

Public procurement of goods and services

Learning objectives

At the end of this module, the user will be able to:

1. Describe public procurement cycle and list the activities associated with the public procurement process
2. Determine the type of procurement, namely, goods, consulting services or non-consulting services and works
3. Explain the principles of procurement
4. Distinguish between the mode of tendering and bidding system
5. Explain MSE policy and its application in public procurement process

1 Procurement cycle

Procurement cycle refers to the sequence of activities during the procurement process. The process is designed in a manner to procure the right (optimal) quantity with the right quality matching the functional requirements of the end-users at the right price from the right source at the right time. GFRs stipulate that all departments shall prepare annual procurement plan before the commencement of the year and place it on its website.

The procurement cycle for goods, works and/or services normally involves the following cycle of activities:

- 1) **Need Assessment:** This involves: assessment of the need (quantity), formulation of Specifications (quality) and annual procurement planning. Procurements should be initiated only based on an indent from the user department. The authority in the user department initiating the indent for procurement shall first determine the need including anticipated requirement and time when the delivery is needed. Specifications are important to ensuring value for money, transparency, competition and level playing field in procurement.
- 2) **Bid invitation:** Decide on the mode of tender and the bidding system, prepare bid documents, e-publish, receive and open the bids, manually or electronically
- 3) **Bid evaluation:** Evaluation of bids on the basis of pre-determined and e-published evaluation parameters to determine the lowest bid and award of contract
- 4) **Contract execution:** Contract management and closure
- 5) **Disposal of Scrap:** Obtain value of the scrap through various modes of disposal

2 Types of public procurement

There are **three types of public procurement**, namely, of goods, services and works. Ministry of Finance (Department of Expenditure) has issued detailed manuals:

- a) Manual for procurement of goods, 2017 (Goods manual) ;
- b) Manual for procurement of consultancy and other services, 2017 (Services manual); and
- c) Manual for procurement of works, 2019 (Works manual).

(These documents may be accessed on the web portal: <https://doe.gov.in/procurement-policy-divisions>)

The GFRs stipulate that detailed instructions relating to procurement of goods may be issued by the procuring departments broadly in conformity with the General Financial Rules, 2017. Government orders regarding product reservations or purchase preference or other facilities to sellers in Micro and Small Enterprises, Domestically Manufactured Electronic Products, Pharmaceutical Central Public Sector Enterprises, Khadi/Handlooms goods, etc. and the guidelines issued by the Central Vigilance Commission.

3 Standards of financial propriety & principles of public procurement

Public Procurement like any other expenditure in Government must conform to the **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:

- a) **Vigilance**: 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.
- b) **Economy**: The expenditure should not be prima facie more than the occasion demands.
- c) **Morality**: No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- d) **Equity**: Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless – (a) a claim for the amount could be enforced in a Court of Law, or (b) the expenditure is in pursuance of a recognized policy or custom.

4 Fundamental principles for public procurement:

Public procurement authorities must procure in public interest.

They shall have the responsibility and accountability:

- a) to ensure value for money by bringing **efficiency and economy**;
- b) for **transparency** in matters relating to public procurement;
- c) to provide **fair and equal opportunity** to all probable suppliers; and treatment to all suppliers;
- d) **promotion of competition** in public procurement; and
- e) ensure **probity** in public procurement process.

5 Modes of procurement (types of tenders) and bidding system

S No	Cost ceiling under the General Financial Rules, 2017	Mode of procurement
Mandatory to procure from GeM (GFR-149) 1-6 only if the item/service NOT available on GeM one will adopt one of the following types of tenders to procure goods or services		
1	Up to Rs 25,000 (R-154)	Without quotation subject to a certificate
2	Above Rs 25,000 but up to Rs 2,50,000 (R-155)	Local Purchase Committee subject to a certificate
3	Up to Rs 25,00,000 (R-162)	Limited Tender Enquiry
4	Beyond Rs 25,00,000 (R-161)	Advertised tender enquiry
5	Common (off-the-shelf) office items	Rate Contract (R-148&156) E-procurement (R-160)
6	Propriety items (R-166)	Single tender enquiry

5.1 Mode of procurement refers to the mode of inviting tenders; and the **bidding system** refers to the manner of submission of bids.

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

Various modes of procurement that can be used in public procurement are:

Mandatory Procurement of Goods and Services for Goods or Services available on GeM

Open tenders

Global or International open tender enquiry

Domestic open tender enquiry

Procurement through selected suppliers

Limited Tender Enquiry - (upto Rs. 25,00,000 (Rupees Twenty-Five lakh); and

Special Limited Tender Enquiry (above Rs. 25,00,000 (Rupees Twenty-Five lakh under special circumstances)

Nomination Basis Tenders

Proprietary Article Certificate (PAC); and

Single Tender Enquiry

Procurements without calling tenders

Direct Procurement without Quotation;

Direct Procurement by Local Purchase Committee;

Global or International open tender enquiry

This may be viable only in following situations:

- i) Where Goods of required specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- ii) Non-existence of a local branch of the global principal of the manufacturer/vendors/contractors;
- iii) Requirement for compliance to specific international standards in technical specifications; and
- iv) Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders. (Rule 161 of GFR 2017)

Domestic open tender enquiry (OTE)

In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. The systemic cost of this procedure may be high enough to be unviable for smaller value procurements. OTE procedures through e-Procurement or through traditional tendering should be adopted in the following situations:

- i) Procurements exceeding the threshold of Rs. 25 lakh;
- ii) All common use requirements with clear technical specifications;

- iii) For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and
- iv) When requirements are not available from known sources or sources are presently limited and need to be broad based. In such situations, even for procurements below Rs. 25 lakh, OTE mode may be used, if warranted.

Limited tender enquiry (LTE) is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. This mode provides a short and simple procedure, but may not provide as good a value for money as in case of open tendering – still a good balance for procurements below the threshold.

Special Limited Tender Enquiry: LTE mode, even for values higher than Rs. 25 lakh (Rule 162 of GFR 2017), where normally OTE should have been done, is permissible in certain special circumstances. This mode has the merit of being quicker but value for money obtained may be less than in case of OTE; hence it should be restricted to rare situations:

- i) The competent authority in the Ministry/Department certifies that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry/Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier;
- ii) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry;
- iii) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote;
- iv) Nature of items to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms; and
- v) Government policy designates procurement from specific agencies.

Proprietary Article Certificate (PAC): Certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/ stockists) against a PAC certificate signed by the appropriate authority. This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and also strains the transparency principle, it should be used only in justifiable situations.

Direct Procurement without Quotation:

Purchase of goods upto Rs. 25000 on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority

“I, _____, am personally satisfied that these goods purchased are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price.”

Direct Procurement by Local Purchase Committee:

The Head of the Department may constitute a Local Purchase Committee of three members of an appropriate level. On the basis the recommendations of this Committee, procurement of

goods costing above Rs 25000 and up to Rs 250000 may be procured by the competent authority. The Committee will jointly record a certificate:

“Certified that we _____, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question.

5.2 Bidding systems

Types of bidding system:

- 1) Single stage bidding system
 - a. Single stage single envelop system
 - b. Single stage two envelops system
- 2) Two stage bidding system

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for right quality, right source and the right price under different complexities/criticality of technical requirements and value of procurements. In certain critical and complex requirements, the technical and financial capability of source of supply becomes an important determinant for value for money. Depending on the complexity and criticality technical of requirement, criticality of capability of source and value of procurement, relevant type of bidding system may be used.

Single stage bidding system: 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.

Single stage single envelop system:

May adopt when qualitative requirements and technical specifications are clear, capability of source of supply is not critical and value of procurement is low or moderate. In this bidding system where eligibility, technical, commercial and financial details are submitted together in the same sealed envelop. This is the simplest and the quickest bidding system and should be the default system of bidding. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful.

Single stage two envelops system

Adopted in technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low.

Bids are placed in two separate sealed envelops. The first sealed envelop (techno-commercial bid) contains the eligibility, technical quality, performance aspects, commercial terms and conditions and documents sought in the tender. The second sealed envelop (financial bid) contains the price bid along with other financial details. Both the sealed envelops are to be submitted together in a sealed outer envelope. The techno-commercial bid is opened first for evaluation. The financial bid of only the eligible bidders who scored the minimum score are opened to decide the successful bidder. The financial bids of non-successful bidders are returned.

Two stage bidding system

Adopted where the goods or services to be procured is of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market. Useful when:

- a) it is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or
- b) the character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; or
- c) procurement authority seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or
- d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

The first stage:

Invite bids through advertised tender containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price. All eligible first stage bids, shall be evaluated through a technical evaluation committee. The committee may hold discussions with the bidders by giving equal opportunity to all bidders to participate in the discussions. In revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or omit any specification of the subject matter of procurement or criterion for evaluation.

The second stage:

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. Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that 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.

6 Public Procurement Policy for Micro and Small Enterprises (MSEs) Order

Salient features:

- 1) Every Central Ministry /Department / CPSEs shall set an annual target for 25% procurement from MSE Sector. Initially, the target was 20% from 01.04.2015.
- 2) A sub-target of 4% out of 25% target of annual procurement earmarked for procurement from MSEs owned by SC/ST entrepreneurs.
- 3) A further sub-target of 3 per cent from within the 25% target shall be earmarked for procurement from MSEs owned by women.
- 4) Registered MSEs are entitled for tender sets free of cost and exemption from payment of earnest money.
- 5) MSEs quoting price within price band L-1 + 15%, when L1 is from someone other than MSE, shall be allowed to supply at least 25% of tendered value at L-1 subject to lowering of price by MSEs to L-1.

- 6) Ministry /Department/CPSEs shall prepare their annual procurement plan to be uploaded on their official website.
- 7) For enhancing participation of MSEs in government procurement, Ministry /Department/CPSEs shall conduct Vendor Development Programmes or Buyer Seller Meets for MSEs especially for SC/ST entrepreneurs.

7 Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation against an ad-hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.

8 Public procurement of services

The terms ‘service’ and ‘other services’ are not defined in GFR. The Service Manual defines these two terms. Service is defined by exception:

- 1) any subject matter of procurement other than goods or works
- 2) except those (goods & works) incidental or consequential to the service and
- 3) includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procurement authority
- 4) but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf
- 5) the term implies both ‘Consultancy Services’ and ‘Other (Non-consultancy) Services’

Other services

Other services (including the term ‘non-consultancy services’ in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services:

- 1) involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and
- 2) consistently applied
- 3) may include small works, supply of goods or consultancy service, which are incidental or consequential to such services
- 4) 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;

The Table below gives the meaning of and also compares and contrasts among consultancy services, non- consultancy services and outsourcing of services.

Table – 1: meaning of and also compares and contrasts among consultancy services, non- consultancy services and outsourcing of services

Consultancy services	Non-consultancy services	Outsourcing of services
a) means any subject matter of procurement other than goods or works	a) means any subject matter of procurement other than goods or works	a) means deployment of outside agencies on a sustained long-term (for one year or more)
b) may include small works or supply of goods or other services which are incidental or	b) which involves physical, measurable deliverables/ outcomes	b) for performance of other services which were traditionally being done

<p>consequential to such services</p> <p>c) involves primarily non-physical project-specific, intellectual and procedural processes</p> <p>d) where outcomes and deliverables would vary from one consultant to another</p> <p>e) covers a range of services that are of an advisory or professional nature and</p> <p>f) are provided by consultants giving expert or strategic advice</p> <p>g) different from ‘Non-Consultancy Services’</p>	<p>c) where performance standards can be clearly identified and consistently applied</p> <p>d) different from ‘Consultancy Services’</p>	<p>in-house by the employees of Ministries/Departments</p>
<p>Includes</p> <p>a) professional, intellectual, training and advisory services or any other service classified or declared as such by a procurement authority</p> <p>b) typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, advisory and project related consulting services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.</p>	<p>Includes</p> <p>a) maintenance, hiring of vehicle, outsourcing of management of building facilities, security, photocopier service, janitor, office errand services, drilling, aerial photography, satellite imagery, mapping etc.</p>	<p>Includes</p> <p>a) maintenance, hiring of vehicle, outsourcing of building facilities management, security, photocopier service, janitor, office errand services, drilling, aerial photography, satellite imagery, mapping etc.</p> <p>b) Security Services, Horticultural Services, Janitor / Cooking / Catering / Management Services for Hostels and Guest Houses, Cleaning / Housekeeping Services, Errand / Messenger Services and so forth.</p> <p>c) include procurement of short-term standalone services.</p> <p>d) may include small works, supply of goods or consultancy service, which are incidental or consequential to such services</p>
<p>Does not include</p> <p>a) direct engagement of a retired Government</p>	<p>Does not include</p> <p>a) appointment of an individual made under</p>	

servant [See para 5(6) too]	any law, rules, regulations or order issued in this behalf	
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9 Types of Consultants or Service Providers

Types of consultants or service providers are:

- 1) **Consortium of Consultants/Service Providers:** In large and complex assignments consultants/service providers may associate with each other to form:
 - a. a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal and make larger pools of experts available or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment.
 - b. a Joint Venture (JV) or a sub consultancy.
- 2) **Consultancy or Service Providing Firms:** This is the main source for procurement of constancy service with diverse specializations that provide teams to clients. These firms provide project preparation services, project implementation supervision services, training, advisory services and policy guidance. They may either be international – firms that have international experience and are capable of undertaking work at international level at international rates; or national – firms that may not have international exposure and normally undertake assignments only within that country, usually at comparatively and significantly lower rates.
- 3) **Individual Consultants/Service Providers:** They are recruited for similar activities as consultancy/ service providing firms when a full team is not considered necessary. They may be:
 - a) independent experts not permanently associated with any particular firm,
 - b) or they may be employees of a firm recruited on an individual basis, or
 - c) employees of an agency, institution, or university.

They are normally recruited for project implementation supervision, training, provision of specific expert advice on a highly technical subject, policy guidance, special studies, compliance supervision, or implementation monitoring.
- 4) **Specialized Agencies and Institutions:** They may also from time to time be recruited to provide Consultancy or non-consultancy services. These services may be provided by individuals or by teams.
- 5) **Non-Governmental Organizations (NGO):** There may be distinct advantage in use of Non-Governmental organizations (NGOs) in projects which emphasize experience in community participation and in-depth local knowledge – for example, projects related to Corporate Social Responsibility (CSR), social awareness programmes, etc.
- 6) **Retired Government Servant:** GFR 2017 stipulates that the consulting services do not include direct engagement of retired Government servants. However, a retired Government servant can be hired as consultant through a competitive process. They should not be engaged against regular vacant posts as consultant under this rule. Retired Government servants can be engaged only for the specific task and for specific duration as consultant. They should be assigned clear output related goals.

The procurement authority may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EoI. Each criteria may be sub-divided into further sub-criteria, if called for. Normally, the weightages shown in Table below may be used

for such an evaluation. This is just indicative criteria. The criteria and their weightage may be changed as per the need of procurement authority.

Qualification criteria and their weightages

S No	Criteria	Weightage	
	Sub-criteria Criteria	Criteria total	Sub-criteria
1	Past experience of the consultant (track record)	60%	
	a) Number of years' relevant experience		20%
	b) Past experience of studies of similar nature		50%
	c) Past experience in carrying out		
	a. Studies in the related sector		20%
	b. Studies carried out in the region		10%
2	General profile of qualification, experience and number of key staff (not individual CVs)	25%	
	a) Qualifications		30%
	b) Relevant experience		70%
3	Overall financial strength of the consultant in terms of turnover, profitability and cash flow (liquid assets) situation	15%	
	a) Turnover figure for last three years		50%
	b) Net profit figure for last three years		50%
	Totals	100%	

10 The procurement authority shall shortlist all the consultants who secure the minimum required marks [normally, 75%]. The minimum qualifying requirement shall be specified in the EoI document. In EoI, simplified evaluation criteria can also be used, instead of marking schemes as mentioned above. A fail-pass, minimum benchmark in each criteria/sub-criteria can be specified.

For example:

- a) Must have past experience of at least two similar projects;
- b) Key professionals must have at least seven years' experience and must have Master's Qualification in relevant field;
- c) Firm must have a turnover of at least Rs 10 crore and so on.
- d) Any firm which passes these benchmarks is declared as qualified.

The purpose of exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality.

The short lists shall normally comprise at least three firms but not more than eight (to avoid inordinate delays in evaluation of subsequent RfP).

The weightage between the technical and price bids, like for instance 50:50 or 60:40 or 70:30, evaluation parameters and the inter-se allocation of marks among evaluation parameters, minimum score to qualify, etc. must be published in the RfP.
