **completed similar** works, during last 7(seven) years ending last day of month previous to the one in which bid applications are invited (i.e. eligibility period) should be any of the following: -

Three similar **completed works** each costing not less than the amount equal to 40%* of the estimated cost put to tender.

Or

Two similar **completed works** each costing not less than the amount equal to 50%* of the estimated cost put to tender.

Or

One similar **completed work** costing not less than the amount equal to 80%* of the estimated cost put to tender.

Similar nature of work shall include

Experience for those works only shall be considered for evaluation purposes, which match eligibility requirement stipulated above, on or before the last day of month previous to one in which tender has been invited (publication date of NIT). The experience of incomplete/ongoing works as on last date of eligibility period will not be considered for evaluation. If the referred work includes construction as well as maintenance after construction, the experience of such work may be considered as 'acceptable' if the construction part is completed as on the last date of 'eligibility



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

period', even if maintenance work is ongoing, and the certificate issued clearly stipulates the same.

In all the above cases, while considering the value of completed works, the full value of completed work be considered whether or not the date of commencement is within the said 7(seven) years period.

*However, for tenders for Trunk Contracts as per Chapter-2 of CMM, the respective experience to be possessed by Bidder against one/two/three completed works shall be 40%/25%/20% respectively of the estimated cost put to tender. This shall also apply in below mentioned Clauses at (a) to (c).

**** Work experience can be taken as eligibility criteria for tenders of ECV below Rs.50 Lakhs in case of Services pertaining to Production and Safety as decided by Subsidiary Companies.

Cost of previous completed works shall be given a simple weightage of 7% per year to bring them at current price level, while evaluating the qualification requirement of the Bidder. Such weightage shall be considered after end date of completion. Updating will be considered for full or part of the year (total no. of days / 365) i.e. considering 365 days in a year, till the last day of month previous to one in which bid has been invited.[**Note: Configuration of the portal to 7% is required**]

Joint Venture shall be allowed for participation in the bid with estimated cost above Rs. 2.0 Crores.

The above qualification criteria shall be fulfilled by JV in the following manner.

The qualifying criteria parameter e.g. experience of the individual partners of the J.V will be as deliberated hereinafter towards fulfillment of qualification criteria related to experience.

a) In case of completion of single work of similar nature costing, not less than the amount equal to 80% of the estimated cost put to tender: -

Any of the JV partner/JV itself shall have the experience of having completed successfully a single work of similar nature equal to 80% of the estimated cost put to tender.

Or

b) In case of completion of two works of similar nature each costing not less than the amount equal to 50% of the estimated cost put to tender: -

i) Any one partner/JV itself can match the above requirement.

Or

ii) At least two partners should each have completed at least one work of similar nature each costing not less than the amount equal to 50% of the estimated cost put to tender.

Or

c) In case of completion of three works of similar nature, each costing not less than the amount equal to 40% of the estimated cost put to tender: -

i) Any one partner/JV itself can match the above requirement.

Or



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

ii) Any two partners shall match the above requirement through completion of at least two work by one partner and one work by other partner of similar nature each costing not less than the amount equal 40% of the estimated cost put to tender: -

Or

iii) All the three partners shall match the above requirement through completion of at least one work of similar nature each costing not less than the amount equal 40% of the estimated cost put to tender.

Works of similar nature may be suitably defined by respective subsidiaries based on its own necessity.

Note: The definition of Similar Work to be given in the NIT should be broader, unambiguous, explicit and it should contain the predominant nature of tendered work. There should not be any scope for different interpretation by Bidder and the department w.r.to “similar nature of work” defined in the NIT.

Data to be furnished by the Bidders:

- i. Start date & end date of each qualifying experience (similar nature)
- ii. Work order Number /Agreement Number of each experience
- iii. Name & address of Employer/Work Order Issuing authority of each experience
- iv. Percentage (%) share of each experience (In case the experience has been earned by the Bidder as a partner in a Joint Venture firm/Partnership firm then the proportionate value of experience in proportion to actual share of Bidder in that Joint Venture firm/ Partnership firm will be considered against eligibility else it shall be taken as 100%).
- v. Executed Value of work against each experience
- vi. In case the Bidder is a Joint Venture, work experience as above may be furnished as the work experience of the Bidder.

Technical evaluation by the System:

- i. The system shall calculate the period of 7 years backwards starting from the last day of month previous to the e-Publication date of NIT.
- ii. The system shall check the End date of each experience (The system shall not allow more than 3 entries for experience) and accept it as a qualifying experience if the end date of experience falls within the 7 years computed by the system.
- iii. The system shall calculate the value of each qualifying experience by multiplying the value with the % share of experience and adding 7% for each completed year (total No. of days/365) after the end date of experience of work till the last date of month previous to one in which the NIT has been published on e-Procurement portal.
- iv. The system shall check the experience with highest value whether it exceeds 80% of ECV. In case it does not, it shall check the top 2 experiences whether each of them is greater than 50% of ECV. In case, it still does not, the system shall check all 3 qualifying experiences whether each of them exceeds 40% of ECV. The system shall regard the Bidder as 'Eligible' if it meets any of the aforementioned criteria or else it shall consider the Bidder as 'Ineligible'.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

- v. The weightage of 7% every year will be on simple rate and will not be compounded on yearly basis for the purpose of calculating the value of each qualifying experience.
- vi. The work experience of the Bidder for those works only shall be considered for evaluation purposes, which are completed before the last date of month previous to one in which NIT has been published on e-Procurement portal. Hence, the works which are incomplete/ongoing, as on the last date of month previous to one in which NIT has been published on e-Procurement portal, shall not be considered against eligibility.
- vii. In case the work is started prior to the eligibility period of 7 years (counted backwards starting from the last day of month previous to the e-Publication date of NIT) and completed within the said eligibility period of 7 years, then the full value of work shall be considered against eligibility.
- viii. In case the experience has been earned by the Bidder as an individual or proprietor of a proprietorship firm, then 100% value of the experience will be considered against eligibility. But if the experience has been earned by the Bidder as a partner in a Joint Venture/ Partnership firm then the proportionate value of experience in proportion to the actual share of Bidder in that Joint Venture/ Partnership firm will be considered against eligibility.

Note: Till the time of changes in the e-procurement portal regarding weightage from 5% to 7% is configured in the portal, the 5% weightage shall be considered for work experience for floating of tender on NIC Portal.

Scanned copy of documents to be uploaded by Bidders (CONFIRMATORY DOCUMENT):

For work experience Bidders required to submit Satisfactory Work Completion Certificate issued by the employer against the Experience of similar work containing all the information as sought on-line. In case of Sub-contractor suitable document as per provision of eligibility, if applicable.

Work order, BOQ, TDS etc. may be sought during clarification or along with deficient documents, if felt necessary by the Tender Committee.

- b. Financial Turnover (Not Applicable for tenders with ECV below Rs.50 lakhs):**
Average annual financial turnover during the last 3 (three) years ending 31st March of the previous financial year should be at least 30% of the estimated cost.

(The "Previous Financial Year" shall be computed with respect to the e-Publication date of NIT).

Data to be furnished by Bidders:

- i. Annual turnover of each of the last 3 years ending 31st March of the previous financial year.
- ii. Name of the Chartered Accountant issuing the Profit and Loss A/c or the Turnover certificate.
- ii. Membership Number of the CA



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

- iii. In case the Bidder is a Joint Venture, the turnover of the individual partners of the JV will be added together for each financial year and is to be furnished as the turnover of the Bidder for that particular financial year

Technical evaluation by the System:

- i. The system shall have to calculate the 30 % of the estimated value (ECV) as the required average turnover of the Bidder.
- ii. The system shall calculate the average of the financial turnover of 3 years furnished by the Bidder by adding 7% for each completed year (total number of days/365) after the end of respective Financial Year (i.e. 31st March) till the last day of month previous to one in which e-Tender has been invited.
- iii. The average shall be compared with the minimum requirement to ascertain the eligibility status of the Bidder.
- iv. If any Bidder does not submit the Turnover value for any of the 3 years, the system will not disqualify him and instead shall consider all 3 years for computing the average by assuming a value of 'zero' for the year for which no information is given by Bidder.

Note: Till the time of changes in the e-procurement portal regarding weightage from 5% to 7% is configured in the portal, the 5% weightage shall be considered for financial turnover for floating of tender on NIC portal.

Scanned copy of documents to be uploaded by Bidders (CONFIRMATORY DOCUMENT):

Turnover certificate with UDIN issued by a Practicing Chartered Accountant having a membership number with Institute of Chartered Accountants of India containing the information as furnished by Bidder on- line.

- c. **Permanent Account Number:** - The Bidder should possess a permanent account number issued by Income tax Department.

Data to be furnished by Bidder on-line:

Confirmation in the form of YES/NO regarding possessing of PAN

Technical evaluation by the System:

The system will evaluate "Yes" as eligible and "No" as not eligible.

Scanned copy of documents to be uploaded by Bidders (BIDDER SPACE/ MY DOCUMENT):

PAN CARD of the Bidder

In case of JV, PAN card for each Indian partner of JV and Verifiable Tax Residency Certificate of respective country for each foreign partner or JV itself.

- d. **Goods and Services Tax (Not Applicable for Exempted Services)**

The Bidder should be either GST Registered Bidder under regular scheme

OR

GST Registered Bidder under composition scheme



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II
OR

GST unregistered Bidder

In respect of the above eligibility criteria the Bidder is required to furnish the following information online:

i). Confirmation in the form of Yes/No regarding possessing of required document as enlisted in NIT with respect to GST status of the Bidder.

Scanned copy of documents to be uploaded by Bidders in Bidder space/ My Document

The following documents depending upon the status w.r.to GST as declared by Bidder in the BOQ sheet:

I. Status: GST registered Bidder under regular scheme

Document: GST Registration Certificate (i.e. GST identification Number) issued by appropriate Authority of India.

II. Status: GST registered Bidder under composition scheme

Document: GST Registration Certificate (i.e. GST identification Number) issued by appropriate Authority of India

III. Status: GST unregistered Bidder:

Document: A Certificate with UDIN from a practicing Chartered Accountant having membership number with Institute of Chartered Accountants of India certifying that the Bidder is GST unregistered Bidder in compliance with the relevant GST rules of India.

(In case of JV, Bidder should submit scanned copy of GST status of Lead Partner or GST Registration Certificate of JV.).

Note:

1. In case the work/service is awarded to a Joint Venture participating in the tender they have to submit PAN, GST registration (as applicable in the tender and for the Bidder status) etc. in the name of the Joint Venture after Award of Work/Service at the time of execution of Agreement/ before the payment of first running on account bill.
2. If turnover of Bidder exceeds exemption limit, the Bidder must have GST registration as per GST Act and rules.
3. During evaluation of GST Registered Bidders the confirmation of their status shall be verified from the relevant Govt. website (Not to be kept as a part of NIT).

e. Purchase Preference under 'Make in India' Policy for "Local supplier".

Preference to Make in India (as applicable) vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020, issued by Govt. of India as amended from time to time shall be applicable.

In terms of the above said policy, purchase preference shall be given to Class-I local supplier.

In terms with the above said policy, Class-I local suppliers and Class-II local suppliers shall be eligible to bid.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

The definitions of Class-I Local Supplier, Class-II local supplier, Non-Local supplier, Local Content and Margin of Purchase Preference as per above mentioned Order are as follows: -

- A. 'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under said order.
- B. 'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 20% but less than 50%, as defined under said order.
- C. 'Non-Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than 20% as defined under said order
- D. '*Local Content*' means the amount of value added in India which shall be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
- E. '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. The margin of purchase preference is 20%.

In respect of the above eligibility criteria the Bidder is required to furnish the following information online:

- i). Confirmation in the form of Yes/No regarding possessing of required document indicating percentage of local content as enlisted in NIT.

Scanned copy of documents to be uploaded by Bidder(s) in support of information / declaration furnished online by the Bidder against Eligibility Criteria as Confirmatory Document.

- I. If the estimated value of Procurement is less than Rs. 10 crores, all the Bidders at the time of bidding shall submit either self-certification indicating the percentage of local content in the offered items. They shall also give details of the location(s) at which the local value addition is made, if applicable.
- II. If the estimated value of procurement is more than Rs. 10 crores, all the Bidders shall submit along with its bid a certificate with UDIN from the statutory auditor or cost auditor of the company (in case of companies) or from a practicing cost accountant or practicing chartered account (in respect of suppliers other than companies) giving the percentage of local content.

B. General Essential Requirements for both Services and Works :

In order to qualify in the tender the Bidders have to accept the following conditions:

- i. All the Terms and Condition of the NIT and Tender Document Unconditionally on line in the form of User Portal Agreement.
- ii. Expected values of each of the General Technical Evaluation (GTE) items.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

- iii. Documents confirming the legal status of the Bidder as specified in the checklist given in the NIT.

However, in case of JV, the participating share of JV members shall be as below:

- a) Lead Partner shall have at least 50% participating share in JV
 - b) Other partner(s) shall have at least 20% participating share in JV
- iv. To upload online the scanned copy of documents, as specified in the NIT for evaluation by Tender Committee as per the checklist given in the NIT

Data to be furnished by Bidder on-line:

- i. Confirmation in the form of **Agree/Disagree** for accepting user portal agreement
- ii. Confirmation in the form of **Yes/No** for each GTE item

Technical evaluation by the System:

System will capture data in the **Agree/Disagree** OR **Yes/No** format from the Bidder and will decide the eligibility for (i) & (ii) above.

For (iii) & (iv) the confirmatory documents will be downloaded and evaluated by Tender Committee as explained in Part I. The outcome is to be uploaded on line in Confirmatory Document page by Evaluator

Scanned copy of documents to be uploaded by Bidders (CONFIRMATORY DOCUMENT):

To be taken as per Checklist

Note: For preparation of tender documents for customized/ specialized /non routine works & services, the eligibility criteria may be considered in line with the Manuals of DoE.

C. CHECK LIST OF DOCUMENTS TO BE UPLOADED BY THE BIDDERS (For Services)

- (1). For SERVICES TENDER (For tenders covered under Chapter 3 & Chapter 6 of CMM):

(Below given Work Experience and Working Capital criteria as per Clause No. 1(a) and 1(b) shall also be applicable for AMC Contracts as per MCEW)

i. Confirmatory Documents (Cover documents):

Sl. No.	Eligibility Criteria	Information to be furnished by Bidder on line	Scanned copy of documents, to be uploaded by in support of information/ declaration furnished online by the bidders against Eligibility Criteria as Confirmatory Document
1.	THE WORK EXPERIENCE: The Bidder must have experience of works (includes	a. Start date of the year for which work experience of Bidder is to be considered for eligibility.	For work experience, Bidders are required to submit Work Experience Certificate issued by the employer against the



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

	completed / ongoing) of similar nature valuing 50 % of the annualized estimated value of the work put to tender (for period of completion over 1 year) / 50 % of the estimated value of the work (for completion period up to one year) put to Tender in any year (consecutive 365 days) during last 7(seven) years ending last day of month previous to the one in which bid applications are invited.	<p>b. Start date & end date of each qualifying experience (similar nature)</p> <p>c. Work Order Number/Agreement Number of each experience</p> <p>d. Name & address of Employer/Work Order Issuing authority of each experience</p> <p>e. Percentage (%) share of each experience (In case the experience has been earned by the Bidder as a partner in a joint venture firm/partnership firm then the proportionate value of experience in proportion to actual share of Bidder in that joint venture firm/partnership firm will be considered against eligibility else it shall be taken as 100%).</p> <p>f. Executed Value of work against each experience.</p> <p>g. In case the Bidder is a Joint Venture, the work experience of any one, two or three of the individual partners of JV or the JV itself may be furnished as the work experience of the Bidder.</p>	experience of similar work containing all the information as sought on-line. Work order, BOQ, TDS etc. may be sought during clarification or along with deficient documents, if felt necessary by the Tender Committee
2.	THE AVAILABILITY OF WORKING CAPITAL Evidence of possessing adequate working capital (at least 20% of the "Annualized value or Estimated	<p>1. Amount of available working capital inclusive of lines of credit and availability of other financial resources.</p> <p>2. Date on which the Bidder possesses the</p>	Certificate of working capital issued by a Practicing Chartered Accountant having a membership number with Institute of Chartered Accountants of India containing the information as furnished by Bidder on- line with UDIN.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

	value whichever is less" of this work) inclusive of access to lines of credit and availability of other financial resources to meet the requirement. The Bidder should possess the working capital within three months prior to the date of opening of tender.	<p>required working capital.</p> <p>3. Date of issue of W.C. Certificate by CA.</p> <p>4. Name of the Chartered Accountant (CA).</p> <p>5. Membership Number of CA who certifies the Bidder's working capital.</p> <p>6. In case of JV, the requirement of Working Capital under this clause shall be met as per following proportion:</p> <ul style="list-style-type: none"> The lead member shall have to possess at least 50% share in the required Working Capital in order to qualify in this tender. All other members shall have to possess at least 25% share in the required Working Capital, in order to qualify in this tender. 	
3.	Valid Digital Signature Certificate	Confirmation in the form of Yes/NO for possessing the supporting documents	<p>If the Bidder himself is the DSC holder bidding on-line then no document is required.</p> <p>However, if the DSC holder is bidding online on behalf of the Bidder, then the Power of Attorney or any sort of legally acceptable document for the authority to bid on behalf of the Bidder</p>
4.	Pre-Contract Integrity Pact (as applicable)	Confirmation in the form of Yes/NO for possessing the supporting documents	Pre-contract Integrity Pact (as per format given in bid document) This will be signed by the authorized signatory of the Bidder (s) with name, designation and seal of the Company at time of execution of formal agreement.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

5.	Code of Integrity for Public Procurement (CIPP)	Confirmation in the form of Yes/NO for possessing the supporting documents	CIPP (as per format given in bid document) This will be signed by the authorized signatory of the Bidder (s) with name, designation and seal of the Company at time of execution of formal agreement.
6.	Public Procurement (Preference to Make in India) for “Local supplier”.	Confirmation in the form of Yes/NO for possessing the supporting documents	<p>i) If the estimated value of Procurement is less than or equal to Rs.10 crores, the ‘Class-I Local Supplier’ / ‘Class-II Local Supplier’ shall indicate the 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, if applicable.</p> <p>ii) If the estimated value of procurement is more than Rs. 10 crores, the ‘Class-I Local Supplier’ / ‘Class-II Local Supplier’ shall submit a certificate with UDIN from the statutory auditor or cost auditor of the company (in case of companies) or from a practicing cost accountant or practicing chartered account (in respect of suppliers other than companies) giving the percentage of local content.</p>
7.	An Undertaking on their letter head regarding relatives as employees of company, arbitration clause (in case of partnership firm/ Joint Venture), local supplier status of the Bidder etc. as per the format given in Bid Document.		

Note: Only one file in .pdf format can be uploaded against each eligibility criteria. Any additional/ other relevant documents to support the information/declaration furnished by bidder online against eligibility criteria may also be attached by the bidder in the same file to be uploaded against respective eligibility criteria.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

ii. Confirmatory Document (From Bidder space/My document. Not to be recycled)

Other than the above Confirmatory documents, the Bidder has to upload the following documents in Bidder's space/ My Document / accept unconditionally in GTE (General Technical Evaluation) and no recycling will be done for these documents -

Sl. No.	Document	Information to be furnished by Bidder online in GTE	Scanned documents to be uploaded by Bidder in Bidder's space/ My Document
1.	FLEET REQUIREMENT: The Bidder is required to give an undertaking to deploy matching equipments/ tippers/ pay loaders as per NIT either owned or hired	Confirmation in the form of Yes/No as unconditional acceptance in GTE	NIL
2.	Legal Status of the bidder	Confirmation in the form of Yes/NO for possessing the supporting documents	<p>Any one of the following documents:</p> <ol style="list-style-type: none"> 1. Affidavit or any other document to prove proprietorship/Individual status of the Bidder. 2.Partnership deed containing name of partners 3.Memorandum & Article of Association with certificate of incorporation containing name of Bidder <p>The following documents in respect of Legal Status of a JV Bidder shall be uploaded in Bidder's Space by the JV Bidder:</p> <ol style="list-style-type: none"> i. Scanned copy of JV Agreement containing name of partners and lead partner, Power of Attorney to the lead partner and share of each partner. ii. Power of attorney of the respective partners from the Board of Directors of the concerned Company, or from the partners of the entity, or from the



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

			<p>proprietor, authorizing the signatory of JV agreement on behalf of them.</p> <p>iii. The document(s) (any of them as applicable) regarding legal status of all the individual partners of JV mentioned below:</p> <p>a) Affidavit or any other document to prove Proprietorship/Individual status of the Bidder. OR</p> <p>b) Partnership deed containing name of partners. OR</p> <p>c) Memorandum & Article of Association with certificate of incorporation containing name of Bidder.</p>
3.	Valid Permanent Account Number (PAN)	Confirmation in the form of Yes/NO for possessing the supporting documents	<p>PAN card issued by Income Tax department, Govt. of India <i>(In case of JV, PAN card for each Indian partner of JV and Verifiable Tax Residency Certificate of respective country for each foreign partner or JV itself).</i></p>
4.	<p>Goods and Services Tax (Not Applicable for Exempted Services) The Bidder should be either GST Registered Bidder under regular scheme OR GST Registered Bidder under composition scheme OR GST unregistered Bidder</p>	<p>1. Confirmation in the form of Yes/No regarding possessing of required document as enlisted in NIT with respect to GST status of the Bidder</p> <p>2. Status of the Bidder in the BoQ excel sheet being uploaded by the Bidder during bid submission as per previous column.</p>	<p>The following documents depending upon the status w.r.to GST as declared by Bidder in the BOQ sheet:</p> <p>a) Status: GST registered Bidder under regular scheme: Document: GST Registration Certificate (i.e., GST identification Number) issued by appropriate authority of India. OR</p>



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

			<p>b) Status: GST Registered Bidder under composition scheme Document: GST Registration Certificate (i.e., GST identification Number) issued by appropriate authority of India.</p> <p style="text-align: center;">OR</p> <p>c) Status: GST unregistered Bidder: Document: A Certificate with UDIN from a practicing Chartered Accountant having membership number with Institute of Chartered Accountants of India certifying that the Bidder is GST unregistered Bidder in compliance with the relevant GST rules of India. [In case of JV, Bidder should submit scanned copy of GST status of Lead Partner or GST Registration Certificate of JV]. Note: 1. If turnover of Bidder exceeds exemption/threshold limit, the Bidder must have GST registration as per GST Act and rules.</p>
5.	Letter of Bid and Undertaking regarding genuineness of the information furnished online and authenticity of the documents uploaded online in support of his eligibility as per the format given in Annexure I & II.	Confirmation in the form of Yes/No for unconditional acceptance in GTE	NIL
<p>Note: Only one file in .pdf format can be uploaded against each eligibility criteria. Any additional/ other relevant documents to support the information/declaration furnished by bidder online against eligibility criteria may also be attached by the bidder in the same file to be uploaded against respective eligibility criteria.</p>			



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

(2). FOR WORKS TENDERS (Civil, E&M and Other Tenders):

i. Confirmatory Documents (Cover document):

SI No	Eligibility Criteria	Information to be furnished by Bidder on line	Scanned copy of documents, to be uploaded by Bidders in support of information/declaration furnished online by the Bidder against Eligibility Criteria as Confirmatory Document
1	<p><u>THE WORK EXPERIENCE(Not Applicable for tenders with ECV below Rs.50 lakhs):</u> The Intending Bidder must have in its name or proportionate share as a member of Joint Venture/partnership firm experience of having successfully completed similar works, during last 7(seven) years ending last day of month previous to the one in which bid applications are invited (i.e., eligibility period) should be any of the following:-</p> <p>Three similar completed works each costing not less than the amount equal to 40% of the estimated cost put to tender.</p> <p>Or</p> <p>Two similar completed works each costing not less than the amount equal to 50% of the estimated cost put to tender.</p> <p>Or</p> <p>One similar completed work costing not less than the amount equal to 80% of the estimated cost put to tender.</p>	<p>1. Start & end date of each qualifying experience (similar nature)</p> <p>2. Work order/Agreement Number of each experience</p> <p>3. Work Order Issuing authority of each experience</p> <p>4. Percentage (%) share of each experience (In case the experience has been earned by the Bidder as a partner in a joint venture firm/partnership firm then the proportionate value of experience in proportion to actual share of Bidder in that joint venture firm/partnership firm will be considered against eligibility else it shall be taken as 100%).</p> <p>5. Executed Value of work against each experience</p>	<p>For work experience Bidders required to submit Satisfactory Work Completion Certificate issued by the employer against the Experience of similar work containing all the information as sought on-line. In case of Sub-contractor suitable document as per provision of eligibility, if applicable. Work order, BOQ, TDS etc. may be sought during clarification or along with deficient documents, if felt necessary by the Tender Committee.</p>



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

2	<p>FINANCIAL TURNOVER <u>(Not Applicable for tenders with ECV below Rs.50 lakhs):</u> Average annual financial turnover during the last 3 (three) years ending 31st March of the previous financial year should be at least 30% of the estimated cost.</p> <p>(The "Previous Financial Year" shall be computed with respect to the e-Publication date of NIT).</p>	<p>1. Annual turnover of the last 3 financial years ending 31st March of the previous financial year.</p> <p>2. Name of the Chartered Accountant issuing the Profit and Loss A/c or the Turnover certificate.</p> <p>3. Membership Number of the CA</p>	<p>Financial Turnover certificate with UDIN for last 3 (three) financial years issued by a Practicing Chartered Accountant having a membership number with Institute of Chartered Accountants of India. <i>(In case of JV, turnover certificate for each individual partner of JV).</i></p>
3	VALID DIGITAL SIGNATURE CERTIFICATE	Confirmation in the form of Yes/NO for possessing the supporting documents	<p>If the Bidder himself is the DSC holder bidding on-line then no document is required.</p> <p>However, if the DSC holder is bidding online on behalf of the Bidder then the Power of Attorney or any sort of legally acceptable document for the authority to bid on behalf of the Bidder</p>
4	VALID ELECTRICAL LICENSE (For Electrical works only)	Confirmation in the form of Yes/NO for possessing the supporting documents	<p>Valid Electrical Contractor's License issued by Electrical Licensing Board/Authority of any Indian State/UT, in accordance with IE Rule-45.</p> <p>(In case the Bidder is a Joint Venture, atleast one partner of</p>



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

			JV should possess the valid Electrical Contractor's License issued by Electrical Licensing Board/Authority of any Indian state, in accordance with IE Rule-45.)
4.	Pre-Contract Integrity Pact (as applicable)	Confirmation in the form of Yes/NO for possessing the supporting documents	Pre-contract Integrity Pact (as per format given in bid document) This will be signed by the authorized signatory of the Bidder (s) with name, designation and seal of the Company at time of execution of formal agreement.
5.	Code of Integrity for Public Procurement (CIPP)	Confirmation in the form of Yes/NO for possessing the supporting documents	CIPP (as per format given in bid document) This will be signed by the authorized signatory of the Bidder (s) with name, designation and seal of the Company at time of execution of formal agreement.
5	An Undertaking on their letter head regarding relatives as employees of company, arbitration clause (in case of partnership firm/ Joint Venture), local supplier status of the Bidder etc. as per the given format.		
	Note: Only one file in .pdf format can be uploaded against each eligibility criteria. Any additional/ other relevant documents to support the information/declaration furnished by Bidder online against eligibility criteria may also be attached by the Bidder in the same file to be uploaded against respective eligibility criteria.		

ii. Confirmatory Document (From Bidder space/My document. Not to be recycled)

Other than the above Confirmatory documents, the Bidder has to upload the following documents in Bidder's space/ My Document / accept unconditionally in GTE (General Technical Evaluation) and no recycling will be done for these documents –

S No	Document	Information to be furnished by Bidder on line in GTE	Scanned documents to be uploaded by Bidder
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COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

			in Bidder's space/ My Document
1	<p>Goods and Services Tax (Not Applicable for Exempted Services)</p> <p>The Bidder should be either GST Registered Bidder under regular scheme OR GST Registered Bidder under composition scheme OR GST unregistered Bidder</p>	<p>1. Confirmation in the form of Yes/No regarding possessing of required document as enlisted in NIT with respect to GST status of the Bidder</p> <p>2. Status of the Bidder in the BoQ excel sheet being uploaded by the Bidder during bid submission as per previous column.</p>	<p>The following documents depending upon the status w.r.to GST as declared by Bidder in the BOQ sheet:</p> <p>a) Status: GST registered Bidder under regular scheme:</p> <p>Document: GST Registration Certificate (i.e. GST identification Number) issued by appropriate authority of India.</p> <p>b) Status: GST Registered Bidder under composition scheme</p> <p>Document: GST Registration Certificate (i.e. GST identification Number) issued by appropriate authority of India.</p> <p>c) Status: GST unregistered Bidder:</p> <p>Document: A Certificate from a practicing Chartered Accountant having</p>



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

			<p>membership number with Institute of Chartered Accountants of India certifying that the Bidder is GST unregistered Bidder/dealer in compliance with the relevant GST rules of India.</p> <p>[In case of JV, Bidder should submit scanned copy of GST status of Lead Partner or GST Registration Certificate of JV].</p> <p>Note:</p> <ol style="list-style-type: none"> 1. If turnover of Bidder exceeds exemption/threshold limit, the Bidder must have GST registration as per GST Act and rules. 2. During evaluation of GST Registered Bidders the confirmation of their status shall be verified from the relevant Govt website (Not to be kept as a part of NIT).
2	LEGAL STATUS OF THE BIDDER	Confirmation in the form of Yes/NO for possessing the supporting documents	<p><u>Any one of the following document:</u></p> <ol style="list-style-type: none"> 1. Affidavit or any other document to prove proprietorship/Individual status of the Bidder.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

			<p>2.Partnership deed containing name of partners</p> <p>3.Memorandum & Article of Association with certificate of incorporation containing name of Bidder</p> <p>The following documents in respect of Legal Status of a JV Bidder shall be uploaded in Bidder's Space by the JV Bidder:</p> <p>i. Scanned copy of JV Agreement containing name of partners and lead partner, Power of Attorney to the lead partner and share of each partner.</p> <p>ii. Power of attorney of the respective partners from the Board of Directors of the concerned Company, or from the partners of the entity, or from the proprietor, authorizing the signatory of JV agreement on behalf of them.</p> <p>iii. The document(s) (any of them as applicable) regarding legal status of all the individual partners of JV mentioned below:</p>
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COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

			<p>a) Affidavit or any other document to prove Proprietorship/Individual status of the Bidder.</p> <p>OR</p> <p>b) Partnership deed containing name of partners.</p> <p>OR</p> <p>c) Memorandum & Article of Association with certificate of incorporation containing name of Bidder.</p>
3	VALID PERMANENT ACCOUNT NUMBER (PAN)	Confirmation in the form of Yes/NO for possessing the supporting documents	<p>PAN card issued by Income Tax department, Govt. of India</p> <p><i>(In case of JV, PAN card for each Indian partner of JV and Verifiable Tax Residency Certificate of respective country for each foreign partner or JV itself).</i></p>
4	Letter of Bid and Undertaking regarding genuineness of the information furnished online and authenticity of the documents uploaded online in support of his eligibility as per given format.	Confirmation in the form of Yes/No for unconditional acceptance in GTE	NIL
<p>Note: Only one file in .pdf format can be uploaded against each eligibility criteria. Any additional/ other relevant documents to support the information/declaration furnished by Bidder online against eligibility criteria may also be attached by the Bidder in the same file to be uploaded against respective eligibility criteria.</p>			



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
Chapter 3 (e-PROCUREMENT OF WORKS AND SERVICES)

PART II

[Note: For AMC/Tenders for Turnkey Contracts/ Other customized NITs the list of Confirmatory documents can be prepared with above sample lists and to be kept in the Standard NIT]



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
ANNEXURE-I

ANNEXURE- I

PROFORMA FOR UNDERTAKING TO BE ACCEPTED UNCONDITIONALLY BY BIDDER/S FOR GENUINENESS OF THE INFORMATION FURNISHED ONLINE AND AUTHENTICITY OF THE DOCUMENTS UPLOADED ONLINE IN SUPPORT OF HIS ELIGIBILITY : (TO BE ACCEPTED THROUGH GTE)

FORMAT OF UNDERTAKING

We solemnly declare that:

1. I/We am/are submitting Bid for the work against Tender id No.(to be entered by TIA) Dated..... and I/we offer to execute the work in accordance with all the terms, conditions and provisions of the bid.
2. All information furnished by us in respect of fulfilment of eligibility criteria and qualification information of this Bid is complete, correct and true.
3. All copy of documents, credentials and documents submitted along with this Bid are genuine, authentic, true and valid.
4. I/ We hereby authorize department to seek references / clarifications from our Bankers.
5. We hereby undertake that we shall register and obtain license from the competent authority under the contract labour (Regulation & Abolition Act) as relevant, if applicable.
6. I/We do not have relationship with any other participating Bidders, directly or through common third parties, that puts us in a position to have access to information about or influence on the bid of another Bidder.
7. I/We or any of my/our affiliate has/have not participated as consultant in the preparation of the design or technical specification of the contract that is the subject of the bid.
8. If any information and document submitted is found to be false/ incorrect at any time, department may cancel my/our Bid and action as deemed fit may be taken against me/us, including termination of the contract, forfeiture of all dues and Debarment of our firm and all partners of the firm etc from Bidding, as per the tender document.

Note: Tender specific or for a particular category of tender, relevant Clauses may be added/modified/substituted while framing the standard NIT



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
ANNEXURE-II

ANNEXURE- II

PROFORMA FOR UNDERTAKING TO BE UPLOADED BY BIDDER/S (ON THEIR LETTER HEAD) REGARDING RELATIVES AS EMPLOYEES OF COMPANY, ARBITRATION CLAUSE (IN CASE OF PARTNERSHIP FIRM/JV), LOCAL SUPPLIER STATUS OF THE BIDDER ETC.:

PROFORMA FOR UNDERTAKING

(To be uploaded by the Bidder on his Letter Head during submission of bid online)

I / We,,
Proprietor/Partner/Legal Attorney/Director/ Accredited Representative of M/s.
....., solemnly declare that:

1. Myself/Our Partners/Directors don't has/have any relative as employee of Coal India Limited/Subsidiary.

OR

The details of relatives of Myself/Our Partners/Directors working as employee of Coal India Limited is as follows:

- a) Name of the employee
 - b) Place of posting
 - c) Department
 - d) Designation
 - e) Type of relation - Wife/Husband/ Father/ Step-Father/Mother / Step-Mother/ Son/Step-son/ Son's wife / Daughter / Daughter's Husband / Brother/ Step-Brother/ Sister / Stet-Sister.
2. *I/We hereby confirm that we have registration with CMPF / EPF Authorities. We shall make necessary payments as required under law.

Or

*I/We hereby undertake that we shall take appropriate steps for registration as relevant under CMPF / EPF authorities, if applicable. We shall make necessary payments as required under law.

* Delete whichever is not applicable.

3. ** I/We have not been debarred or banned or delisted by any Govt., or Quasi Govt. Agencies or PSUs.

Or

**I / Wehave been debarred or banned by the organization named "....." for a period of..... year/s, effective from to.....

** Delete whichever is not applicable.

4. We,.....(Name of Partners of Partnership Firm/Joint Venture), partners of(Name of Partnership Firm/Joint Venture) hereby consent to abide by the relevant provisions of General Terms and Conditions of CMM/MCEW pertaining to arbitration.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
ANNEXURE-II

(Applicable in case of Partnership firm/Joint Venture)

5. We certify that the works/services offered by us against the tender for the work "..... (Name of work)" against NIT No/Tender ID. Dated....., meet the minimum local content requirement and has local content:

* Equal to or more than 50% (Select this, in case of Class-I Local Suppliers) i.e.....% (indicating the percentage of local content)

* More than 20% but less than 50% (Select this, in case of Class-II Local Suppliers) i.e.....% (indicating the percentage of local content)

*Delete whichever is not applicable.

Note: If the estimated value of procurement is more than Rs. 10 crores, all the Bidders shall submit along with this Undertaking, a certificate (with UDIN) from the statutory auditor or cost auditor of the company (in case of companies) or from a practicing cost accountant or practicing chartered account (in respect of suppliers other than companies) giving the percentage of local content.

6. Certificate regarding compliance to order no.F.No.6/18/2019-PPD dt 23/7/2020 as amended from time to time of Ministry of Finance, Dept of Expenditure, Public Procurement Division with respect to restrictions on procurement of goods, services or works from a Bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries - I/we have read the Clause regarding restrictions on procurement from a Bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I/we certify that I am/ we are not from such a country or, if from such a country, has/have been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that I/we fulfil all requirements in this regard and I am/ we are eligible to be considered.

Note: Where applicable, evidence of Competent Authority shall be attached along with this Undertaking.

7. **I/We have not been debarred by any procuring entity for violation of Preference to Make in India (as applicable) vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020, issued by Govt. of India as amended from time to time.

OR

**I / Wehave been debarred by.....(name of procuring entity) for violation of Preference to Make in India vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020, issued by Govt. of India as amended from time to time for a period of.....year/s, effective from to.....

**Delete whichever is not applicable.

Note: A bidder who has been debarred by any procuring entity for violation of Preference to Make in India vide Order No. P-45021/2/2017-PP (BE-II) dated



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
ANNEXURE-II

16.09.2020, issued by Govt. of India as amended from time to time shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of debarment.

8. I/we abide the Code of Integrity for Public Procurement (CIPP) as given in the tender document.

9. *I/we do not have any previous transgression of CIPP in last three years with any entity in any country.

Or

*I / We have been debarred by.....(name of procuring entity) for violation of Code of Integrity for Public Procurement (CIPP), for a period of..... year/s, effective from to.....

*Delete whichever is not applicable

10. If any information and document submitted is found to be false/ incorrect at any time, department may cancel my/our Bid and action as deemed fit may be taken against me/us, including termination of the contract, forfeiture of all dues and Debarment of our firm and all partners of the firm etc from Bidding, as per the tender document.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
ANNEXURE-III

ANNEXURE- III

PROFORMA FOR LETTER OF BID TO BE ACCEPTED UNCONDITIONALLY BY BIDDER DURING SUBMISSION OF BID ONLINE: (TO BE ACCEPTED THROUGH GTE)

FORMAT OF "Letter of Bid" (for Works & Services Tenders)

LETTER HEAD OF BIDDER (As enrolled on the e-Procurement Portal of CIL)

To,
The Tender Inviting Authority
.....Coalfields Limited

Sub. : Letter of Bid for the work "-----" (to be filled by the department)

Ref. : 1. NIT No.: "-----" (to be filled by the department)

2. Tender Id No. : "-----" (to be filled by the department)

Dear Sir,

This has reference to above referred bid. I/we have read and examined the conditions of contract, Scope of Work, technical specifications, BOQ and other documents carefully.

I /We am/are pleased to submit our bid for the above work. I/We hereby unconditionally accept the bid conditions and bid documents as available in the website/e-Procurement portal, in its entirety for the above work and agree to abide by and fulfill all terms and conditions and specifications as contained in the bid document.

I/we here by submit all the documents as required to meet the eligibility criteria as per provision of the bid notice/document.

I/We hereby confirm that this bid complies with the Bid validity, Bid Security and other documents as required by the Bidding documents.

If any information furnished by me/us towards eligibility criteria of this bid is found to be incorrect at any time, penal action as deemed fit may be taken against me/us for which I/We shall have no claim against CIL/Subsidiary.

Until a formal agreement is prepared and executed, this bid and your subsequent Letter of Acceptance/Work Order shall constitute a binding contract between us and(To be filled up by Department) Coalfields Ltd.

Should this bid be accepted, we agree to furnish Performance Security within stipulated date and commence the work within stipulated date. In case of our failure to abide by the said provision(To be filled up by Department) Coalfields Ltd. shall, without prejudice to any other right or remedy, be at liberty to "cancel the letter of acceptance/ award and to forfeit the Earnest Money and also debar us from participating in future tenders for a minimum period 12 months" OR to act as specified in the NIT.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

Appendix 1

Basic Aims and Fundamental Principles of Public Procurement

1.1 Basic Aims of Procurement – the Five Rs of Procurement

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

i). Right Quality

Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the Procuring Entity's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value. For the Right Quality, Technical Specification (Terms of Reference (ToR) in case of Procurement of Services) should be the most vital ingredient. In public procurement, it is essential to give due consideration to Value for Money while benchmarking the specification.

ii). Right Quantity

There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities. Hence, the right quantity is procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities. In case of Procurement of Services, scope of Work determines the quantum of services.

iii). Right Price

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity and other factors involved (or should not be abnormally low for a facilities/works/ services which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs (Also termed as life cycle costing - please also refer to para 1.2 below)

iv). Right Time and Place

If the material (or facility or services) is needed by an organisation in three months' time, it will be costly to procure it too late or too early. Similarly, if the vendor delivers the materials/ facilities/ services in another city, extra time and money would be involved in logistics. An unrealistic time schedule for completion of a facility may lead to delays, claims and disputes.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

v). Right Source

Similarly, the source of delivery of Goods, Works and Services of the requirement must have just right financial capacity and technical capability for our needs (demonstrated through satisfactory past performance of contracts of same or similar nature). Buying a few packets of printer paper directly from a large manufacturer may not be the right strategy. On the other hand, if our requirements are very large, buying such requirements through dealers or middlemen may also not be right.

1.2 Refined Concepts of Cost and Value – Value for Money

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

1.2.1 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

APPENDIX 1

scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

1.2.2 Total Cost of Ownership

While the value of a product covers all components of value over the “Whole-Of-Life” (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or “Life-Time-Cost” (LCC) or “Total Cost of Ownership” (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

- a) Procurement price. The amount paid to the vendor/ contractor for the product, service, or capital equipment;
- b) Acquisition costs. All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;
- c) Usage costs. In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on; and
- d) End-of-life costs. All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

1.2.3 Value for Money

Besides value of a product or service, the customer also has his own notion of “value” of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the government,



COAL INDIA LIMITED

GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023

APPENDIX 1

ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is 'fit for purpose' and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional 'value added' benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any 'added value' that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or 'shadow' bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

- i) Fitness for purpose;
- ii) Potential vendor/contractor's experience and performance history;
- iii) Flexibility (including innovation and adaptability over the lifecycle of the procurement);
- iv) Environmental sustainability (such as energy efficiency and environmental impact); and
- v) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore, preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.

1.3 Fundamental Principles of Public Procurement

General Financial Rules, 2017 lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

principles of public procurement, which all procuring authorities must abide by and be accountable for:

i) **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. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared. As part of this principle, 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).

ii) **Professionalism Principle**

- (i) As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this manual. They should, at the same time, ensure that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, the government may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.
- (ii) In reference to the above two principles - Transparency and Professionalism Principle, It may be useful to refer to the following provisions in the General Financial Rules, 2017:
- (iii) "Rule 144 of GFR 2017: Fundamental principles of public buying. (for all procurements including procurement of works).— Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

- (iv) The procedure to be followed in making public procurement must conform to the following yardsticks:-
- a) The description of the subject matter of procurement to the extent practicable should --
 - 1. be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;
 - 2. not indicate a requirement for a particular trade mark, trade name or brand.
 - b) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.
 - c) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a Procuring Entity may, for reasons to be recorded in writing, adopt any other technical specification.
 - d) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;
 - e) offers should be invited following a fair, transparent and reasonable procedure;
 - f) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;
 - g) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;
 - h) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
 - i) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.
 - j) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on the their website”



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

k) [Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.]

iii) Broader Obligations Principle

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

- a) Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and
- b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- c) Support to broader social policy and programme objectives of the government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
- d) Facilitating administrative goals of other departments of government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').
- e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a sub-point (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1) which are as follows:

1. Requirement of registration

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Para 12(c) below.
- b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA)



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

has been issued on or before the date of the order (23rd July 2020); and
(ii) cases falling under para 13 below.

2. Transitional cases

Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

- a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
- b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated de novo. The de novo process shall adhere to the conditions prescribed in the Order.
- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 5(c), 5(d) and 6 read with para (1).

3. Incorporation in tender conditions

In tenders to be issued after the date (23rd July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

4. Applicability

- a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable: to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions; and
- c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
- d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
- e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

5. Definitions

- a) "Bidder" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.

- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
 - c) "Bidder from a country which shares a land border with India" for the purpose of the Order means
 - i. An entity incorporated, established or registered in such a country; or
 - ii. A subsidiary of an entity incorporated, established or registered in such a country; or
 - iii. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - iv. An entity whose beneficial owner is situated in such a country; or
 - v. An Indian (or other) agent of such an entity; or
 - vi. A natural person who is a citizen of such a country; or
 - vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
 - d) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.
6. Beneficial owner for the purposes of point (c) (iv) will be as under:
- a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation:-

- b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

- d) Where no natural person is identified under (6) (a) or (6) (b) or (6) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

7. Sub-contracting in works contracts

In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in paragraph (5) (c) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23rd July, 2020).

8. Certificate regarding compliance

A certificate shall be taken from bidders in the tender documents regarding their compliance with the Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

9. Validity of registration

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

10. Government e-Marketplace

The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with the Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

11. Model Clauses/ Certificates

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders should be prepared by Procuring Entity. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to Department of Expenditure.

12. Competent Authority and Procedure for Registration



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT).
- b) The Registration Committee shall have the following members
 - i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above. On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur.
- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.
- h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

- i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.
 - j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
 - k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.
13. Special Cases [In reference to para (1) (b) above]
- a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.
 - b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.
 - c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
 - d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.
 - e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.
 - f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as “sub-contracting”. However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

- g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard.
14. Clarification to Order (Public Procurement No.1) dated 23rd July 2020
- a) For the purpose of (2)(b) above, “qualified bidders” means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23rd July 2020 had not been issued.
- b) If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process de novo.
- c) The following examples are given to assist in implementation of the Order
- i. Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.
- ii. Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.
- iii. Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.
- iv. Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.
- iv) Extended Legal Responsibilities Principle



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on. Details of such extended legal obligations are given in Appendix 2.

v) Public Accountability Principle

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

- a) documents pertaining to determination of need for procurement;
- b) description of the subject matter of the procurement;
- c) statement of the justification for choice of a procurement method other than open competitive bidding;
- d) documents relating to pre-qualification and registration of bidders, if applicable;
- e) particulars of issue, receipt, opening of the bids and the participating bidders at each stage;



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 1

- f) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) bids evaluated, and documents relating to their evaluation;
- h) contracts and Contract Amendment; and
- i) complaint handling, correspondences with clients, consultants, banks.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

Appendix– 2

Legal Aspects of Public Procurement

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

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

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase “For and on Behalf of the President of India/the Governor of State” is written to signify this fact. In a state government, the persons who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various departments by issuing SoPP. Rule 224 (1) & (2), Chapter 8: Contract Management of the GFR, 2017 covers this aspect also

1.3 Other Mercantile Laws

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



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

2.0 Salient Features of the Indian Contract Act

2.1 Legal Aspects Governing Public Procurement of Goods - Introduction

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

- i) The Constitution of India;
- ii) Indian Contracts Act, 1872;
- iii) Sale of Goods Act, 1930;
- iv) Arbitration and Conciliation Act, 1996 read with the Arbitration and Conciliation (Amendment) Act, 2015;
- v) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- vi) Micro, Small and Medium Enterprises Development (MSMED) Act, 2006;
- vii) Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
- viii) Right to Information (RTI) Act 2005;
- ix) Central Vigilance Commission Act, 2003;
- x) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
- xi) Prevention of Corruption Act, 1988;
- xii) The Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (EXIM Policy), 2015; Foreign Exchange Management Act (FEMA), 1999 and FEMA (Current Account Transactions) Rules, 2000.

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

2.2 Elementary Legal Practices

2.2.1 What is a Contract? The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

2.2.2 Proposal or Offer: 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 or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

The invitation to tender and instructions to tenderers do not constitute a proposal.

2.2.3 Acceptance of the Proposal: 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.

2.2.4 What agreements are contracts: An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable

- i) Competency of the parties;
- ii) Freedom of consent of both parties
- iii) Lawfulness of consideration
- iv) Lawfulness of object

2.3 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

2.3.1 Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads: -

- i) Individuals;
 - ii) Partnerships;
 - iii) Limited Companies;
 - iv) Corporations other than limited companies
- a) Contracts with Individuals: Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.
- b) Contracts with Partnerships: A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

- c) **Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.
- d) **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Co- operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.4 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement, may occur in the following cases: -

- i) When the misunderstanding relates to the identity of the other party to the agreement;
- ii) When it relates to the nature or terms of the transactions;
- iii) When it related to the subject matter of the agreement.

2.5 Free consent of both Parties

- 2.5.1 The consent is said to be free when it is not caused by coercion, undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it would not have been given but for the existence of



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

coercion, undue influence, fraud, mis-representation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

2.5.2 In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

2.5.3 Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.6 Consideration

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value and no consideration and likewise an act or a promise which is illegal or impossible has no value.

2.7 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

2.8 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

2.9 Communication of Acceptance

A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

of the tenderer firm should be obtained to keep the offer open for further period or periods.

2.9.1 The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic fool proof mode like registered post acknowledgement due, etc.

2.10 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

2.11 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the date and time of opening of tender.

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

2.12 Withdrawal of Acceptance



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

2.13 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

2.14 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

- i) By mutual agreement: If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- ii) By breach: In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- iii) By refusal of a party to perform: On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.
- iv) In a contract where there are reciprocal promises: If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

2.15 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 2

The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

2.16 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words “for and on behalf of the President of India” should Therefore, follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

2.17 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the 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;
- iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer;
- v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 3

Appendix- 3

Electronic Procurement (e-Procurement)

1.0 Electronic procurement (e-procurement)

E-procurement is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014 prescribed mandatory procurement of tenders through the e-procurement mode for tenders valued above Rupees two lakh. (as per GFR, 2017, now this is mandatory for all tenders)

2.0 Service Provider

A service provider is engaged to provide an e-procurement system covering the following:

- i) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;
- ii) The system archives the information and generates reports required for the management information system/decision support system;
- iii) A helpdesk is available for online and offline support to different stakeholders;
- iv) The system arranges and updates the Digital Signature Certificate (DSC) for departmental users; and
- v) Different documents, formats, and so on, for the e-procurement systems are available.

3.0 The e-Procurement Process: In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

- i) **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;
- ii) **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 3

tender, a unique "tender id" is automatically generated by the system. While creating/publishing the tender, the "bid openers" are identified – four officers (two from the Procuring Entity and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. As in case of normal tenders, NITs are also posted on the Procuring Entity website. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;

- iii) Registration of bidders on portal: In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;
- iv) Bid submission: The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/declaration/scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker's cheque/pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/banker's cheque/pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;
- v) Corrigendum, clarifications, modifications and withdrawal of bids: All these steps are also carried out online mutatis mutandis the normal tendering process;
- vi) Bid opening: Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 3

see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening is uploaded on the portal and shortlisted firms are also informed through system generated emails and SMS alerts – after shortlisting of the techno-commercially acceptable bidders;

- vii) Shortfall document: Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tendering process;
- viii) Evaluation of techno-commercial and price bids: This is done offline in the same manner as in the normal tendering process, based on system generated reports and comparative statements;
- ix) Award of contract: Award of the contract is done offline and a scanned copy is uploaded on the portal; and
- x) Return of EMD: EMD furnished by all unsuccessful bidders should be returned through an e-payment system without interest, at the earliest, after the expiry of the final tender validity period but not later than 30 (thirty) days after conclusion of the contract. EMD of the successful bidder should be returned after receipt of performance security as called for in the contract.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

Appendix-4

Types of Contracts, Mode of tendering and system of selection

1.0 Definition of 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 that either 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 proposal is called the "promisor", and the person accepting the proposal is called "promisee",
- d. When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promisee;
- e. Every promise and every set of promises, forming the consideration for each other, is an agreement;
- f. Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;
- g. An agreement not enforceable by law is said to be void;
- h. An agreement enforceable by law is a contract;
- i. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;
- j. A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

2.0 According to Section 10 of the Indian Contract Act, 1872, only those agreements are enforceable by law which 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. This is subject to any special law according to which a contract should be in writing and attested by witnesses.

A) The following are the essential ingredients of a contract –

- a) Offer made by one person called the “Promisor”.
- b) Acceptance of an offer made by the other person called the “Promisee”.
- c) Doing of an act, or abstinence from doing a particular act by promisor for promisee, that is called consideration.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

- d) The offer and acceptance should relate to something which is not prohibited by law.
 - e) Offer and acceptance constitute an agreement, which when enforceable by law, becomes a contract.
 - f) In order to make a valid and binding agreement, the party entering into such an agreement should be competent to make such agreement.
- B) For the purpose of an agreement, there must be a communication of intention between the parties thereto. Hence in the forms of a contract there is :
- a. A proposal.
 - b. Communication of acceptance of the proposal containing mutual Consideration
- C) Following are essential requirements of a contract.
- i. Proposal and its communication
 - ii. Acceptance of proposal and its communication
 - iii. Agreement by mutual promises
 - a) Free consent of both parties
 - b) Mutual and lawful consideration for agreement.
 - c) Parties should be competent to contract
 - d) Object should be lawful
 - iv. Contract
 - a) Certainty and possibility of performance Contract should not have been declared as void under Contract Act or any other law
 - b) Certainty, Commitment and Communication
 - v. Performance of Contract
- D) The communication of acceptance of the proposal completes the agreement. An offer may lapse for want of acceptance or be revoked before acceptance. Acceptance produces something that cannot be recalled or undone. A contract springs up as soon as the offer is accepted and imposes an obligation upon the person making the offer. It has been opined by the Ministry of Law that before communication of acceptance of an offer, the tenderer would be within his right to withdraw, alter and/or modify his tender before its acceptance, unless there is a specific promise to keep the offer open for a specific period, backed by a valid consideration.
- E) As per Section 10A in The Information Technology Act, 2000, Validity of contracts formed through electronic means. -Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

3.0 Types of Contract:

While the competent authority sanctions the estimate, the Engineer in Charge will decide the method of execution of work. Generally civil works/other services are executed on contract by inviting tenders for all works. In case of emergency works, directly affecting the production in the mines or involving safety of workmen, the requirement of open tenders can be relaxed and the work can be executed by direct negotiations with the working contractors or by call of limited tenders amongst the working contractors with the approval of the competent authority as per the delegation of powers. In case of limited tenders the tender notice is sent to limited number of contractors who are considered suitable for undertaking the job within the time frame set for the urgent works.

Such list of contractors be finalized on the basis of decided criteria which shall be brought to the notice of approving authority. Efforts should be made to have more number of quality participants.

Press publication for emergency works can be avoided to save time. However, such notices should be sent to all eligible working contractors of the Area and also displayed in the notice boards.

3.01 Types of contract:

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

- a. Lump sum (Fixed Price) Contract
- b. Item Rate (Unit Rate) Contract
- c. Percentage Rate Contract
- d. Mixed Rate Contract
- e. Piece Rate Contract
- f. Engineering, Procurement, Construction (EPC) Contracts or Turnkey rate
- g. Public Private Partnership (PPP)

3.01.1 Lump sum (Fixed Price) Contract

- i) This form is used for work in which contractors are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost. Lump sum contracts are easy to administer because it is a



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones.

- ii) There may be tendency for the Contractor to cut corners on quality and scope of work by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of work. The contract should include provision for evaluation of quality and scope of work.
- iii) As time is not linked to the payment, there may be tendency for the Contractor to save on deployment of resources which may result in time-over-run. While the payments are not linked to time, the assignment should be monitored per month to ensure that the progress of work per month is in line with planned and estimated time-line.
- iv) 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. Thus, is suitable for stereotype/ repetitive residential buildings or other structures for which standard drawings are normally available. It is also suitable for minor bridge works, chimneys, bins/ silos, overhead tanks, whether on Department's design or that of the contractor. In the latter case, the Department shall spell out the requirements in detail to enable the contractor to prepare his designs and drawings accordingly, and submit them to CIL/ Subsidiary for check and approval before construction.
- v) The method of deriving the rates may be specified in the contract in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions and alterations to drawings, designs and specifications not covered by the contract.
- vi) The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. In The concept of priced "activity schedules" may be used, to enable payments to be made on the basis of percentage completion of each activity. The billing schedule shall commensurate with the actual work done, and the risk of front-loading strictly guarded against.

3.01.2 Item Rate (Unit Rate) Contract

- i) For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by the Procuring Entity in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract.
- ii) The payment is made at the rate set out in the contract for the measured quantity



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

- iii) 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.
- iv) Specifications, design, drawings and contract conditions (including availability of land, forest clearance, social and environmental impact assessment, where applicable) have to be critically appraised before the initiation of procurement process, in order to minimise the incidence of internal inconsistencies, variations, and situation of claims/ disputes or contract failure.

3.01.3 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.

3.01.4 Mixed Rate Contract

This form should be used in tenders for a work where the items of works constituting a substantial part of the estimated cost put to tender are based on department's approved schedule of rates and a smaller part is beyond approved SOR.

Percentage rate shall be invited for the items based on department's approved schedule of rates and item rates shall be invited for the items beyond approved SOR.

3.01.5 Piece 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



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

that the procuring entity may put an end to the agreement at his option at any time.

3.01.6 Engineering, Procurement and Construction (EPC) Contracts or Turnkey rate

- i) The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.
- ii) 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.
- iii) Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula. It also lays down a ceiling of 10 (Ten) per cent of contract price to cater for any changes in the scope of project, the cost of which the Procuring Entity will bear.
- iv) The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement. Procuring Entity's engineer (also called owner's engineer) reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by the Procuring Entity on the design proposals submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule. The contractor is free to proceed with construction after the expiry of specified period in case no remarks/ clearances are given by the Procuring Entity.
- v) The Contractor is liable to pay Liquidated Damages for each week or part of the week of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 (ten) per cent of the Contract Price.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the Procuring Entity. If so provided in the Bid Document, Procuring Entity is also liable to pay bonus (normally should not exceed five percent) to the Contractor for completion of the project before the scheduled completion date, if so provided in the contract documents.

- vi) Monitoring and supervision of construction are undertaken through Procuring Entity's engineer, (a qualified firm that maybe selected through a transparent process) acting as a single window for coordination with the contractor.
- vii) Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period of five years may be specified in the Agreement in order to provide additional comfort to the Procuring Entity.
- viii) The selected Procuring Entity's Engineer (Consultant) has to have good experience in design, project supervision and works management. The Procuring Entity organisation must have an experienced team to super check the quality of supervision exercised by the owner's engineer, including quality of design review, site supervision, quality audits, etc. Periodic audits of the Procuring Entity's Engineer functioning are desirable in ensuring that the Procuring Entity's Engineer carries out his tasks professionally.
- ix) In complex projects, a third party consultant be deployed for specific tasks like design audit, quality audits, safety audits, etc., to cross-check the Procuring Entity's Engineer's diligence in the process.
- x) In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.
- xi) Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.
- xii) In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.
- xiii) EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

the contractor to optimize design. Provisions on the following should be included in commercial conditions:

- a) Limitation of liability for procuring entity as well as contractor.
 - b) Deviation limits and procedure for change of scope.
 - c) Contract closing timelines and procedure to ensure timely closing of contract.
 - d) Performance parameters and liquidated damages for shortfall in performance
 - e) Risk matrix and responsibilities of the contractor and the procuring entity.
- xiv) In addition, a latent defect period beyond the defect liability period may be included to protect the procuring entity and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.
- xv) To mitigate the risk involved in the methodology proposed by the contractor, the project executive authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.
- xvi) To ensure equality, regular inspection and quality checks must be carried out. The Project, executing authority shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.
- xvii) EPC tenders shall preferably be under two / three-part tendering systems. Two Stage Tendering system, if required may also be called.
- xviii) EPC contracts can be used for Water Treatment Plants, Sewage Treatment Plants, Coal Handling Plants, Washeries, specialized comprehensive buildings/ complexes, bridges, ROB, specialized architectural structures etc. (to be decided by SO(C)/GM/HoD(C) as applicable)

3.01.7 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



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

instructions issue by Department of Economic Affairs (DEA), Ministry of Finance from time to time, may be referred.

4.00 Bidding Systems -

a. Single Stage Bidding System

- I. Single stage single bid/envelope/ cover system (1S1E)
- II. Single stage two bid/envelope/ cover system (1S2E)
- III. Single stage multiple bid/envelope/ cover system

b. Two stage bidding with Expression of Interest (EoI)

4.01 Single Stage Bidding System

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

a. Single Stage Bidding System

I. Single Stage Single Bid/ Envelope/ cover 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/ cover system may be adopted, where eligibility, technical/ commercial and financial details are submitted together in the same envelope/ cover. 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.

This will be dealt as per e-Procurement Guidelines of CIL for Works and Services. All the tenders with ECV 2 lakh & above and below 50 lakh pertaining to Works and Services except Turnkey Tenders shall be dealt as per this system. There will be no technical and financial criteria in these tenders. However, for tenders pertaining to Safety and/or Production may have experience criteria as decided by competent authority of the subsidiary/ CIL HQ.

II. Single Stage Two Envelope/ cover 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/ cover system may be followed:

- i) If required, Technical specification and techno-commercial conditions may be modified, after the pre-bid meeting in the two envelope/ covers. The pre-bid conference is to be organised before the bid submission date. It may be



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

necessary to upload the pre-bid meeting minutes to the web-portals and some revised RfQ/ RfP documents where necessary.

- ii) The tenderers should be asked to bifurcate their quotations in two envelope/ covers. The first envelope/ cover, 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. In the second envelope/ cover, called the financial bid, the price quotations along are submitted. Both the envelope/ cover are to be submitted together in a sealed outer envelope/ cover, as it would not be desirable to invite financial bids after opening of techno-commercial bids;
- iii) 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;
- iv) 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. In e-Procurement, financial bids of technically non-compliant offers would not get opened;

This will be dealt as per e-Procurement Guidelines of CIL for Works and Services. All the tenders with ECV 50 lakh & above pertaining to Works and Services shall be dealt as per this system. There will be technical and financial criteria in these tenders. All Turnkey tenders shall be dealt as Turnkey Contract Chapter (i.e. Chapter 2) of Contract Management Manual.

III. Single Stage Multiple Envelope/ cover System (with post-qualification, 1S3E)

As discussed below, where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (as described below), a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelope/ cover in a three envelope/ cover single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised by him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders (as in case of Single Envelope/ cover and Two Envelope/ cover Bidding). In the first instance on the bid opening date only the post-qualification envelope/ cover (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/ cover system for only qualified bidders. In e-Procurement, rest envelope/ covers of non-compliant offers would not get opened.

b. Two Stage Bidding with Expression of Interest (Eoi)



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

- I. 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. Expression of Interest (EoI) bids may be invited in following situations:
 - i) 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;
 - ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
 - iii) The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development; or
 - iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- II. The procedure for two stage bidding shall include the following, namely:
 - i) In the first stage of the bidding process, the procuring entity shall invite EoI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/ presentations may be held with the short-listed Contractors, which are prima facie considered technically and financially capable of executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement agency may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/ presentations and the process of decision making should be kept;
 - ii) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

procuring entity shall not modify the fundamental nature of the procurement itself;

- iii) In the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
 - iv) Any bidder, invited to bid, but not in a position to execute the work due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
 - v) If the procuring entity is of the view that after EOI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EOI stage and it may be so declared in the EOI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EOI is called 'Non-committal' EOI.
- III. Invitation of EOI Tenders: In EOI tenders, an advertisement inviting expression of interest should be published. The invitation to the EOI document should contain the following information:
- i) A copy of the advertisement;
 - ii) Objectives and scope of the requirement: This may include a brief description of objectives and broad scope of the requirement;
 - iii) Instructions to the bidders: This may include instructions regarding the nature of work, last date of submission, place of submission and any other related instructions;
 - iv) Formats for submission: This section should specify the format in which the bidders are expected to submit their EOI;
 - v) The EOI document should be made available to the interested bidder in website in a downloadable form; and
 - iv) Eligibility criteria: The invitation to EOI should clearly lay down the eligibility criteria, which should be applied for short listing. Supporting documents required need to be clearly mentioned. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the EOI. Criteria used should be measurable and based on documents that are verifiable. Definitions and explanatory notes shall be provided for each criteria that are simple and unambiguous. It may also be advisable to cross-check and verify these documents, when in doubt.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

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

5.0 Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend.

For a successful pre-NIT Discussion, a provisional set of Bid documents, covering all aspects of Scope of work, eligibility-criteria (if any), technical parameters (If any) and conditions of contract be prepared and hosted in the web-site.

The provisional bid document shall cover a notice for pre-NIT discussion on a suitable date. The notice shall request participation of interested bidders and offer comments/ suggestion for incorporation in the final document.

Such comments / suggestions (on any/all aspect of the document) may be suitably incorporated, if found necessary, and final bid document be drafted. This final draft, after due approval shall be the final bid document.

Bids be invited thereafter as per standard practice.

Pre-bid Meeting:

In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly work/ services/ equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for inviting the bidders or their official representatives to attend one or more pre-bid conference at a specified place and time, for clarifying issues and clearing doubts, if any, about the specifications/ Terms of Reference and other allied technical/ commercial details of the work, services, plant, equipment and machinery etc.

Bidders should be asked to submit written queries in advance of the conference. After the conference, Minutes of the pre-bid meeting including all the questions and replies shall be prepared and approved by the tender inviting authority. In order



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

to bring clarity to replies, all questions/ answers and needed amendments should be merged in the sequence of clauses in the bidding document. It is a good practice to consolidate all queries received either as part of pre-bid meeting or just after issuing bidding documents and deal with in a comprehensive way. Minutes of the meeting, including the text of the questions raised and the responses given, shall be uploaded in the portal. The techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and uploaded in the portal. These pre-bid minutes shall be published along with the bid documents on the appropriate website including CPPP.

Any significant change in condition necessitated from Pre-Bid meeting shall require approval of respective FDs and subsequently, Document download date, Bid submission end date and bid opening date shall be shifted to a date 15 days beyond the date on which changed condition is uploaded. The seek clarification end date shall be adjusted as per e-Procurement Manual for works and services of CIL.

Notice inviting authority may decide to incorporate pre-bid meeting in the bid-notice. Non-attendance in the pre-bid meeting will not be a cause for disqualification of the bidder. Relevant issues raised and clarification given may be hosted in the web-site without disclosing the name of the bidder.

Pre-bid meeting may take place, if required, after publication of Tender but in any case at least 1 (one) day before the start date of Bid submission. If a Pre Bid meeting is held then the minutes of the Pre-Bid meeting shall be uploaded on the Portal, before start date of bid submission which can be viewed by all interested bidders

For procurement of highly technological and complex works, tender submission dates may be extended by the CIL/Subsidiaries in order to reply queries in the pre-bid meetings or any other justifiable reason.

6.0 Fixed Budget-based Selection (FBS) for consultancy services:

6.1 The Fixed Budget based Selection (FBS) method is allowed for selection of consultants. Under this method, cost of the consulting services shall be specified as a fixed budget in the tender document itself. FBS may be used when:

- (i) the type of consulting service required is simple and/or repetitive and can be precisely defined; and
- (ii) the budget can be reasonably estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and
- (iii) the budget is sufficient for the consultant to perform the assignment.

6.2 Under FBS, the selection of the consultant shall be made by one of the following two methods:



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

- (i) By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(1) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.
- (ii) In cases of repetitive or multiple assignments, by empaneling suitable consultants, through an open advertised process with specified quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment shall also be fixed by CIL/ Subsidiary.

7.0 Mode of Tendering:

- a. Open Tender Enquiry (OTE)
- b. Global Tender Enquiry (GTE)
- c. Limited Tender Enquiry-LTE
- d. Single Tender Enquiry (STE) or Selection by nomination
- e. Award of work through quotation

7.1 Open Tender Enquiry (OTE)

This is the normal procedure of tendering where tenders are invited from the parties under a given set of terms & conditions, eligibility requirement covering their past experiences, present status, credibility and other conditions which may be included in the NIT for a particular tender depending upon the requirement of work. The minimum time for submission of tender and extent of publicity to be given are elaborated in the relevant clauses.

It is mandatory to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP). CIL/Subsidiary shall also publish all its tenders on its web site.

Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.

7.2 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 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. At Present DoE has set a limit that no Global Tender Enquiry (GTE) shall be invited up to



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

Rs. 200 crores except in exceptional cases where it can be done with prior approval.

7.3 Limited Tender Enquiry (LTE)

In case the work is of a specialized nature/ urgent nature with strict time frame and stringent quality requirements, limited tenders amongst registered/ working contractors or known agencies of repute may be invited with the competent approval, depending upon the value of work as per delegation of power. This mode provides a short and simple procedure, but may not provide as good a VfM as in case of open tendering.

Copies of the bidding documents should be sent free of cost directly by speed post/ courier/ e-mail/through e-procurement portal to firms which are enlisted bidders/ contractors.

Procuring Entity should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP). Apart from CPPP, the organisations should publish the tender enquiries on the website of CIL/Subsidiaries.

The minimum number of bidders to whom LTE should be sent is more than three. In case less than three bidders/ contractors are available, LTE may be sent to the available bidders/ contractors with approval of the CA, duly recording the reasons.

However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:

Inadequate Competition

Non-availability of suitable quotations

Urgent demand and capacity/ capability of the firm offering the unsolicited being known, etc.

Further a limited tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.

Limited tenders can be called in the following cases with prior approval of the competent authority as indicated above.

The work is required to be executed with great speed.

Not all contractors are able to take up such work and ensure speedy completion.

The work is of special nature requiring specialized equipment, which is not likely to be available with all contractors.

Specialized work and all contractors are not in a position to take up such work like Interior Furnishing (Hard & soft), afforestation, Landscape, Lawn, Garden, Catering and House- keeping.

Maintenance of very important buildings.

Works directly affecting production in the mines or involving safety of workmen.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

Inauguration, foundation stone-laying and special occasions.

Other exigencies of the work so demand.

Such list of contractors be finalized on the basis of decided criteria which shall be brought to the notice of approving authority. Efforts should be made to have more number of quality participants.

In case registration system is in vogue, it be ensured that all registered contractors, of appropriate category, is informed. Information through website publication should be resorted to.

However, the provisions in this regard as stipulated in Guidelines of e-Procurement of Works and Services of CIL shall prevail in case of any contradiction.

7.4 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 Ministry or Department.

7.5 Quotation Notice



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

For smaller works of estimated value below Rs. 2 lakhs, quotation notice may be floated. This will be similar to open tender notice. The interested parties shall be asked to download Quotation document (comprising of NIQ and BOQ) from CPP portal or from the CIL/Subsidiary website. The period of circulation of such notice can vary from 5 to 10 days depending upon the value and urgency of work. Under emergency circumstances the circulation time may be further compressed, however, reasons for such compression may be recorded while taking final approval. Publicity by way of circulating notices as per extant provision may be resorted to in such cases. Such quotations shall be invited in Single stage single envelope/cover system. However, the bidders must submit Earnest Money along with valid PAN, Document to support GST status of bidder and Valid Trade License, if required. The Notice Inviting Quotation (NIQ) shall be specially drafted incorporating measures of penalty in case of failure on the part of the Bidder to complete the work.

Alternatively, Quotation Notice may also be dealt as per Single cover System/Single stage single envelope/ cover system as provided in e-procurement guidelines for Works and Services.

Work Orders for works finalized through quotation notice shall also incorporate salient provisions of General Conditions of Contract in addition to BOQ and Scope of Work to bind the contractor in respect of quantity of work and time in which the work is to be completed.

8.0 Various selection methods, which are suitable for Consultancy Services and are also suitable for Other Services are as below:

- i) Price based System - Least Cost Selection (LCS);
- ii) Quality and Cost Based Selection (QCBS);
- iii) Direct Selection: Single Source Selection (SSS)

8.1 Price based System - Least Cost Selection (LCS):

In this method of selection, consultants/ service providers submit both a technical proposal and a financial proposal at the same time. Minimum qualifying marks for quality of the technical proposal are prescribed as benchmark (normally 75 (seventy five) out of maximum 100 (hundred)) and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. Alternatively, since in LCS selection, technical offers do not require be ranked (or adding of weighted technical score to financial score – as in QCBS selection), it would suffice in appropriately simple cases, if the evaluation criteria is only a fail/ pass criteria prescribing only the minimum qualifying benchmark. Thus, in LCS, a simplified evaluation criteria may also be used where instead of a marking scheme a minimum fail/pass benchmark of technical evaluation may be prescribed (i.e. must have completed at least two similar assignments; must have a turnover of at least Rs 10 (Rupees Ten) Crore etc). Any bidder that passes these benchmarks is declared as technically qualified for opening of their financial bids. The technical proposals are opened first and evaluated and the offers who are qualifying as per these technical evaluation criteria will only be considered as technically responsive, and the rest would be considered technically nonresponsive and would



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

be dropped from the list. Financial proposals are then opened for only eligible and responsive offers (Financial bids of other unresponsive bidders are returned unopened) and ranked. L-1 offer out of the responsive offers is selected on price criteria alone without giving any additional weightage to marks/ ranking of Technical proposal. This system of selection is roughly the same as the price based selection of L-1 offer (among the technically responsive offers) in procurement of Goods/ Works. In Finance Ministry's 2006, 'Manual of Policies and Procedure of Employment of consultants/ service providers', this is called QCBS, which is not the generally prevalent nomenclature. (Rule 193 of GFR 2017, also see para 6.9.1)

LCS is considered suitable for recruiting consultants/ service providers from firms in most assignments that are of a standard or routine nature (such as engineering design of non-complex works) where well established practices and standards exist. It is the simplest and the quickest system of selection and under normal circumstances, this method of evaluation shall be used as default since it allows for minimum satisfactory technical efficiency with economy. Justification must be provided if a selection method other than LCS is to be used.

8.2 Quality-cum-Cost based Selection (QCBS) for Works and Non-Consultancy Services:

8.2.1 CIL/ Subsidiary are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:

- (i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
- (ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore.

Note: In cases where estimated value was less than Rs 10 crore, but on tendering, following QCBS process, it is proposed to place contract for more than Rs 10 crore, the following procedure shall be adopted:

- (a) In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.
- (b) In all other cases, the procurement process is to be scrapped and restarted either as QOP or on non QCBS basis.

The principles of QCBS shall be as provided in Rule 192(i), (i) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

8.2.2 The Competent Authority for allowing QCBS shall be as follows:

- (i) For declaring a procurement as QOP is the Board of Director of CIL/ Subsidiary.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

- (ii) For Non-consulting Services not exceeding Rs.10 crore in value: the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CIL/ Subsidiary whichever is lower.

8.2.3 In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:

- (i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;
- (ii) One or more persons with extensive experience in handling projects and/or finance,
- (iii) One or more persons with experience in financial management/ financial administration/audit/accountancy,
- (iv) Not more than one member representing the concerned department who may inter alia provide administrative support to the Committee.
- (v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.

8.2.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 7.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement.

8.2.5 The STC shall make specific recommendations on the following matters:

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

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

8.2.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned above in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 9.2.3 (i) to (v).

8.2.7 Grounds for Declaring a Procurement to be Quality Oriented Procurement: A procurement should be declared as a QOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

of quality. Reasons for not adopting two cover/ pre-qualification-based/ least cost system shall be documented.

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

- (i) To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.
- (ii) Weightage may also be given for timely completion of past projects of similar nature by the bidder.
- (iii) In all cases of QOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation, such changes shall require the recommendation of the STC. In Non Consultancy Services, pre-bid meetings may be held at the discretion of Competent Authority.

8.2.9 Fixing of Scoring/ Marking Criteria:

- (i) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/ experts being involved in the evaluation process. When the outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.
- (ii) It is better to specify minimum marks for meeting the qualifying criteria specified.
- (iii) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations ISO/ standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.
- (iv) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service etc. and bidders may be asked to fill it and give evidence to that effect.
- (v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
- (vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

8.2.10 Evaluation of QCBS Bids: For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.

8.2.11 Joint ventures in QCBS:

- (i) In conventional tenders, some bidders adopt "name borrowing" and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.
- (ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

8.3 SSS has already been explained above.

9.0 Tenders for Turnkey contracts

The intention behind turnkey contracts is to entrust the contractors with the entire responsibility of detailed investigation, planning, design, construction and commissioning of the total project. Tenders for Turnkey works, following provisions of CMM Chapter Two, may be invited for specialized nature of work like design and construction of Water Treatment Plants, Sewage Treatment Plants, Effluent Treatment Plant, CHPs, Washeries, Workshops, etc.

The entire responsibility from concept to commissioning including design, construction, procurements, and installations shall be left to the contractor with least interference but with strong supervision from the company. The department before the execution of works approves the designs, drawings and specifications. For approving designs, department may take help of CMPDIL / suitable consultants/ Engineering colleges/ Government Departments.

For preparation of Turnkey contract documents, department may take help of CMPDIL / suitable consultants. Department may also on its own prepare Preliminary Bid Document related to turnkey contract. Based on such documents pre NIT discussion may be carried out after giving Notice in website. Preliminary Bid document is hosted in the website and discussion carried out with prospective bidders based on this document, on a date mentioned in the Notice. Thereafter scope of work, specification, technical parameters, terms of payment etc. are finalized. The Final bid document shall thereafter be prepared and bids invited. This process shall be termed as Pre NIT.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 4

Before submitting tenders, the tenderer shall have to satisfy themselves about the location of work, scope of work, technical parameters and actual quantity involved, which shall be the basis of offer. The contractor shall have no claim for any payment on account of deviation and variation in quantity of any item(s) or Components of the work unless they are authorized deviations from the parameters, drawings and Specifications contained in the tender document.

The offer shall clearly specify the inclusions in and exclusions from the scope of the contract and the various stages of work, and the percentage of the contract value for each stage for release of intermediate and final payments.

These tenders shall be dealt as Turnkey Contract Chapter (i.e. Chapter 2) of Contract Management Manual. In special cases Two Stage Tendering may also be done wherein in the first stage only Request for Qualification (RFQ) shall be hosted online and in the second stage Request for Proposal (RFP) shall be hosted online seeking proposals from qualified bidders in first stage.



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 5

No.F.1/4/2021-PPD
Government of India
Ministry of Finance
Department of Expenditure
Public Procurement Division

264-C, North Block, New Delhi.
18.05.2023.

OFFICE MEMORANDUM

Subject: Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017.

The undersigned is directed to refer two Preferential Procurement Orders mandated for the Public Procurement in India, namely:

- i. Public Procurement Policy for Micro and Small Enterprises (MSEs) Order dated 23.03.2012 (PPP-MSE Order) issued by Ministry of Micro, Small and Medium Enterprises (MoMSME) in exercise of the powers conferred in Section 11 of the MSME Development Act, 2006. (Last revised on 09.11.2018)
 - ii. Public Procurement (Preference to Make in India) Order, 2017 (PPP-MII order), under Rule 153(iii) of the General Financial Rules (GFRs) 2017, approved by the Cabinet. Implementation of this PPP-MII order is monitored by Department for Promotion of Industry and Internal Trade (DPIIT). (Last revised on 16.09.2020.)
2. It has been brought to the notice of this Department that concurrent application of these two orders are creating confusion to the procuring entities and different procuring entities interpret them differently. In order to bring predictability both to the procuring entities as well as bidders, following guidelines are being issued.

Guidelines

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

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



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 5

4. The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:
- a) *Items covered under Para 3(a) of PPP- MII Order, 2017 for which Nodal Ministry has notified sufficient local capacity and competition:* For these items, only Class-I local suppliers are eligible to bid irrespective of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid. Possible scenarios can be as under:
- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
 - (ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.
- b) *Items reserved exclusively for procurement from MSEs as per PPP-MSE Order:* These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:
- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
 - (ii) L-1 is "MSE non-Class-I local supplier" - Purchase preference is to be given to Class-I local supplier as per PPP-MII Order. Balance quantity, is to be awarded to L-1 bidder.
- c) *If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:*
- c (a) Items covered under Para 3A(b) of PPP-MII Order are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:
- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
 - (ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to MSEs, if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.
 - (iii) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to Class-I local suppliers, if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
 - (iv) L-1 is "Non-MSE non-Class-I local supplier" - Purchase preference is to be given to MSEs as per PPP-MSE Order. Thereafter, purchase preference is to be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 5

above" as per PPP- MII Order. For the balance quantity, contract is to be awarded to L-1 bidder. *(Kindly refer to the illustrative example in the annexure).*

- c (b) Items covered under Para 3A(c) of PPP-MII Order, 2017 are non-divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:
- (i) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.
 - (ii) L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference - Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.
 - (iii) If conditions mentioned in sub paras (i) and (ii) above are not met i.e. L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:
 - A. L1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" – Contract is awarded to L1.
 - B. L1 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE not eligible/ does not accept - purchase preference to be given to Class- I Local supplier as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept – contract to be awarded to L-1.
 - d) *Items reserved for both MSEs and Class-I local suppliers:* These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers. Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.
 - e) Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry.

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18/5/2023
(Kanwalpreet)
Director

Tel.: -223093811; email: - kanwal.irss@gov.in

To

1. Secretaries of all Central Government Ministries/ Departments.
2. Secretary Department of Public Enterprises with a request for issuing suitable instructions to all Central Public Sector Enterprises in this regard.

Page 3 of 4



COAL INDIA LIMITED
GUIDELINES FOR e-PROCUREMENT OF WORKS AND SERVICES-2023
APPENDIX 5

Annexure

Example explaining applicability in scenario explained in para 4 c (a)(iv)

(Scenario: Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference and L-1 is "Non-MSE non-Class-I local supplier")

Item – Desktop computer

Qty – 50 Nos.

Details of bids received

Sr. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE non- Class-I local supplier"
2.	B	110	L2	"Non-MSE but Class-I local supplier"
3.	C	112	L3	"MSE but non- Class-I local supplier"
4.	D	115	L4	"Non-MSE but Class-I local supplier"
5.	E	118	L5	"MSE but non- Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

1. In this case, first purchase preference is to be given to MSEs as per PPP-MSE Order for 25% of tendered quantity of 50 Nos. i.e. 12.5 Nos. (rounded off to the next whole number say 13 Nos). Accordingly, invite L3 (bidder C), whose quoted rates falls within 15% margin of purchase preference to match L1 price i.e. Rs. 100/- for quantity of 13 Nos. Bidder "E" and "F", although MSEs, will not get purchase preference since their quoted rates don't fall within 15% margin of purchase preference. Bidder C will be considered for order of 13 Nos. on confirmation of reduction of price.
2. For 50% of balance quantity of 37 number (tendered quantity of 50 – 13 awarded to bidder C; assuming bidder C has confirmed to accept L1 rates), purchase preference will be given to lowest Class-I local supplier as per PPP-MII Order. Accordingly, bidder B will be invited to match L-1 price for 50% of 37 Nos i.e. 18.5 (say 19 Nos of computers). If bidder "B" does not accept the L1 price i.e. price of Rs. 100/- per unit, next higher Class-I local supplier falling within 20% margin of purchase preference, i.e. bidder "D", may be invited to match L-1 price for 19 Nos. of computers and so on.
3. For remaining quantity i.e. 18 Nos (50-13-19), the contract will be awarded to lowest quoting bidder i.e. Bidder "A", who is L-1 in the example.



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