# Northern Railway
# Materials Management Department

## *"Instructions to Tenderers (ITT)"*
## for electronic tenders invited on IREPS

## Issued by:

## PCMM, Northern Railway, Baroda House, New Delhi-110001.

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## 1.0 GENERAL INSTRUCTIONS

**1.1** On behalf of the President of India, Principal Chief Materials Manager, Northern Railway, Baroda House, New Delhi, India (here in after referred to as the Purchaser), invites electronic tenders for the supply as set forth in the Notice Inviting Tender, 'Techno Commercial Bid Details' form and 'Financial Rate Page for Supply' form of the electronic tender uploaded on the Indian Railways E-Procurement System website (www.ireps.gov.in), herein after referred to as IREPS website. The tenders are invited in terms of 'IRS Conditions of Contract', 'Instructions to Tenderers for Electronic Tenders' and 'Special Conditions of Contract' uploaded on the IREPS website, and other conditions incorporated in the tender documents. The instructions contained herein are also applicable for all electronic tenders invited by the Store's officers in Northern Railway.

**1.2 Electronic tender document consists of: -**

- **a.** Latest version of IRS conditions of contract.
- **b.** Instructions to Tenderers for Electronic Tenders.
- **c.** NIT and Tender Document.
- **d.** 'Submit Payment Details' form.
- **e.** 'Techno Commercial Bid Details' form, including attached documents, if any.
- **f.** 'Financial Rate Page for Supply' form.

**1.3 The contract, if placed, shall be governed by**

- **a.** IRS Conditions of Contract (latest versions, along with all correction slips) as applicable on the date of tender closing.
- **b.** Instructions to Tenderers for Electronic Tenders.
- **c.** NIT with all Corrigenda.
- **d.** Purchase Order and Amendments.

(Note: In case of any contradiction among a, b & c above, the conditions mentioned in (c) above will prevail. Further in case of any contradictions between (c) & (d) above, (d) will prevail).

All the documents at (a) to (c) above are available on the IREPS website (www.ireps.gov.in).

**1.4 <u>Registration of Vendors on IREPS website:</u>**

In order to participate in the electronic tenders issued by Northern Railway, the vendors are required to obtain 'Class-III Digital Signature Certificate with Company Name' from any Certifying Authority' licensed

by Controller of Certifying authorities (CCA).The details of the certifying authorities are available on CCA website www.cca.gov.in. The vendors will also have to get themselves registered on IREPS website (www.ireps.gov.in).

Vendors can submit their login registration request online by clicking on the New Vendors link available on Home Page of IREPS website, and after signing the same digitally using their own Digital Signature Certificate. Login registration to the website is available on free of charge basis. The registration request, after due verification, will be accepted and Password will be sent to them to their registered e-mail account. Detailed instructions regarding registration process are available in 'Users Manual for Vendors' which can be accessed through Learning Center link available on the Home page of IREPS website.

Vendors interested in participating against an electronic tender are advised in their own interest to obtain the digital signatures, and get themselves registered on IREPS website well in advance of the tender closing date. Northern Railway shall not provide any assistance to the vendor in this regard, and shall not be responsible for failure of the vendor to submit their offer against any electronic tender on this account.

**1.5** Offers received in the electronic tender box available in the IREPS website (www.ireps.gov.in) will only be considered against electronic tenders.

**1.6** Manual offers delivered by post/fax or in person, or offers sent by e-mail or telex shall not be accepted against electronic tenders, even if such offers are received in time. All such offers shall be considered as invalid offers and shall be rejected summarily, without any consideration.

**1.7** The digital signature of the tenderer on the E-tender form will be considered as confirmation that the tenderer has read, understood and accepted all the documents referred to in Para 1.2 and 1.3 above, unless special deviation is quoted by the tenderer in the technical deviation & Commercial Deviation templates in 'Techno- commercial Bid Details' form. Deviations quoted elsewhere in the tender form shall not be considered, and Purchaser's decision there on shall be final and binding.

**1.8** All mandatory fields in pre-designed templates of 'Techno Commercial Bid Details' form and 'Financial Rate Page for Supply' form marked with asterisk (*) shall be filled in by the tenderer.

**1.9** The stores offered should be in accordance with stipulated drawings and specifications as given in the 'Techno Commercial Bid Details' form and 'Financial Rate Page for Supply' form and attachments attached with the electronic tender.

**1.10** The details of deviations, if any, from tender specification and other conditions should be clearly indicated in the Technical Deviation and Commercial Deviation templates provided on 'Techno-commercial Offer' form only. Deviations mentioned under 'PVC and remarks' field or elsewhere in the offer, except in the manner mentioned above will not be considered. Tenderers may note that conditions deviating from the tender conditions/ description/ specifications may render the offer liable to be ignored.

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

**1.12 Currency of Offer:**

The price should be quoted only in Indian Rupees.

The offers submitted in other currencies shall not be considered.

**1.13 Validity of offer:**

Offer shall be kept valid for acceptance for a minimum period as specified in tender schedule from the date of opening of tender. In case a tenderer quotes shorter validity period, the offer shall be considered as unresponsive and would be summarily rejected.

**1.14** Tenderers are advised to confirm "Compliance to special tender condition/ Checklist" in the template Special Conditions/ Checklist for Bidders on 'Techno Commercial Bid Details' form by putting a tick mark in the check box provided against each Special condition/Checklist, and in case of a "No" must furnish reason for non-compliance with that Special Condition/Check list in the remark entry box provided therein. Tenderers may note that non-compliance to the Special Conditions/Checklist, without stating valid reasons in the relevant remark entry box may render the offer liable to be ignored.

**1.15** Should a tenderer have a relative employed in Gazetted capacity in the Stores Department of the Northern Railway, or in the case of a partnership firm or company in corporate under the Indian Company Law should a partner or a relative of the partner be employed in Gazetted capacity in Stores Department of Northern Railway, the authority inviting tenders shall be informed of the fact at the time of submission of tenders, failing which the tender may be rejected, or if such fact subsequently comes to light the contract may be rescinded.

**1.16** (a) Unless fulfilling the condition detailed in sub-clause (b) below, bidders are required to quote for a quantity not less than 50% of the tendered quantity for consideration of eligibility for regular ordering, and quantity not less than 10% of the tendered quantity for consideration of

eligibility for developmental ordering, as per the eligibility requirement of the tender. Offers for quantity less than 50% of tendered quantity from vendors eligible for regular ordering and offers for quantity less than 10% of tendered quantity from vendors eligible for developmental ordering will be considered unresponsive and will be summarily rejected. This condition will not be applicable if part quantity bidding is permitted in NIT

(b) For items being procured from approved vendors where assessed capacity of the vendor is indicated in the vendor directory available on UVAM portal, any vendor quoting for less than 50% /10% (as indicated above) of tendered quantity, may be considered for ordering, subject to the vendor indicating reasons (with respect to assessed capacity and orders in hand only) for quoting less quantity, failing which such offers will be summarily rejected.

## 2.0 QUALIFYING REQUIREMENTS OF TENDERERS

### 2.1 Items reserved to be procured from RDSO/PUs/CORE approved sources: -

**i.** The Railway reserves the right to order either the entire or the bulk quantity on the “Approved vendors”. Status of approval of tenderer shall be reckoned as on the date of tender opening and not thereafter, unless it is a case of downgrading/ removal/ suspension/ banning.

**ii.** The quantities to be ordered on Approved Vendors will be decided considering factors which include past (supply as well as quality) performance, capacity, delivery requirements, quantity under procurement, and nature of item, outstanding order load etc. and the tender conditions.

**iii.** (a) Vendors approved for developmental ordering shall be eligible for developmental order of up to 20% of Net Procurable Quantity [NPQ] in regular tenders.

(b) Vendors approved by any centralized vendor approving agencies for developmental orders with condition of prototype approval and/or field trial, may be given developmental order for 5% of Net Procurable Quantity [NPQ] within or outside NPQ.

(b.i) Order on firms approved for developmental ordering subject to prototype approval/field trial can be upto the quantity required for field trial as indicated in the vendor directory provided no such orders has been placed on the firm earlier. Such firms will mandatorily indicate the orders received for the tendered item in the past and supply status against the same with their offer. If the firm has not received

any order, a NIL statement has to be attached. If no document is attached, it will be considered that such order has already been placed on the firm and no further orders will be placed.

(b.ii) If quantity required for field trial is not indicated in the vendor directory, then order quantity on such firms will be limited to 5% of NPQ.

However the total order on developmental firms will be limited to 20% of the NPQ..

**iv.** When the vendor approving agency grades vendors under two categories, say, Part I and Part II categories, the developmental order on unapproved/untried firm can be up to 5% of NPQ within or outside NPQ. However, if the vendor approving agency grades vendors only under a single category (i.e. there is no system of approving the firms under two categories, say, Part I and Part II categories), developmental orders can be given upto 20% of NPQ on unapproved/untried firms within the NPQ. This will be subject to the procuring entity being prima-facie satisfied that such firms are capable of executing the order. Such firms must submit their credentials like Machinery & Plant, Testing facilities, QAP, Technical Manpower, Supply performance against earlier orders for same or similar items etc. along with their e-offer. Failure to submit such credentials as stated above will make the offer liable to be ignored. Such developmental order can be placed either after assessment of their capacity and capability by the source approving authority within 6 months of advice from the purchase authority or with the condition that bulk supply will start after approval of prototype by nominated agency as mentioned in the Purchase Order.

**v.** Where there are not more than three Indian suppliers categorized as Approved vendor for the tendered item, developmental vendors without any conditional approval can be considered for placement of bulk order without any quantity restrictions. However, while considering such vendors, factors including past performance, capacity, and delivery requirements, quantity under procurement, nature of items, outstanding order load, etc. shall be considered in a transparent manner subject to rates being reasonable. Quantity allocation among eligible vendors shall be based on pre-decided tender criteria. Such orders shall be treated as Bulk Orders.

A Supplier or bidder shall be considered to be from India if (i) the entity is incorporated in India, or (ii) a majority of its shareholding or effective control of the entity is exercised from

India, or (iii) more than 50% of the value of item being supplied has been added in India.

**vi.** Where there is no approved vendor for an item, developmental vendors without any conditional approval can be considered for placement of bulk order without any quantity restrictions.

However, while considering such vendors, factors including past performance, capacity, delivery requirements, quantity under procurement, nature of item, outstanding order load etc. shall be considered in a transparent manner, subject to rates being reasonable. Quantity allocation among eligible vendors shall be based on pre-decided tender criteria.

**vii.** Authorized dealers/ distributors need to quote with Tender specific authorization from the approved vendors/developmental vendors/Manufacturers failing which offer will be summarily rejected. While issuing such authorizations the approved vendors/developmental vendors/Manufacturers must ensure that these authorized dealers/distributors are in a position to raise inspection requests on IREPS.

**2.2 <u>Other Items which are not reserved to be procured from RDSO/PUs/CORE approved sources:-</u>**

**i.** Bulk order will be placed on the manufacturer or its authorized agent. The manufacturer firm must have satisfactorily executed at least one single purchase order for a minimum of 20 percent of the total tender quantity or multiple orders totaling to 20% or more of the tender quantity of Zonal Railways/ PUs/ CORE for the tendered item [OR] for the items having same description, but of different sizes/ ratings/capacities during 5 previous financial years and current financial year up to date of tender closing. Purchase Officers can consider such firms for bulk order duly keeping in view the overall performance of the firm.

**ii.** All other offers, who are otherwise not eligible for regular bulk order(s) due to their not meeting with the eligibility conditions mentioned in Para 2.2(i) above and provided they are able to demonstrate their Capacity-cum Capability to manufacture the tendered item, can be considered only for developmental order up to 20 percent of the net procurable quantity. For this purpose, they should submit along with their offer, documented past performance reports of same or similar items of equivalent rating or equivalent performance parameters, details of M&P, testing facilities, QAP (if available), technical manpower available with them, registration for same/similar item(s) with other Government agencies or PSUs etc. or any other details as may be warranted as per the technical specification and

drawing. Such tenderers are to note that non submission of such documents as per Annexure shall be taken as their not having any such past performance and/or capacity, and their offer shall be considered further as per extant rules and no back reference in this regard will be made to them.

**iii.** The onus of submission of requisite documents (such as copies of Receipt note/IC for stock items, or receipt & acceptance/IC for Non-stock items, or Capacity & capability credential, M&P required for manufacturing tendered item, T&P, Technical manpower, in house testing facilities, MSE credentials etc.) along with their e-offer regarding 'Bulk order' or 'Developmental order' lies with the tenderers. In case the tenderers do not submit the requisite documents as detailed above along with their e- offer, NR reserves the right to decide the tender on the basis of their past supply performance records of NR, as per IMMIS history sheet of NR, for the tendered item, in case of stock items, for the purchase orders placed by NR during preceding five years from the date of tender closing.

In case of non-stock items, NR reserves the right to decide the tender on the basis of NR vendor performance available in IMMIS for the tendered item for the purchase orders placed by NR during preceding five years from the date of tender closing.

No back-reference in this regard will be made with the bidder.

**iv.** Only Manufacturers or their authorized dealers/ distributors need to quote with Tender specific authorization from the manufacturers failing which offer will be summarily rejected.

**v.** In case tenderers participates as an authorized agent, then the performance as required above shall be that of the Principal, authorizing the agent. It may so happen that the agent has credentials of past supply for a different Principal but this will not be considered as performance for placing bulk order in case of change of Principal.

**2.2.1 <u>Common Eligibility Criteria for RDSO Decontrolled Items: -</u>**

**i)** Railway reserves the right to place bulk/regular order on the bidder* having past credentials of successful supply of tendered item to Indian Railways or any Government concern for at least 35% (cumulatively) of tendered quantity during the last three years prior to and up to date of tender closing. Documentary evidence (such as R/Notes, Inspection certificate etc.) must be furnished along with the offer evidencing the execution of such purchase orders.

***** In case of bidder being and authorized dealer/agent, credentials of OEM will be considered.

**ii)** Bidders having no past performance as above may be considered for placement of developmental orders, but for consideration of such developmental orders, they must submit details of M & P, testing facilities, STR & QAP, technical manpower available, supply performance (PO Copies, Inspection Certificates, R/Notes etc.) along with their offer.

**iii)** In addition to above, for Rolling Stock (Electrical) items, if the approved prototype test report as per RDSO specification is not available, the firm has to get the prototype testing successfully conducted by agency authorized by tendering authority before commencing the supply.

**2.3 Items reserved to be procured from OEM: -**

OEMs or their Authorized Agent/dealers with valid authorization from OEM can also quote on behalf of OEM provided the OEM takes full responsibility for the quality of the material including warranty obligations and the inspection against Railway's orders carried out at the manufacturer's premises.

**2.4 Mandatory considerations as per Government of India guidelines: -**

**2.4.1 MSE Consideration:**

**i.** Procurement of items reserved from Micro & Small Enterprises (MSEs).

The Public Procurement Policy envisages extending certain benefits/ preferential treatment to MSEs and making efforts for development of appropriate vendors and enhancement of their participation in government procurements. In order to avail themselves of such benefits and preferential treatment, the MSEs must be registered with any of the following: -

**(a)** UDYAM (UDYAM Registration Certificate).

**ii.** Benefit/Preferential treatment to MICRO & SMALL ENTERPRISES (MSEs)

**A.** Tender sets shall be provided free of cost to all MSEs registered with agencies mentioned at Para (i) above irrespective of relevance of product Category.

**B.** MSEs irrespective of relevance of product Category registered with the agencies mentioned at Para (i) above, will be exempted from payment of Earnest Money.

**C.** In tenders, participating MSEs, as given at Para 3.3.1 (b) subsequently, quoting a price within price band of L-1 + 15% shall be allowed to supply a portion of the requirement by bringing down their price to L-1 price in a situation where L-1 price is from someone other than MSE and such MSEs can together be ordered upto 25% value out of the net procurable quantity, so as to achieve mandatory 25% annual procurement for MSEs.

Sub-target for procurement from MSEs owned by SC/ST shall be 4% and MSEs owned by women shall be 3%, within the above mentioned 25% reservation.

**D.** MSEs, who are interested in availing themselves of these benefits, will enclose with their offer the proof of their being MSE registered with any of the agencies mentioned in para 2.4.1(i) specified by Ministry of MSME. Failing the above, offers may not be considered of benefits detailed in MSE notification of Government of India dated 23.03.2012"

**E.** MSE firms will please note that in case of order being awarded to them, they will have to deposit Security Deposit as per clause 12.0.

**F.** In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all non-tax benefits of the category (micro or small or medium) it was in before the re-classification, for a period of three years from the date of such upward change.

NOTE- The Micro & Small Enterprises (MSEs) claiming above benefits should be registered with agencies mentioned at Para 2.4.1 (i).

**2.4.2 Make in India Consideration:**

Provisions for procurement under Public procurement (Preference to make in India)policy

Following provisions will be applicable for items to be procured under Public Procurement (Preference to Make in India) order 2017 dt.15.6.2017 and Public Procurement (Preference to Make in India) order 2017 – Revision dt. 04.06.2020.

**1. Definitions:** For the purpose of this Order

**A.** '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.

**B.** 'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has minimum local content 50%, as defined under this Order.

**C.** 'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has minimum local content 20%, as defined under this Order.

**D.** '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 this Order.

*If a higher minimum local content is indicated in NIT, then the same would be applicable.

**E.** The Bidders offering imported products will fall under the category of non-local suppliers. They can't claim themselves as Class-I local suppliers/Class-II local suppliers by claiming the services such as transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. as local value addition.

**F.** 'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

**G.** '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.

**H.** 'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

**I.** 'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

**J.** 'Works' means all works as per Rule 130 of GFR – 2017, and will also include 'turnkey works'.

**K.** Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and more than 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

**2. Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

**A.** In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

**B.** In procurement of all goods, services or works, not covered by sub-para 2(A) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure. Only 'Class-I local suppliers' and 'Class-II local suppliers', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'.

**C.** For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

**3. Purchase Preference**

**A.** Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements under taken by procuring entities in the manner prescribed hereunder.

**B.** In the procurement of goods or works, which are covered by para 2(B) above and which are divisible in nature, 'Class-I local supplier' shall get purchase preference over

'Class-II local supplier' as well as 'Non-local supplier' ,as per the following procedure.

**i.** Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.

**ii.** If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local suppliers' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and soon, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

**C.** In the procurements of goods or works, which are covered by para 2(B) above and which are not divisible in nature, and in procurement of services where a bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per the following procedure.

**i.** Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.

**ii.** If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local suppliers' will be invited to match the L1 price subject to the Class-I local supplier's quoted price falling within the margin of Purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

**iii.** In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In

case none of the 'Class-I local supplier', within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

**D.** "Class-II local supplier" will not get purchase preference in any procurement, under taken by procuring entities.

**4.** **Exemption of small purchases:** Not withstanding anything contained in paragraph 2 and 3 above, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order.

**5.** **Minimum local content:** The local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local supplier' shall be as defined in the para 1 above. No change is permissible on this account.

**6.** **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.

**7.** **Requirement of 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.

**8.** **Verification of local content:**

**A.** The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.

**B.** In case of procurement for a value in excess of Rs. 10 Crores, the 'Class- I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content, failing which offer will be summarily rejected.

**C.** Decisions on complaints relating to implementation of this Order shall be taken by the competent authority, which is empowered to look into procurement related complaints relating to the procuring entity.

**D.** Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.

**E.** Nodal Ministries and procuring entities may prescribe fees for such complaints.

**F.** False declarations will be in breach of the code of integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule151(iii) of the General Financial Rules along with such other actions as may be permissible under law.

**G.** A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 8(H) below.

**H.** The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:

**i.** The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convener of the Standing Committee and the Department of Expenditure through the concerned Ministry/Department or in some other manner;

**ii.** On a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);

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

**9.** If a Nodal Ministry is satisfied that the Indian suppliers of an item are not allowed to participate or compete in procurements

by any foreign governments, it may, if it deems appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and/ or other items relating to that Nodal Ministry. A copy of every instruction or decision taken in this regard shall be sent to the Chairman of the Standing Committee, i.e., Secretary, Department for Promotion of Industry and Internal Trade.

**10. Reciprocity Clause:**

**i.** 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.

**ii.** Entities of countries which have been identified by the Nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that Ministry/ Department 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.

**iii.** The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.

**iv.** The term 'entity' of a country shall have the same meaning as in the FDI Policy of DPIIT as amended from time to time.

**11.** Specifying foreign certifications/ unreasonable technical specifications/ brands/models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.

### 2.4.3 Restrictions of procurement from the bidders from countries sharing land borders with India

**i.** Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

**ii.** "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated herein before, including any agency branch or office controlled by such person, participating in a procurement process.

**iii.** "Bidder from a country which shares a land border with India" for the purpose of this Order means:-

**a.** An entity incorporated, established or registered in such a country; or
**b.** A subsidiary of an entity incorporated, established or registered in such a country; or
**c.** An entity substantially controlled through entities incorporated, established or registered in such a country; or
**d.** An entity whose beneficial owner is situated in such a country; or
**e.** An Indian (or other) agent of such an entity; or
**f.** A natural person who is a citizen of such a country; or
**g.** A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

**iv.** The beneficial owner for the purpose of (iii) above will be as under;

**1.** In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
Explanation -

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

**b.** "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or

management rights or shareholders agreements of voting agreements'

**2.** In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

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

**4.** Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

**5.** In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control of ownership.

**v.** An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

Certificate to be provided by the Tenders with their bid-
*"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India. (Please strike out, whichever is not applicable)*

***(a)*** *I certify that I am not from such a country; or*

***(b)*** *I am from such a country and have been registered with the Competent Authority. I hereby certify that I fulfill all requirements in this regard and is eligible to be considered. Evidence of valid registration by the Competent Authority is attached."*

**2.4.4** For items where only Class-I local suppliers are eligible to participate in the tender

In keeping with the Public Procurement (Preference to Make in India) Order, 2017 as amended and in terms of Clause 2.4.2 above, Public Procurement of this item is restricted to 'Class-I local suppliers' only. Thus, only 'Class-I local supplier' as defined under the Public

Procurement (preference to Make in India) Order, 2017, as amended shall be eligible to bid in this tender. Offers from vendors who do not quality to be 'Class-I local supplier' shall be summarily rejected and, therefore, such vendors should not participate in the tender. In case any vendor who does not qualify to be a 'Class-I local supplier' for the tendered item participates in the tender, such a bidder does so at its own risk and cost and Railways shall not be liable for any loss or damage caused to the bidder on this account.

**2.4.5** For items where only Class-I and Class-II local suppliers are eligible to participate in the tender In keeping with the Public Procurement (preference to Make in India) Order, 2017 as amended and in terms of Clause 2.4.2 above, Public Procurement of this item is restricted to 'Class-I and Class-II local suppliers' only. Thus, only 'Class-I and Class-II local suppliers' as defined under the Public Procurement (preference to Make in India) Order, 2017, as amended shall be eligible to bid in this tender. Offers from vendors who do not quality to be 'Class-I or Class-II local suppliers' shall be summarily rejected and, therefore, such vendors should not participate in the tender. In case any vendor who does not qualify to be a 'Class-I or Class-II local supplier' for the tendered item participates in the tender, such a bidder does so at its own risk and cost and Railways shall not be liable for any loss or damage caused to the bidder on this account.

**2.4.6** The status of a bidder as a 'Class-I/Class-II local supplier' shall be ascertained based on the following details/documents, as applicable, furnished at the time of submission of bid.

**a.** The local content declared by the bidder in the earmarked field on IREPS (which shall be treated to be the self-certification by the bidder, required in terms of sub-clause 8(A) of clause 2.4.2 above). However, any downward revision in the local content subsequent to tender opening, if intimated by the bidder, will also be taken into consideration for the purpose of evaluation of the bid.

**b.** A Certificate for the offered item (for procurement value > 10 Cr.) in terms of sub-clause 8(B), of clause 2.4.2 above). Such a certificate should inter-alia include the following details:

i. Name and address of the bidder.
ii. Quantum of 'Local Content' in the item offered by the bidder.
iii. Details of the location(s) at which the local value addition is made.

**c.** Details of the location(s) at which the local value addition is made (in cases of self- certification).

**d.** In case of downward revision of local content subsequent to tender opening, the bidder shall be liable to be taken up as per clause 2.4.2 – 8(F) above. Additionally, EMD of the bidder shall be forfeited.

## 2.5 Other details:-

**i.** The tenderer shall clearly indicate whether he is registered with the office of PCMM/Northern Railway for supplying the quoted item, and if so, he must mention his registration number along with monetary limit, if any, under remarks column in the 'Financial Rate Page for Supply' form. If the tenderer is registered with UDYAM, he must also attach in the Attach Documents template on 'Techno Commercial Bid Details' form a scanned copy in PDF format, of valid UDYAM certificate showing monetary limit and the items for which registered. In case the tenderer is approved by RDSO/ PUs/CORE for the quoted item, he must attach in the Attach Documents template on 'Techno Commercial Bid Details' form a scanned copy in PDF format of the registration/approval certificate.

**ii.** If the tenderer is not registered with Northern Railway or UDYAM, or is not an approved source for the tendered item with RDSO/ PUs/CORE, heshall provide a satisfactory evidence acceptable to the Purchaser by attaching scanned copies of such documents in PDF format in the Attach Documents template on 'Techno-commercial Bid Details' form to show that:-

**a.** He is an established manufacturer, who regularly manufactures the items offered and has adequate technical knowledge and practical experience;

**b**. He has adequate financial stability and status to meet the obligations under the contract for which he is required to submit a copy of the report from a recognized bank or a financial institution;

**c**. He has adequate plant and manufacturing capacity to manufacture the items offered and supply within the delivery schedule offered by him;

**d.** He has established quality control system and organization to ensure that there is adequate quality control at all stages of the manufacturing process.

**iii.** If the tenderer is himself not the manufacturer of the item offered by him, he shall be duly authorized by the manufacturer of such item. Such tenderers must enclose with their offer a

certificate of authorization from the manufacturer, as per Performa given in **Annexure-5** of this document, to participate in the specific electronic tender being submitted.

**iv.** The OEM/Authorized Dealers/Agents must comply the following conditions, failing which their offer(s) will be ignored:

**a.** Authorized dealers/ distributors need to quote with Tender specific authorization from the approved vendors/developmental vendors/Manufacturers failing which offers will be summarily rejected.

**b.** In a tender, either the authorized agent/dealer on behalf of the Principal/OEM or the Principal/OEM itself can bid but both cannot bid simultaneously for the same item in the same tender.

**c.** If an authorized agent/dealer submits bid on behalf of the Principal/OEM, the same agent/dealer shall not submit a bid on behalf of another Principal/OEM in same tender for the same item/product.

**v.** For the purpose of Para 2.5 the tenderer should additionally submit: -

**a.** A performance statement in the Performance Statement template on 'Techno-commercial Bid Details' form by entering a list of major supplies effected in the recent past, of the items offered by him, giving details of the purchaser's name and address, order no. and date, quantity supplied and whether the supply was made within the delivery schedule. Alternatively, tenderers can also create such performance statement in PDF format separately as per the format given in **Annexure-3**, which can be attached in the Attach Documents template of 'Techno-commercial Bid Details' form.

**b.** A statement in PDF format indicating details of equipment, staff employed and quality control measures, as per the format given in **Annexure-4** of this document, attached in the Attach Documents template of 'Techno-commercial Bid Details' form.

**vi.** Tenderers not furnishing the requisite information may note that their offer is liable to be ignored.

## 3.0 EARNEST MONEY

**3.1** Tenderers are required to deposit Earnest Money equivalent to the amount mentioned in the tender document. Tenderers not submitting Earnest Money should clearly indicate in their offer the reasons for the

same, and failure to do so will be taken as unwillingness on their part to deposit the Earnest Money and such offers without requisite Earnest Money will be summarily rejected.

**3.2** Tenderer not falling in the exempted categories as mentioned in the subsequent para shall submit the Earnest Money only through Payment Gateway Facility on the IREPS Portal. Earnest Money shall be accepted only via the online system as available on IREPS portal. No other mode of the submission of Earnest Money is acceptable except in case of Global Tenders.

**3.3** There shall be no exemption from Submission of Earnest Money for any tender or by any tenderer except following:

**a.** Limited Tender Cases (including Single Tender and Global Limited Tender) of value limit up to Rs. 25 (Twenty-five) Lakh.
**b**. Micro & Small Enterprises (MSEs) registered with agencies mentioned at Para 2.4.1 (i).
**c.** Other Railways and Government Departments.
**d.** Indian Ordinance Factories.
**e.** PSUs owned by the Ministry of Railways and PSUs for the group of items that are manufactured by them.
**f.** Vendors registered with Northern Railways for the trade group of the item tendered.
**g.** Vendors appearing on the approved vendor list of RDSO/PUs/CORE, for the tendered item(s), subject to approval status being valid on the date of tender closing.
**h.** Vendors registered with Railway Board/Northern Railways for supply of medicine, medical equipments and consumables shall be exempted from submission of EMD for these items.
**i.** In tender issued against PAC, OEM in whose favor PAC has been issued shall be exempted from submitting EMD. KVIC shall be exempted from EMD for items supplied by them.

***(NB: If authorized agent participate on behalf of OEM/Vendors appearing on the approved vendor list of RDSO/PUs/CORE, such authorized agent can't claim EMD exemption based on its own or its OEM /Approved vendors MSE certificate).***

**3.3.1** Tenderers falling under any of the above listed exempted categories and claiming exemption will have to follow all of the following steps to avail the exemption from submission of Earnest Money:

**a.** Tenderers shall search for the relevant tender using the links (a) quick search or (b) advance search provided in their home page after logging into the IREPS system using their valid Username, Password & Digital Signature.

On retrieving the tender details, they shall click on the Submit Payment Details icon under Actions column to access the Submit Payment Details Page. The tenderers shall then choose the appropriate exemption category available under Submit EMD link on the Submit Payment details page. The tenderer

shall thereafter digitally sign and submit the details by clicking the Sign & Submit button available on the page. Tenderers may please note that 'Submit EMD' link becomes available only after the tenderer has submitted tender document cost (or has chosen the exemption category for tender document cost, if applicable).

**b.** The tenderer will have to attach scanned copy of requisite document viz. the current and valid registration certificate issued by any of the authorities detailed at Para 2.4.1 (i) above in support of their MSE status.

(NB: In two Packet Bidding System, such document must be uploaded at the time of Techno-Commercial bid).

**c.** All vendors, exempted from submitting EMD, as per Para 3.3 above, irrespective of the type of tender, i.e., Single, Limited or Open, shall be required to sign a Bid Securing Declaration as per proforma available on bidders interface for payment of EMD on IREPS Portal.

**d.** Amount of EMD will be as follows:

| Estimated Value of Tender | EMD (rounded off to the nearest higher Rs. 10 (ten). |
|---|---|
| Up to Rs. 25 Lakh | @ 2% of the estimated value of the tender. EMD will be NIL in case of Limited, Single, Global Limited Tenders. |
| Above Rs. 25 Lakh and up to Rs. 50 Crore | @ 2% of the estimated value of the tender subject to max Rs. 20 Lakh |
| Above Rs. 50 Crore | Rs. 50 Lakh |

**3.4** Offers of tenderers, who do not submit Earnest Money, and are also not exempted from submission of Earnest Money shall be summarily rejected.

**3.5** The Purchaser reserves the right to forfeit the Earnest Money Deposit if the tenderer withdraws or revises his offer within the validity period. The Purchaser also reserves the right to forfeit the Earnest Money deposit, if the Bidder fails to deposit Security Money in terms of Clause-12.

**3.6** No interest shall be payable by the purchaser on the Earnest Money.

**3.7** *EMD shall be refunded when any one of the following conditions is satisfied.*

***(a)*** *After finalization of tender to unsuccessful bidder(s).*
***(b)*** *Validity of offer expires and validity extension is not sought.*
***(c)*** *Validity of offer expires and bidder refuses to extend validity of offer.*

***(d)*** *After finalization of the tender successful bidder submits required SD.*

*EMD of bidders or tenderers shall be released immediately after it is due for release as per above criterion. The Purchaser may initiate the process of release just after the EMD is due for release.*

**3.8** *The Earnest Money of the successful tenderer may be adjusted towards Security Deposit and in case where such tenderer furnishes Security Deposit as per the tender conditions, EMD will be refunded after receipt of full Security Deposit.*

**3.9** **(i)** All vendors, exempted from submitting EMD, as per Para 3.3 above, irrespective of the type of tender, i.e., Single, Limited or Open, shall be required to sign a Bid Securing Declaration as per proforma available on bidders interface for payment of EMD on IREPS Portal.

**(ii)** The bidder(s), who stand disqualified as per the declaration furnished by them in Bid Securing Declaration, will not be exempted from submitting EMD and SD for all tenders published during the period of their disqualification.

**(iii)** The disqualification procedure and all correspondence thereof shall be online and digital. Updation on IREPS shall be done by minimum JAG level officer dealing with vendor registration in the Railway.

**(iv)** The conditions detailed in Para 3.9 shall not be applicable to Govt. Departments/ ordinance factories/ other Railways/ Railway PSUs/ KVIC and matter shall be taken up with them departmentally/ administratively.

**3.10** No traders shall be eligible for any MSE benefits.

## 4.0 SUBMISSION OF OFFERS

**4.1** Procedure for submission of electronic offers

**4.1.1** The tenderers should visit IREPS website at the address www.ireps.gov.in and submit online offers after logging into the website using their login ID, Password and Digital Signature. Tenderers can submit their online offers only after they have submitted tender document cost (or have chosen the exemption category for tender document cost, if applicable). Tenderers can submit on line electronic offers after filling the details in the following pre-designed templates.

**i.** Submit Payment Details.

**ii.** Techno-Commercial Bid Details (Bid Process page)

**1**. Eligibility Criteria (Elig.*)

2. Terms and Conditions (T&C*)

3. Commercial Deviation (Com. Dev.)

4. Technical Deviation (Tech. Dev.)

5. Special Conditions & Check List (Check List*)

6. Technical Specifications (Tech. Spec.)

7. Performance Statement (Perf.)

8. Attach Documents(Attach Doc.)

9. Financial Offer (Fin. Offer)

Templates named above super scribed with asterisk (*) will require digital signatures for submission.

Tenderers shall be able to access the 'Financial Offer' link for entering into the 'Financial Rate Page for Supply' only after they fill in the details in the asterisk (*) marked templates on the 'Techno Commercial Bid Details' form and digitally sign and submit the same.

Tenderers may note that the IREPS software is continuously being upgraded and the forms referred above may be subject to changes. Tenderers are advised to keep themselves updated with the latest changes, by referring to the latest versions of user manuals available on the website, and by taking note of the messages sent by the IREPS administrator from time to time. Tenderers should also make themselves fully acquainted with all the available templates/forms, before they submit their offer. No claim shall be entertained from a tenderer, on account of non-familiarity with the any of the templates and forms available on the IREPS website.

**4.1.2** The electronic offers shall be digitally signed by the tenderer. To ensure confidentiality and security, the offers will be auto encrypted using highest level of digital security before transmission on internet channels. Electronic such offers are received in a time locked electronic tender box, where they remain encrypted till stipulated tender opening date/ time. All the details of the digital certificate as obtained from the C.A., showing the identity of the person who is authorized to sign and submit an electronic offer will get auto attached along with the electronic offer, and can be verified by Northern Railway at a later stage, to establish the identity of the person who has digitally signed and submitted his electronic offers. This is similar to an authenticated copy of the document which authorizes the signatory to commit on behalf of the firm.

**4.1.3** Every online tender submitted duly signed with a valid Digital Signature Certificate and received before closing date & time of tender shall be acknowledged by the system and HTML receipt will be generated indicating tender ID as well as date and time of receipt of the tender.

**4.1.4** Electronic offer once digitally signed and submitted for one or all the item/ items cannot be accessed or revised later and shall remain fully secured confidentially stored into time locked E-tender box in an encrypted form till the due date and time of opening.

**4.1.5** Revised bids: Vendors can submit a revised commercial offer

("Financial Rate Page for Supply' form) any time before the stipulated closing date and time and in such case the last revised offer submitted at a later time and date shall be considered as the offer, superseding all the previously submitted offers for that item/ items of the tender.

**4.1.6** Alternative bids: The vendors are also allowed to submit alternative offer.

**4.1.7** Late Offers: The Indian Railway E- procurement application software does not permit vendors to submit their offers after the designated tender closing date and time.

**4.1.8** The tenders are uploaded in IREPS website well in advance of closing time to give sufficient time to the vendors to participate in the tender. Vendors are advised in their own interest to submit their offers well in advance before the tender closing time. Northern Railway shall not be responsible for non- participation of vendors due to any technical problems such as network connectivity etc. on the tender opening day.

## 4.2. Goods & Service Tax (GST)

**i.** The bidders should ensure that they are GST compliant & their quoted tax structure/ rates are as per GST law.

**ii.** The bidders are required to indicate the rate of GST applicable for the tendered item in their bids separately in the rate page provided in the IREPS system. The offers shall be evaluated based on the GST rate as quoted by each bidder & same will be used for determining the inter-se ranking. While submitting the offer, it shall be responsibility of the bidder to ensure that they quote correct GST rate & HSN number.

**iii.** Purchase shall not be responsible for any mis-classification of HSN number or in correct GST rate if quoted by the bidder. The purchaser will not reimburse any GST paid by the supplier due to mis-classification.

**iv.** Where the successful bidder invoices the goods at GST rate or HSN number which is different from that incorporated in the purchase order, payment shall be made as per GST rate which is lower of the GST rate incorporated in the purchase order or billed.

**v.** Vendor is informed that she/he would be required to adjust her/his basic price to the extent required by higher tax billed as per invoice to match the all-inclusive price as mentioned in the purchase order.

**vi.** Any amendment to GST rate or HSN number in the contract shall be as per the contractual conditions and statutory amendments in the quoted GST rate and HSN number, under SVC.

**vii.** The bidders while submitting their bids shall give the following declaration: “We agree to pass on such additional setoff/input tax credit as may become available in future under the GST provisions in respect of all inputs used in the manufacture of the tendered item on the date of supply, by way of reduction in price and advise the purchaser accordingly.”

**viii.** The suppliers while submitting their bills for payment shall give the following declaration:

“We hereby declare that additional setoff/input tax credit to the tune of Rs. has accrued and accordingly the same is being passed on to the purchaser and to that effect the payable amount may be adjusted.

**ix.** In case the successful tenderer is not liable to be registered under CGST/IGST/UTGST/SGST Act. The railway shall deduct the applicable GST from his/their bills under reverse charge mechanism (RCM) and deposit the same to the concerned tax authority.

**x.** The tenderers in their bids shall indicate the details of their Jurisdictional Assessing Officers (Designation, address & email id). In case of a contract award, a copy of the LOA/Purchase Order shall be immediately forwarded by Purchaser to the Jurisdictional Assessing Officer mentioned in the Tenderer's bid.

## 4.3 Delivery Schedule

**4.3.1** The tenderers should quote the delivery period/ delivery schedule carefully, because the time and date for the delivery of stores shall be the essence of the contract and delivery must be completed not later than the date so specified. Attention of the tenderers is invited to

clauses 0700, 0701 and 0702 of the IRS Conditions of Contract, which shall govern the contract. Delivery Period shall be reckoned from the date of issue of Advance PO/ Letter of Advance Acceptance/ Letter of Acceptance.

**4.3.2** The delivery period and delivery schedule as per Northern Railway's requirement are indicated in the respective fields in the electronic tender. Tenderers are advised to adhere to the delivery period/delivery schedule stipulated in the tender, as deviation from the same may render their offer liable to be ignored. Tenderers should invariably quote firm delivery period in their quotation. If the quoted delivery period spreads over several months, the date of commencement, monthly rate of delivery and the date of completion of delivery must be indicated.

**4.3.3** In the case of "ex-stock" offers, the dispatch of stores is to be affected within 7 days of the receipt of order. Wherever the stores are subject to inspection by Third Party Inspecting (TPI) agencies before dispatch, extra time of 3 weeks will be allowed to cover time in inspection.

**4.3.4** In case of delivery by Rail, the date on which stores are placed on Rail will be date of delivery. In case of local delivery, the date of delivery to consignee will be taken as date of delivery. For outstation dispatches, if sent by road, the date of receipt of material by consignee will be taken as date of delivery.

**4.3.5** No transit time shall be allowed beyond the delivery date stipulated in the contract.

**4.3.6** Time Preference Clause: It should be noted that if a contract is placed on a higher tenderer as a result of invitation of tender, in preference to the lower acceptable offer, in consideration of offer of earlier delivery, the contractor will be liable to pay to the Government the difference between the contract rate and of the lowest acceptable tender on the basis of final price F.O.R destination including freight, GST and other incidentals in case of failure to complete supplies in terms of such contract within the date of delivery specified in tender and incorporated in the contract. This is in addition and without prejudice to other rights under the terms of contract.

## 4.4 Delivery Terms

**4.4.1** The purchaser will prefer delivery by road at consignee's end on freight prepaid basis.

**4.4.2** Tenderers are required to clearly indicate the freight charges in the relevant field in the 'Financial Rate Page for Supply' form. The freight charges to be paid shall in no case exceed the freight charges quoted

by the tenderer in the relevant field in the 'Financial Rate Page for Supply' form.

**4.4.3** In case an offer is submitted on 'FOR-Station of dispatch' basis, 'FOR-Ex-Works' basis or 'FOR-Ex- Godown basis' and 'Nil' freight charges are quoted by the tenderer in the relevant field on the 'Financial Rate Page for Supply 'form, the supplier shall agree to dispatch the stores by rail/road on free delivery to consignee. No freight charges shall be payable in such cases.

**4.4.4** In case an offer on "FOR- Station of dispatch" basis is accepted with mode of dispatch by rail, the supplier shall agree to book the stores by goods train for wagonload consignments and passenger/parcel train for smalls. Reimbursement of freight element, permitted as per contract conditions may be claimed through bill.

**4.4.5** The purchaser will not pay separately for transit insurance and supplier will be responsible till the entire stores contracted for are received by the consignee in good condition at destination.

**4.4.6** The bidders may please note that requests for extension of delivery period will not be agreed to in routine manner.

**4.5 Inspection:**

**4.5.1** The inspection of stores at manufacturer's premises before dispatch will be conducted by Third Party Inspecting (TPI) agencies or the representative of consignee with check notes mentioned below. Final inspection of stores will be done by the consignee on receipt at destination.

**Check Notes:**

(i) All inspection work (presently being done through RITES, RDSO, CLW etc), except those required to be done by the consignee, against the contracts being placed for material that can be covered under the scope of the WR contract on TPI Agencies (including those in foreign countries) shall be done through these empanelled inspection agencies after the commencement of the contracts of these TPI agencies.

(ii) DRDO inspection is done for the bacteria for Vacuum toilet system which is a specialized inspection, the same shall continue.

(iii) In case of mandatory requirement of Type test/Prototype test (not the advance samples), the same may be done by the concerned authority for such Type test/Prototype test/as

indicated in Bid document/Contract. All routine inspections shall be carried out by TPI Agencies.

**4.5.2** Tenderers are required to confirm acceptance of the Inspection Clause mentioned in the tender document, and non-acceptance of the same shall render the offer liable to be ignored.

**4.5.3** In case the purchase orders are placed on traders/agents for the item(s) which are peculiar to the railways, traders/agents should indicate the source of supply and inspection shall be carried out at their manufacturer's premises rather than trader/agents' premises, to ensure genuineness of quality of the material.

**4.5.4** In case the firm fails to offer the material for inspection against inspection call issued to inspecting agency, or if the material have to be re-inspected due to rejection of the material at firm premises by inspecting agency or due to non-dispatch of material within validity of inspection certificate, then the charges as per Railway Boards policy for Third Party Inspecting (TPI) agencies will be paid by the supplier to the respective agency.

**4.5.5** In the event any issue related to inspection such as non-availability of drawing/specification/tests or inspection test plan etc. requires clarifications or there is a disagreement between the TPI Agency and the Vendor, the TPI Agency shall refer such matters to the Procuring Entity. The Procuring Entity shall clarify the issue to the TPI Agency. In order to sort out the issue, the Procuring Entity as deemed necessary may call meeting with TPI Agency, the user department representative and/or the Vendor. The clarification on the matter under reference shall be conveyed by the Procuring Entity to the TPI Agency and Vendor. The decision of the Procuring Entity shall be final and binding.

**4.5.6**

**1.** Attention of Tenderers/Bidders is invited to IRS conditions of Contracts, which are the governing conditions of contract. Particular attention is invited to IRS conditions 0701, 1301 (a), 1301 (b) and 1301 (c), 1302 to 1309, 3400 to 3402.

**2.** In terms of IRS conditions of contract, following specific provisions shall apply in cases of supply of pre-inspected goods through empaneled TPI agencies:

**2.1** Unless otherwise stated in the tender schedule, goods procured are required to be pre-inspected before dispatch by the Third Party Inspection (TPI) Agency appointed by Railways at its sole discretion. The TPI Agency appointed shall be indicated in the Purchase Order. It is agreed that Railway's right to appoint TPI Agency of its choice is absolute.

**2.2** Online inspection call shall be placed by the Supplier on IREPS after the Goods are ready for inspection.

**2.3** In Purchase Orders requiring Stage Inspection, Suppliers shall place online inspection call for a particular stage after achieving readiness required at that stage duly mentioning the stage number. The Inspection for a particular stage shall be initiated only after Inspection has been carried out for all the previous stages, as may be applicable.

**2.4** The Third Party Inspection Agency appointed by Railways shall examine the online inspection call and may, within 48 hrs (excluding national holidays), seek additional information, if any, from the Supplier. The Supplier shall within one calendar day (excluding Sundays and national holidays) furnish the required information/documents to the TPI Agency to enable them to register inspection call. In case of incomplete information even after providing opportunity to Supplier to furnish information, the call shall not be registered and Supplier shall be advised of observations through the online system to address the observations and place fresh inspection call. The inspection call may also be rejected by TPI Agency if sufficient time for carrying out the inspection and release of IC before end of delivery period is not available.

**2.5** Supplier shall be allowed to withdraw inspection call placed, without any cost, before the inspection call has been registered by the Third-Party Inspection Agency. Once the inspection has been scheduled by the TPI Agency, withdrawal of inspection call shall not be permitted.

**2.6** Inspection fee/charges will be paid directly by Railways to Third Party Inspection Agencies.

**2.7** However, charges/expenses specifically provided for in IRS Conditions of Contract, particularly in Para 1304, 1305, 1306 and 1400 of IRS conditions of contract, shall be borne by the Supplier.

**2.8** Inspection charges paid or due to be paid by Railways to the TPI Agency shall be recovered from Suppliers in following cases:

**2.8.1** In case of rejection of Goods during the pre-despatch inspection (including stage inspection rejection) by Third Party Inspecting Agency, the charges recovered shall be equal to inspection charges payable to inspecting agency as specified in Para 2.8.4 below.

**2.8.2** When the Authorized Inspector of Third-Party Inspection Agency, on visit to Supplier premises for inspection, finds that Goods offered are not yet ready for inspection, Inspection call shall be cancelled by Authorized inspector by issuing call cancellation certificate. Similarly, in case of Stage Inspection, when the Authorized Inspector of Third Party Inspection Agency, on visit to Supplier premises for inspection, finds that readiness for Stage Inspection to be conducted has not been achieved, Inspection call shall be cancelled by Authorized inspector by issuing call cancellation certificate for Stage Inspection. The Call Cancellation Charges shall be recovered from Supplier as specified in para 2.8.4 below.

**2.8.3** Inspection Certificate revalidation or re-inspection: If the Supplier fails to deliver the pre-inspected Goods as per the terms of the purchase order within the validity period of Inspection Acceptance Certificate, the TPI Agency, on request of Supplier, may, based on the merits of the case, decide to either re-validate the Inspection Acceptance Certificate or re-inspect the Goods against fresh inspection call to be placed by the Supplier. Decision of the TPI agency in this respect shall be binding on the supplier. In such cases, the revalidation or re-inspection charges (as applicable) to be recovered from Supplier shall be as specified in para 2.8.4 below.

**2.8.4** To summarize, following charges shall be recovered from Supplier-

| **Situation** | **Charges to be recovered from Supplier (plus GST extra)** |
|---|---|
| At the time of physical visit call is cancelled due to:<br><br>Goods are not ready for inspection<br>OR<br>Goods, raw materials, components or sub components, as the case may be, are not yet ready for inspection, in cases involving Stage inspection<br>(Call Cancellation through issue of Call Cancellation Certificate) | Y/2, subject to a maximum of Rs 11000/- |

| | |
|---|---|
| Goods, raw materials, components or sub components, as the case may be, rejected in Stage Inspection excluding the final Stage, in cases involving stage inspection. | Y |
| Goods rejected in final Stage, in cases involving stage inspection | 2Y |
| Goods rejected in inspection, in cases without stage inspection | Y |
| Inspection Certificate revalidation or re-inspection | Scenario-1: Rs. 5000 or full inspection charges, whichever is lower for revalidation of inspection certificate.<br><br>Scnerio-2: In case re-inspection is done afresh, inspection charges to be recovered from Vendor shall be "Y". |

Where, Y = X/100 of total value of Goods inspected as per Purchase Order, Where X is the percentage inspection charges of the concerned PO Value slab for Product Inspection.

**3.** Applicable inspection charges in percentage of PO value and slab-wise is as under for information of Suppliers:

| PO Value Slab | Inspection charges (X) |
|---|---|
| Upto Rs. 5 lakhs | Rs. 2610/- +GST extra |
| From Rs. 5 lakhs upto 1 Cr | 0.5220 % + GST extra |
| Above Rs. 1 Cr up to 25 Cr | 0.116 % +GST extra |
| Above Rs. 25 Cr up to 100 Cr | 0.053 % +GST extra |
| Above Rs. 100 Cr up to 500 Cr | 0.035 % + GST extra |

**Note-1.** Purchase Order Value for the purpose of calculating the inspection charges shall mean total value of Goods ordered

specifically indicated in the Purchase Order as total order value, and includes freight, packing, forwarding, taxes and duties etc. used in arriving at total order value but excludes any components or items not included specifically in calculation of total order value. The inspection charges shall be calculated using Value of Goods Inspected based percentage charges and GST applicable on inspection charges for the corresponding PO Value Slab. For avoidance of doubt and as an illustration, if the PO Value for 100 Nos of Item A is Rs. 50 Lakhs and a lot consisting of 25 nos. is offered for inspection. The inspection charges for the lot being inspected shall be = (0.5220/100)x(25/100)x50,00,000 = Rs. 6525 only+ GST Extra.

**Note-2.** For inspection of Goods by Third Party Inspection Agency where Purchase Order value is below Rs. 5 lakh, the inspection charges in such cases will be those applicable for PO valuing Rs. 5 Lakhs.

**Note-3.** For inspection of Goods by Third Party Inspection Agency where Purchase Order value is above Rs 500 Cr, the inspection charges in such cases will be fixed separately by the purchaser subject to maximum of 0.035 % + GST extra

**4.** When pre-inspected Goods get rejected at consignee end joint inspection will be held as per procedure below. Moreover, in case of rejection of Goods on Joint Inspection, the replacement supply against the rejected lot of Goods shall normally be inspected by the same Third Party Inspection Agency, which inspected and passed the original supply, unless purchaser under special circumstances decides to get the lot inspected by some other inspection agency/consignee and decision of purchaser in this respect shall be binding on supplier.

**5.** Procedure for Joint Inspection:

**(i)** If Goods, pre-inspected by TPI Agency, gets rejected at consignee end after receipt by consignee, the material rejection advice/rejection memo will be sent by consignee through online system to all concerned i.e. Vendor, TPI Agency, Procuring Entity and Paying Authority and to such others as required.

**(ii)** Before rejected goods are returned to the supplier, the consignee after or at the time of issue of rejection advice, at his discretion, shall call for a Joint Inspection between consignee, Vendor and TPI Agency. Such Joint Inspection

shall be conducted at a place as mentioned in the notice for Joint Inspection.

**(iii)** The joint inspection is to be carried out by the consignee with the representatives of the inspecting agency.

**(iv)** In case where either the firm or the representatives of inspecting authority do not turn up for Joint Inspection, Joint Inspection shall be done with whosoever of the two is available. In case neither firm nor inspection agency attend, consignees' decision to accept or reject such goods shall be final and binding.

**(v)** A Joint Inspection report shall be signed by the Party(ies) attending the Joint Inspection. Failure to attend Joint Inspection shall not be an excuse to dispute the findings of Joint Inspection.

**(vi)** Irrespective of the outcome of Joint Inspection, the TPI Agency will not be entitled for any fee or charges, whatsoever, for attending such Joint Inspection. In case of rejection of Goods on Joint Inspection, the TPI Agency shall not be entitled for inspection charges for the quantity of Goods rejected. The inspection charges, if and to the extent already paid, shall be recovered from the TPI Agency.

**4.5.7** Inspection by TPI for items involving procurements of raw materials and bought out components by the contractor from other firms.
**"In case of items where successful vendors (say M/s A) are required to procure raw material and/or bought out components from other approved vendors (say M/s X, M/s Y, M/s Z...), the inspection of raw materials & other bought out components will also be carried out by the nominated inspection agency mentioned in the Purchase Order at the premises of M/s A. It shall be the responsibility of the vendor on whom the order is placed (M/s A) to ensure the inspection of raw materials & bought out components being procured through other approved vendors at its premises."**

## 4.6 Payment Terms

**4.6.1** The standard payment terms subject to recoveries, if any, under the IRS Conditions of Contract are as under: -

**a.** 95% payment against inspection certificate and proof of dispatch/ delivery to consignee and balance 5% after receipt and acceptance of the goods.

**b.** 100% payment against receipt and acceptance of material by the consignee after inspection and acceptance at destination.

**c.** 100% payment will be made after receipt, inspection, acceptance of the equipment by the consignee, and installation/commissioning of the same on site.

**d.** 80% payment shall be made on receipt of the items in satisfactory condition, against supplier's challan certified by consignee gazetted officer, and inspection certificate issued by the nominated inspection agency. Balance 20% payment shall be made after successful installation, commissioning and acceptance of the equipment by consignee subject to submission of Bank Guarantee for 10% of the contract value for warranty obligations, valid beyond 6 months period of warranty.

**e**. For contracts valued up to Rs. 5 Lakh, payment terms as per (b) above only will be accepted.

**4.6.2** In case of dispatch by rail, unqualified Railway Receipt/Parcel Way Bill will be taken as the proof of dispatch. In case of dispatch by other means such as road transport, receipted challan signed by the Gazetted Officer at consignee's end will be taken as proof of delivery for the purpose of 4.6.1 as above.

**4.6.3** Tenderers are advised to accept the standard payment terms incorporated in the tender, as deviation from the same shall render the offer liable to be ignored.

**4.6.4** In deserving cases, Northern Railway, at their sole discretion may accept deviation from the standard payment terms, as per existing guidelines/instructions.

**4.6.5 Payment through EFT**

**a.** The tenderer shall give his consent in a mandate form for receipt of payment through EFT (**Annexure-6** of this document); by attaching scanned copy of the same in PDF format in the template Attach Documents on 'Techno Commercial Bid Details form.

**b.** Tenderer shall provide the details of Bank A/C in line with RBI guidelines for the same. These details will include Bank Name, Branch Name & Address, Account Type, Bank A/C No., and Bank & Branch Code as appearing on MICR cheque issued by bank.

**c.** Tenderer shall also attach certificate from their bank certifying the correctness of all above- mentioned information.

**d.** In case of non-payment through EFT, or where EFT facility is not available, payment may be released through cheque.

**e.** The purchase order will contain the following details as furnished by the firm;

**(i)** Account no. & Type

**(ii)** Bank Name & Code.

**(iii)** Branch name & Address.

**(iv)** Whether payment is through EFT or Cheque.

**4.6.6** Payment through LC – Vendors can avail the option of payment through LC in tenders having estimated value of Rs. 10 lakh and above. This scheme shall be governed by the following conditions-

**a.** The LC will be a sight LC.

**b.** The bidder, at the time of bidding itself, shall exercise an option, in favor of taking payment due against this tender, through LC arrangement. The option, so exercised, shall be an integral part of the bidders offer.

**c.** Option once exercised shall be final and no change shall be permitted thereafter.

**d.** The incidental cost @ 0.15% of LC value, towards issue of LC and operation thereof shall be borne by the supplier and shall be recovered from their bills.

**e.** State Bank of India through its branches shall be the Banker for Railways for opening domestic letters of credit for ensuing year. The arrangement would cover all such contracts finalized against tender issued during the said period and shall extend till final execution of these contracts.

**f.** The schedule of payment liability arising in the contract shall be established by the Railways based on the prescribed delivery schedule/stages of supply.

**g.** The acceptable, agreed upon document for payments to be released under the LC so opened shall be a Document of Authorization.

**h.** The supplier/contractor shall submit their bills for completed supply to the bill processing authority mentioned in supply/contract agreement to issue Document of Authorization to enable supplier/contractor to claim the authorized amount from their Banker.

**i.** Accounts Officer responsible for passing the claim will issue the Document of Authorization.

**j.** The supplier/contractor shall take print out of the Document of Authorization available on IREPS portal and present his claim to

his banker (advising bank) for necessary payments as per LC terms and condition. The claim shall comprise LC Document of Authorization, Bill of Exchange and Invoice.

**k.** The bank shall also recover any amount as may be advised by railway against the contractor/ supplier.

**l.** The Contractor/ Supplier shall indemnify the Railway from and against all losses, claims and demands of every nature and description brought or recovered against the Railways by reason of any act or omission of the Contractor/ Supplier, his agents or employees, in relation to the Letter of Credit (LC). All sums payable/ borne by Railways on this account shall be considered as reasonable compensation and paid by Contractor/ Supplier.

**4.6.7** Bidder may please note that Northern Railway has switched completely to 100% online payment. Hence no option for manual payments will be accepted.

## 4.7 Samples, Drawings & Specifications

### 4.7.1 Samples

**4.7.1.1** The offers should strictly conform to the specified description and drawing/ specification in schedule of requirements and no samples need be submitted unless so mentioned in tender form. When samples are required, the same must strictly conform to description, drawing/ specification as mentioned in the tender documents. Samples submitted will be considered as supplemental and not in supersession to any specification mentioned and such samples will only be considered in relation to those points which are not defined in the specification. The onus of drawing attention to any particular item in which a tenderer wishes his samples to supersede or vary from the tender description/specification lies on tenderer. In the absence of specific acceptance in writing to any variation, the purchaser shall be entitled to reject any claim for acceptance of supply embodying such variation.

When samples are called for, they should be marked, sealed and labelled so as to correspond with the item of the tender. They should be sent “Freight Paid” to the same address as per the tender, and arrangements should be made to see that they arrive by the opening time and date of the tender; otherwise, the offer is liable to be rejected.

Samples submitted by the tenderer which are of the value of Rs. 500/- or less will not be returned to them. For samples valuing above Rs.500/- the tenderer must state on the tender form if he requires the return of unaccepted samples failing which they will be retained by the purchaser. Unaccepted samples will be returned to firms on application who may arrange collection of the same from the Office of PCMM.

Firms on whom orders are placed should refrain from sending advance samples unless called for and should make supplies strictly as per tenders or orders placed with them.

**4.7.1.2** Wherever the tenders have been invited as per approved sample, such approved sample can be seen in the Office of the PCMM, Northern Railway, Baroda House, New Delhi-110001 or otherwise as mentioned, during office hours, on any working day before the closing date and time of the tender.

### 4.7.2 Drawings & Specifications

**4.7.2.1** Where the tenders have been invited as per IRS/RDSO drawings or specifications, the tenderer shall obtain such drawings or specifications from RDSO (Research Designs and Standards Organization, Manak Nagar, Lucknow- 226011) on payment of the cost of drawings/specifications, well in advance of the closing date. Similarly, where the tender has been invited as per drawings or specifications issued by ICF (Integral Coach Factory, Perambur, Chennai, Tamilnadu)/RCF (Rail Coach Factory, Kapurthala, Punjab)/CLW (Chittaranjan Loco Works, Chittaranjan, West Bengal)/DLW (Diesel Locomotive Works, Varanasi, Uttar Pradesh)/CORE (Central Organization for Railway Electrification, Allahabad, Uttar Pradesh), the tenderer shall obtain such drawings/ specifications from the respective issuing authorities, on payment of cost of the drawing/ specification. Where the tender has been invited as per BIS specifications or any other standards, it shall be the responsibility of the tenderer to arrange such documents from the respective issuing authority. Northern Railway shall provide no assistance to the vendors in this regard, and shall not be responsible for non- participation of vendors on account of delay in arranging such drawings/specifications.

**4.7.2.2** Where the tenders have been invited as per Northern Railway drawings or specifications, scanned copies of such drawings/specifications shall normally be attached with the electronic tender. However, where it is not possible to do so, the drawings/specifications can be seen/obtained from the Office of the Principal Chief Materials Manager, Northern Railway, Baroda House, New Delhi- 110001, during office hours, on any working day before the closing date and time of the tender.

### 4.8 Price Variation Clause

**4.8.1** Unless otherwise specified in Tender Schedule, Tenderers are advised to quote firm prices only.

**(i)** Offers of Tenderers quoting with PVC in such cases shall be summarily rejected.

**(ii)** Offers of tenderers mentioning PVC applicable without giving PVC formula or giving ambiguous PVC formula shall also be summarily rejected.

**4.8.2** However, wherever considered desirable by the purchaser, a Price Variation Clause may be incorporated in the Tender Schedule itself. In all such cases, where PVC formula and PVC base date/base rate has been incorporated in tender, the Tenderers are advised to submit their offers as per the PVC formula and Base Date incorporated in the tender document and offers received with fixed prices or with a different Price Variation formula shall be summarily rejected.

**4.8.3** Tenderers who quote with PVC as stated in Para 4.8.2 above on account of escalation in price of raw materials may please note that such escalation claims will be subject to verification by the FA & CAO with reference to the records that may be called for from them. Successful Tenderers will be required to produce complete records for verification/examination of their claims under price escalation before acceptance of such claim. If the tenderer fails to establish their claim by producing satisfactory records before the FA&CAO/NR, their claim will be disallowed and/or proportionately/ suitably reduced.

**4.8.4 Following Price Variation Clauses are generally recognized by the Railways.**

**a.** IEEMA PVC for the items covered by IEEMA formulae.

**b.** Railway Board's/CORE's PVC for items covered by such formulae.

**c.** Any other PVC formulae included in NIT.

**Note:-** Unless specified otherwise in the tender document, Tenderers whose offers are with IEEMA/ Railway Board PVC have to quote with the prices of input raw materials ruling on the base date as stipulated in the relevant PVC (IEEMA/Railway Board). For example, in case of IEEMA PVC, if the Tender opening date falls in May of a year, the applicable prices of input raw materials should be those prevailing on the 1st April of that year.

**4.8.5** Tenderers who quote with Price Variation Clause on account of escalation in price of raw material may please note that such escalation claims will be subject to verification by the Financial Adviser and Chief Accounts Officer of the Railways with reference to the records that may be called for from them. Successful tenderer will be required to produce complete records including records of ground stocks available at the time of submission of tender for verification/ examination of their claims under price escalation before their claims are accepted. If the tenderer fails to establish his claim by producing satisfactory records before the

FA&CAO/ Northern Railway, their claim will be disallowed and/or proportionately/suitably reduced.

**4.9** I.T.C.C: This will be governed by extant rules of the Government of India. Tenderers are to indicate their Income Tax PAN details and enclose a photocopy of the same.

**4.10 Decision of tenders through Reverse Auction**

**4.10.1 Selection criteria for tender cases of Stores proposed through Reverse Auction (e-RA):-**

The Reverse Auction shall be the preferred method for procurement of Stores Tenders valued more than Rs. 5 Crore. The process of Reverse Auction shall be followed where at least three approved vendors (bulk procurement is to be from vendors approved by RDSO/ CORE/PUs etc.) or at least three proven/ likely competitive sources, prima facie competent for execution of bulk ordering.

Financial Bids in single currency/ parameter only shall be allowed.

**4.10.2 Procedure for award of contracts through Reverse Auction:-**

Each tender for Reverse Auction shall clearly specify essential technical and commercial parameters in a transparent manner. No deviation to such essential Technical and Commercial conditions shall be permitted to vendors in the electronic bid form.

**4.10.3 Technical Bid and Initial Price offer:-**

**a.** Procuring authority shall decide the bid evaluation criteria in the tender itself, whether the evaluation shall be item wise, consignee wise or overall tender value wise.

**b.** Bidder shall be simultaneously required to electronically submit a Technical & Commercial Bid and Initial Price Offer.
Offers found eligible for bulk order shall be categorized as qualified for bulk order for the purpose of RA and offers found eligible for Developmental Order shall be categorized as Qualified for Development Order for the purpose of RA.

**c.** Offers not complying with essential technical & commercial requirements of the tender shall be declared as ineligible for award of contract.

**d.** Initial Price offer of only those bidders categorized as qualified for Developmental Order or Qualified for Bulk Order, shall be opened and tabulated by system separately, category wise.

**4.10.4 Financial bid:**

Financial Bid shall comprise of Final Price Offer obtained through Reverse Auction. Following conditions and procedure shall be followed in selection of bidders for conduct of Reverse Auction.

**a.** Selection of vendors for Reverse Auction for award of bulk ordering in Stores Tenders:

| Number of tenderers qualified for Award of contract /Bulk Order | Number of tenderers to be selected for Reverse Auction | Remarks |
|---|---|---|
| <3 | Nil * | The bids disallowed from participating in the Reverse Auction shall be the |
| 3 to 6 | 3 | |

| Number of tenderers qualified for Award of contract /Bulk Order | Number of tenderers to be selected for Reverse Auction | Remarks |
|---|---|---|
| More than 6 | 50% of Vendors qualified for bulk order/ award of contract (rounded off to next higher integer) | Highest bidder(s) in the tabulation of initial price offer. In case the highest bidders quoted the same rate, the initial price offer received last, the initial price offer received last as per time log of IREPS shall be removed first on the principle of last in first out, by IREPS system itself. |

**Note:-**

**i.** If the number of tenders qualified for bulk order/ Award of Contract is less than 3, RA shall not be done and tender will be decided on the basis of initial price offer(s).

**ii.** MSE Criteria: All MSEs found qualified for Bulk Order/ Award of contract but could not be selected for Reverse Auction as per criteria stipulated above, but are within the range of 15% of lowest initial price bid shall be permitted to participate in the Reverse Auction, irrespective of their inter- se ranking on the basis of initial price bid. Such MSEs shall be over and above the number of vendors selected for Reverse Auction.

During Reverse Auction process bidders shall not be allowed to bid a rate higher than the lowest initial price offer. The bidders will not be allowed to alter the rates of taxes and duties quoted by them.

**4.10.5** Bidders shall only be able to see the auction screens relevant to them for each category. Purchaser shall be permitted to see all the auction screens for both categories on line.

**4.10.6** Quantity to be covered on developmental orders shall be limited to 20% of the net procurable quantity. The quantity covered on developmental orders may be within or outside NPQ.

**4.10.7** After obtaining the final bids of Reverse Auction, tenders shall be finalized as per existing policy (including price preference to MSEs and Make in India Order, 2017 (wherever applicable) and procedures based on the eligibility and quantity distribution criteria, as pre-defined in the tender document. All the relevant policies of Government of India at the relevant time shall be applicable.

**Note:-** For all the e-RA Tenders above Rs. 5 Crore, two packet Single Stage System of tendering will be followed.

## 5.0 OPENING OF ELECTRONIC TENDERS

**5.1** The tender shall be opened electronically by railway official(s), authorized to do so by Northern Railway, by logging on the IREPS website with their Login ID and Password, by authenticating themselves through their Digital Signature Certificate, as well as applying secure decryption key of Northern Railway for decryption of electronic offers.

**5.2** The tender shall normally be opened on the stipulated closing date, after the stipulated opening time. In case the closing date falls on a holiday, the tender shall be opened on the next working day. However, due to unavoidable reasons, the tender may not be opened on the stipulated closing date, and may be opened on a later date. However, no revision or modification of the offer shall be allowed after the closing date and time, even if there is any delay in the tender opening.

**5.3** Immediately after the opening of tender, financial and Techno-commercial tabulation statements are generated by the IREPS module. Vendors who have submitted valid offers against electronic tenders against ‘Open’ and ‘Special Limited’ tenders are not required to come to Northern Railway office to witness the tender opening process and know the offer details, as they will be able to access the tabulation statements and bids, immediately after tender opening, by visiting the IREPS website and logging in with their Login ID, Password and Digital Signature.

**5.4** Clarifications from Tenderers: After opening of tender, if necessary, the purchaser may obtain clarification on the offers by requesting for such information from any of the tenderers as considered necessary. Tenderer will, however, not be permitted to change the substance of the offers after the tender have been opened.

**5.5** Corrigendum: Purchaser reserves the right to issue any corrigendum to the tender up to five days prior to the due date of closing of the tender, excluding the date of closing. Tenderers are also advised, in their own interest, to regularly check, till the date of closing of the tender, the website www.ireps.gov.in to see whether any such corrigendum to the tender has been issued or not and for submitting their e-bids or revising their e-bids.

## 6.0 EVALUATION OF OFFERS

**6.1** The commercial offer details shall be submitted by vendors using 'Financial Rate Page for Supply' form having separate entry box for each element of rate. The vendors must fill in basic rate and other rate components such as GST, unconditional discount on basic rate, if any, packing charges on basic rate, forwarding charges, Freight charges, other charges, if any, in the boxes provided in the 'Financial Rate Page for supply' form. The all-inclusive rate per unit shall be calculated automatically considering all the elements of rate components, as filled by vendor before submitting the offer, and will be displayed before vendor submits his digitally signed electronic offers. Tenderers can edit any or all rate entries before submission and before digitally signing their electronic offers. Tenderers are therefore advised to check, and revise any or all the entries in the rate page before the same is digitally signed and submitted.

All offers will be evaluated after taking into account the all-inclusive destination rate per unit, which will also be displayed to the vendor before submission of his electronic offer.

**6.2** Tenderers should quote financial terms and conditions in the nominated fields of 'Financial Rate Page for Supply' form only. Any financial terms and conditions mentioned in the fields other than the nominated fields will be ignored and will not be considered for purpose of evaluation of offer to determine the inter-se ranking of the offer. Tenderers are advised not to quote any terms and conditions having financial bearing in any other template of 'Techno Commercial Bid Details' form except the 'Financial Rate Page for Supply' form, or in the Remarks field of the 'Financial Rate Page for Supply' form, as these will not be considered for evaluation of the offer. Similarly, any financial terms and conditions enclosed as attachments will be ignored and not considered for purpose of evaluation of offer to determine the inter-se ranking of the offers. However, Railways at their own discretion may avail the benefit of such conditions while placing purchase order, if the offer is considered for placement of order.

Nothing extra shall be payable over and above the all-inclusive rate shown in the financial offer, except on account of Price Variation clause, and Statutory Variation, if applicable. Digital Signature of the tenderer

on the E-tender form shall be construed as confirmation that the tenderer has read and accepted this condition.

**6.3** The tenderers shall quote specific freight charges in the relevant field of financial rate page. Ambiguous remarks like 'freight extra at actual', 'freight shall be charged extra', 'Railway freight shall be charged extra' etc., mentioned in the 'PVC and remarks' field or elsewhere in the electronic offer or attachments shall not be considered for evaluation, and may render the offer liable to be ignored. However, freight charges shall not be payable if the offer is considered.

**6.4** Rates quoted by the tenderers with discounts, if any, linked to quantity will be considered for determining inter-se position of the offers. Discounts with conditions attached to early payment, early Receipt Notes etc. will be ignored for calculating inter-se position. However, Railways may avail the discounts linked to early payment, early Receipt notes etc. if otherwise firm's offer is found to be acceptable.

**6.5** The tenders will be evaluated by the Purchaser on free delivery to destination basis, to ascertain the best and lowest acceptable tender, as specified in the specifications and tender documents. Wherever more than one consignee/item are involved, unless specified otherwise in the tender document, tender would be evaluated and inter-se ranking of the tenderer would be made for each item and/or each consignee separately.

**6.6** The inter-se ranking shall be determined by considering the taxes & duties applicable on the date of tender opening and the inter- se ranking arrived at in such manner shall be taken as final.

In case of reduction in taxes and duties, the taxes and duties will be paid as per rate there of prevailing on the date of supply. Statutory variation in taxes and duties shall be allowed only during the original delivery period.

**6.7** Claim for any tax or duty not stipulated in the quotation will not be admitted at any stage on any ground whatsoever.

**6.8** The purchaser reserves the right to give price preference to the MSE units registered with UDYAM as per para 2.4.1, over the quotations of large-scale units, in accordance with the policies of the Government of India from time to time. The price preference above cannot however be taken for granted and every endeavor need be made by them to bring down cost and achieve competitiveness.

## 7.0 Acceptance of Tender

**7.1** The purchaser may accept a tender for a part or whole of the quantity offered, reject any tender without assigning any reason and may not accept the lowest or any tender.

**7.2 Option Clause –**

**a.** Wherever specified in the NIT, the purchaser shall be entitled to increase the order quantity by 30% of the order quantity anytime within the validity of the contract (original/ extended). The increase in quantity with respect to the tender quantity can be done even at the time of ordering and the tenderer shall be bound to accept the quantity so ordered.

**b.** The purchaser shall be entitled to operate +30% option clause in one or more than one installment as long as the total variation in quantity does not exceed the limit of 30% of the ordered quantity.

**c.** In case where separate orders for an item for different consignee(s)/ paying authority(ies) are placed on one firm against one tender, total quantity of all such orders shall be the basis for the purpose of option clause. In such cases, option clause can be operated in any of the order/ or for any consignee(s) so long as Delivery Period of any of the order in the tender is alive.

**d.** In a contract that provides for quantity option clause, in case Delivery Period is extended either for the full ordered quantity or a part quantity which remained unsupplied on the date of expiry of the original delivery period, then during the extended delivery period also, quantity variations can be made on the total ordered quantities.

**e.** Where the + (plus) 30% quantity option leads to fractional quantities, these may be rounded off to the next higher number, if the fraction obtained is 0.5 or more.

**f. Special Option Clause:**

(i) Wherever stipulated in the Letter of Acceptance/Contract, apart from 30% option clause, if applicable, railway reserves the right to enhance the order quantity up to the tender quantity within a period of 90 days from the date of issue of purchase order.

(ii) The 30% option clause is over and above the Special Option Clause and inter alia shall be applicable on the total quantity, including the quantity wherever enhanced by operation of Special Option Clause.

(iii) Total coverage against the tender considering the orders placed on all the firms in the tender should not exceed the tendered quantity by more than 30%.

**7.3 Splitting of tendered quantity**

**7.3.1** Case of no prior decision to split the order-

**A.** Normally full order shall be placed on L-1 firm. However, if it is discovered that the quantity to be ordered is more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered will be distributed among the other tenderers in a manner that will be fair, transparent and equitable. The manner of splitting will take specific note of the following parameters-

**i.** Past Performance of tenderers
**ii.** Capacity of tenderers
**iii.** Delivery requirements in the tender
**iv.** Quantity under procurement
**v.** Vital/safety nature of the items

**B.** In the absence of any differentiation on the above parameters, the manner of splitting will be based on the stipulation given in para 7.3.2.1 below.

**7.3.2 Case of pre-decided split ordering -**

**7.3.2.1** Wherever pre-decided split ordering is mentioned in the tender document in advance to have more than one source of supply on account of delivery requirement in tender, past performance and capability of bidders, quantity under procurement and vital/safety nature of items, provision 7.3.2.1(A) to para 7.3.4 shall be applicable.

**(a)** The purchaser reserves the right to distribute the procurable quantity on one or more than one of the eligible tenderers. Zone of consideration of such eligible tenderers will be the right of the Purchaser. The zone of consideration will be a dynamic mix of inter-se position of firms, supply performance of the firms, quantity being procured, criticality of and lead time of supply of the item, number of established suppliers, their capacity etc.

**(b)** Whenever such splitting of the procurable quantity is made, the quantity distribution will depend (in an inverse manner) upon the differential of rates quoted by the tenderers (other aspects i.e. adequate capacity-cum-capability, satisfactory past performance of the tenderers, outstanding orders load for the Railway making the procurement, quoted delivery schedule vis-à-vis the delivery schedule incorporated in the tender enquiry

etc. being same/similar) in the manner detailed in the table below.

| Price differential between L-1 and L-2 | Quantity distribution ratio betweenL-1andL-2 |
|---|---|
| Up to 3% | 60:40 |
| More than 3% and up to 5% | 65:35 |
| More than 5% | At least 65 % on the L1 tenderer, for the quantity to be ordered on L-2 tenderer, TC / TAA shall decide. |

**i.** In the phrase 'differential rates quoted by the tenderers', the quoted rate would mean when no price negotiation has been called for, the original rates as obtained at the time of tender opening. However, the rate of the highest eligible tenderer within the zone of consideration has to be per-se reasonable.

**ii.** When price negotiation has been called for, the reference L-1 rate for assessment of ratio will be the original rate of L-1 firm (suitable for bulk quantity)-say firm "A"–as obtained at the time of tender opening.

**(c)** If splitting of quantity is required to be done by ordering on tenderers higher than the L2 tenderer, then the quantity distribution proportion amongst the tenderers will be decided by transparent/logical/equity-based extrapolation of the model as indicated in the above para.

**(d)** There could be a situation when between the lowest eligible tenderer considered suitable for bulk qty (L-1 firm "A") and another tenderer considered suitable for bulk quantity order (say L-4), there are tenderers who are considered suitable only for part quantity. For example, say L-1 tenderer is approved source for bulk ordering/Pt-I and firm L-4 is also approved for bulk ordering and splitting is to be done between these two eligible tenderers. But there are two tenderers in between who are suitable for part quantity, i.e., are approved for developmental tenders/Pt-II. In such cases, L-1 should be given its proportion based on its rate differential with respect to L-4 (say by this L-1 gets 65% of NPQ). The balance quantity (say 35 % of NPQ) is to be distributed among other eligible tenderers. The balance quantity is to be distributed as follows.

**(1)** L-2 and L-3 shall be allocated within the overall ceiling of 15%/ 20%/ 25% (of 35% of NPQ)

**(2)** And the balance quantity shall be allocated to L-4 tenderer.

**7.3.2.2** However, in exceptional circumstances Railway reserve the right not to split the order quantity in cases of pre decided splitting.

**7.3.3** For cases where the Rlys/Pus had entered the into ToT/JV agreements the following shall be applicable.

As the Rly has entered into TOT/JV agreement with……. no. of firms, they reserve the right to place orders on all such TOT/JV agreement partners. However, for ratio/ proportion of quantity distribution among such agreement partners, conditions as detailed in Para 7.3.2.1(B) shall apply with the exception that the aspect of 'per-se reasonability' will not be applicable.

**7.3.4** In the cases of inadequate capacity-cum-capability, dissatisfactory past performance large quantity of outstanding orders (liquidation of which will take very long time) etc., the Purchaser shall have the right to distribute the procurable quantity amongst tenderers with due consideration to these constraints and in such a manner that would ensure timely supply of materials in requisite quantity to meet the needs of operation, maintenance, safety etc. of the Railways, regarding of inter-se ranking of the tenderers and in a fair and transparent manner with due conformity to the Principles of Natural Justice and Equity.

(Authority: Rly Bd. letter no.99/RS(G)/779/2pt.dt.05/02/2016)

**7.3.5** There will be no purchase preference for products of central public sector enterprises except for preferential purchase policies framed for specific sectors separately.

**7.3.6** Standby Coverage: In addition to regular coverage and placement of Purchase orders for confirmed quantities in the tenders, Purchaser reserves the right to conclude additional parallel Rate/ Price contract at same/ differential prices also without confirmation of any quantity. In case of failure of a firm to execute the purchase order partly or fully, the Purchaser reserves the right to cancel such Purchase Order and procure against the above Rate/ Price contract and any extra expenditure incurred on this account will be recovered from the defaulting firm(s) as a predetermined liquidated damages as per IRS conditions of Contract. However, liquidate damages shall not exceed 10% of contract value.

**7.3.7** Progress of supply: Within one month of receipt of Purchase Order, the supplier shall have to intimate in writing about the monthly supply schedule program with full details i.e. quantity likely to be manufactured and going to put up for inspection etc. and will update regularly at least on monthly basis till completion of contract.

The tenderer should note that the supplier shall have to give a written intimation immediately after the dispatches of material (i.e. preferably

within 48 hours of dispatch of materials) duly indicating Supply Order's Reference, brief description of item, its quantity, Truck/ Trailer No., Name and Mobile No. of Carrier's driver (if available) to the Purchaser.

## 8.0 CARTEL FORMATION

**8.1** Wherever all or most of approved firms quote equal rates and cartel formation is suspected, Railway reserves the right to place order on one or more firms with exclusion of the rest without assigning any reason thereof.

**8.2** Firms are expected to quote for quantity not less 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be considered unresponsive and are liable to be rejected in case cartel formation is suspected. Railways, however, reserve the right to order on one more firm any quantity.

**8.3** The firms who quote in cartel are likely to be deleted from the list of approved sources.

**8.4** Whenever tender is floated with purchase restriction from sources approved by nominated authorities and there exists a suspected cartel situation by approved sources or the rates available from approved source/sources are adjudged unreasonably high, despite fair efforts as permissible, the purchaser reserves the right to place orders on firms outside the approved vendors list, without any restrictions.

## 9.0 SPECIAL INSTRUCTIONS/CONDITIONS FOR MACHINERY & PLANT (M&P) ITEMS INCLUDING MEDICAL EQUIPMENTS.

### 9.1 Technical Compliance

The tenderers shall give para/clause wise comments on the technical specification to indicate whether the equipment offered fully meets the tender specifications. The offer shall be accompanied with complete details of technical parameters/ brochure/ pamphlets for quoted equipment with model number, if any.

### 9.2 Authorization letter

In case the tenderer is an agent of the manufacturer, such tenderer should clearly indicate the same and also enclose authorization certificate from the manufacturer to this effect (specific to the tender) and also mention the place where the equipment will be offered for pre-inspection before dispatch.

### 9.3 Validity

The offer should be kept valid for 120 days from the date of opening of the tender.

## 9.4 After Sales Service

The tenderers should confirm that they will render quick after sales service during the warranty period of the machine and advise details of them after sales network / office which will render the said service.

## 9.5 Comprehensive Annual Maintenance Contract (CMC): -

**A.** The Complete Equipment/ M&P shall be covered by CMC for a period of five years after expiry of warranty period. Tenderers along with their offers shall also quote CMC charges on a yearly basis for period of five years for the proper upkeep and maintenance of the quoted Equipment. The quoted CMC charges shall include the following: -

- **i.** Cost of preventive maintenance visits during the year (Two visits in each year. Detailed itemized breakup of jobs to be done in each visit shall be furnished in the offer).
- **ii.** Cost of all spares required for preventive maintenance.
- **iii.** Cost of breakdown Maintenance visits during the year.
- **iv.** Cost of all spares required for Breakdown Maintenance.
- **v.** Boarding, lodging, transportation, medical facilities and all other incidental expenses.
- **vi.** All duties, taxes and levies applicable.

However, the cost of consumables required for day-to-day operation would not be included in the scope of CMC.

The CMC prices for each year will be firm. The CMC charges shall be separately payable in Indian Rupees only. Railways reserve the right for entering into Comprehensive Annual Maintenance Contract (CMC) on the basis of rates quoted by the Contractor in their tender against CMC charges.

CMC is mandatory for Medical Equipment. Therefore, offer of tenderers not quoting CMC charges for medical equipment shall be summarily rejected.

For all other M&Ps, the essentiality of CMC (whether CMC required or not) is clearly indicated in schedule or requirement. However, in any case, Tenders shall quote CMC charges for 5 years for all other M&Ps, even for the purpose of future reference/guidance of the consignee.

**B.** Evaluation criterion: -

- **i.** For Medical Equipment (CMC requirement is mandatory) and for all other M&Ps where CMC requirement has been clearly indicated in schedule of requirement:-

Total Net Present Value of CMC charges for 5 years (P) after expiry of warranty period of two years calculated on predetermined % rate of discounting (RD) is mentioned in Para 9.12 below. In case of different warranty period & different span of CMC Charges this formula will be as per the equivalent suitable calculations. The same shall be loaded on FOR destination rate including cost of installation & commissioning charges quoted by the tenderer for the purpose of comparative evaluation of offers (inter-se ranking).

**ii.** For all other M&Ps where CMC is not required and indicated in schedule of requirement, but the same may be used for future reference of the consignee: -

CMC charges shall not be loaded and only FOR destination rate including cost of installation & commissioning charges quoted by the tenderer shall be the criterion for comparative evaluation of offers.

**C.** The CMC shall guarantee 98% availability (minimum Uptime) in case of Medical Equipment or indicated in schedule of requirement for other M&Ps, which shall be calculated on a quarterly basis on the total or working days available in the quarter. Availability shall be defined as full functionality of the machine to fulfill all requirements specified in the specification.

**D.** The Maintenance shall normally be done during working hours i.e. from 10:00AM to 5:00PM. However, in case of emergency, maintenance may have to be done beyond working hours and even on holidays. Prior arrangements through proper communication should be worked out in all cases by the Contractor.

**E.** The Equipment shall be considered under breakdown, if any of the requirements specified in the specification is not fulfilled. In case of medical Equipment's, all breakdowns must be attended within 48 hours of intimation by the consignee in writing (Maximum Response time). No breakdown shall stretch beyond three days consecutively (Maximum down time). The Contractor, in case of Medical Equipment, any provide standby Equipment in case Equipment could not be put in order within three days. The maximum response time and maximum down time for other M&Ps are indicated in schedule of requirement.

**F.** A penalty of 0.25% of the CMC value shall be levied for each percentage point shortfall. However, total penalty in a year shall not exceed 10% of the CMC value. In case, the total penalty

exceeds 10% Railways shall have the right to cancel the CMC and forfeit the performance guarantee bond towards CMC.

**G.** Payment of CMC shall be made on quarterly basis against a performance guarantee bond equal to full value of the annual contract value, valid for 15 Months from date of CMC, to be furnished by the contractor at the beginning of CMC. Payment shall be made at the end of the quarter. Penalties imposed during quarter shall be deducted from the quarterly payment due to the Contractor.

**H.** After each preventive maintenance and breakdown visit, the performance of the machine/Equipment shall be monitored for two days after which joint note shall be signed between the Contractor or his authorized officials and the consignee. The joint note shall clearly bring out the performance of the machine/Equipment to fulfill the requirements in the specification.

**I.** The Contractor shall execute the contract in conformance to all applicable laws of the land. The consignee shall not be liable in any way for any penalties, claims and charges arising out of the execution of contract by the Contractor. For all such expenses and liabilities, the Contractor shall be solely responsible. This shall also include any compensation claims arising out of any accident during execution of the contract.

**J.** The Contractor shall also be solely responsible for any damages suffered by the consignee's property during execution of the contract. However, the liability shall be limited to making good the damages inflicted.

**K.** The tenderers are required to give the current cost of spares required for maintenance of machine and the current service charges for each item of work of repair of M&P to undertake maintenance work of the equipment by consignee after the CMC period 5 years is over. These charges will not be included in the price of M&P for the purpose of comparative evaluation of offers.

**L.** Tenderers, who are OEM, must give undertaking for supply of spare parts for a period of expected life of the machine/equipment. Tenderers participating on authorization of OEM must submit undertaking from OEM for supply of spare parts for period of expected life of the machine/equipment.

## 9.6 Commissioning & Proving Test

**A.** The contractor shall arrange commissioning of the equipment at the consignee premises. The tenderers shall carry out

necessary proving test to demonstrate the performance of equipment, after its successful commissioning to the entire satisfaction of the consignee.

**B.** The Contractor or his agents shall commission the machine within stipulated time as shown in the contract. This time frame will be applicable from the date of intimation from the consignee in respect of readiness of the machine for commissioning in cases where the machine is to be installed by the consignee. The time schedule includes the time for installation in cases where installation is also to be undertaken by the contractor.

**C.** The time allowed for commissioning of machine shall be deemed to be the essence of the contract. In case of delay in commissioning of the machine on the part of the contractor, the purchaser shall be entitled to recover and the contractor shall be liable to pay a penalty at the rate of 2% of the price of the M&P for each and every month or part thereof for which commissioning is delayed, provided always that the entire amount of penalty to be paid under the provision of this clause shall not exceed 10% of the total contract value. Failure to install / commission the machine within stipulated time after intimation from the consignee will be taken as breach of contract and purchaser will be at liberty to forfeit the Security Money furnished by the supplier without any prejudice to other rights under the contract.

**D.** Continuance of commissioning work after expiry of stipulated time will also constitute a default for the purpose of the Clause 10.6.c. above. The decision of the Purchaser on whether the delay in commissioning has taken place for reason(s) attributed to the contractor shall be final and binding.

## 9.7 Training

The contractor during commissioning of the equipment will also train Railway staff in operation and maintenance of equipment supplied.

## 9.8 Maintenance Manual & Spare Parts

Contractor is required to supply 2 copies of operation and maintenance manual and lists of Spare parts along with the equipment.

## 9.9 Warranty

**A.** The contractor shall warrant that the equipment supplied shall be free from defect and faults on material, workmanship. Manufacturing quality should be of the highest grade consistent with the established and generally accepted standard goods of

the type offered and in full conformity with the tender specifications.

**B.** Unless otherwise mentioned in the specification, the equipment offered should be warranted against defective design, material, workmanship etc. for a period of 24 months from the date of commissioning and proving test at destination, provided defect and / or claims are notified to contractor within 2/3 months of such date.

**C.** The Contractor shall, if required, replace or repair the equipment or such portion thereof as is found defective by the Purchaser, free of cost at the ultimate destination or at the option of the purchaser, the Contractor shall pay to the Purchaser value thereof at the contract price and such other expenditure and damages as may arise by reason of the breach of the condition herein specified.

**D.** Maximum downtime during the warranty period will be 2% for online Machinery and Plant including Medical equipment and 10% for offline Machinery and Plant calculated on quarterly basis. Penalty of 0.5% per week on part thereof of the contract value will be levied for delay in response time for attending and rectification of fault beyond specified time during the warranty time.

Maximum penalty to be levied on account of warranty failure will be 5% of the contract value calculated during whole of the warranty period, and after that if there is any delay on part of the Contractor, purchaser shall be entitled to encash warranty BG. Further, in such cases bad performance of such Contractor shall be recorded and circulated to all the zonal railways and in future tender the poor performance of such tenderer shall be duly considered.

**E.** The decision of the Purchaser in regard to Contractor's liability and the amount, if any, the payable under this warranty shall be final and conclusive.

**F.** Warranty clause is also applicable for spare parts / assemblies.

**9.10 Inspection: -** By Third Party Inspecting (TPI) agencies at works/premise of manufacturer.

**9.11 Payment Terms**

**A.** For orders value up to Rs. 5 Lakh – 100% payment will be made after inspection, receipt, installation and acceptance of equipment by the consignee.

**B.** For orders valued above Rs. 5 Lakh - 80% payment shall be made against proof of dispatch / delivery and inspection certificate, 20% after satisfactory installation, commissioning and acceptance of the equipment by consignee subject to submission of BG for 10% of the contract value for warranty obligations, valid beyond 6 months period of warranty.

## 9.12 Formula for calculating Net Present Value for CMC Charges:-

| | |
|---|---|
| CMC Charges for 1st Year after expiry of warranty period of two years | C1 |
| CMC Charges for 2nd Year after expiry of warranty period of two years | C2 |
| CMC Charges for 3rd Year after expiry of warranty period of two years | C3 |
| CMC Charges for 4th Year after expiry of warranty period of two years | C4 |
| CMC Charges for 5th Year after expiry of warranty period of two years | C5 |

Predetermined percentage rate of discounting = RD @ 8%.

| | | |
|---|---|---|
| Net present value of CMC charges for 1st year | P1 | = C1/(1+RD/100)$^3$ |
| Net present value of CMC charges for 2nd year | P2 | = C2/(1+RD/100)$^4$ |
| Net present value of CMC charges for 3rd year. | P3 | = C3/(1+RD/100)$^5$ |
| Net present value of CMC charges for 4th year | P4 | = C4/(1+RD/100)$^6$ |
| Net present value of CMC charges for 5th year. | P5 | = C5/(1+Rd/100)$^7$ |
| Total Net present value of CMC charges for 5 year. | P | = P1+P2+P3+P4+P5 |

Total Net present Value of CMC charges for 5 years (P) shall be loaded on FOR destination rate including cost of installation & commissioning charges quoted by the tenderer for the purpose of comparative evaluation of offer (inter-se-ranking of the offers).

## 10.0 SPECIAL INSTRUCTIONS FOR SIGNALLING & TELE-COMMUNICATION ITEMS

**10.1** Purchase of Signaling & Telecommunication items, for which RDSO has approved the sources, will be made from the sources approved by RDSO as per extant policy. The tenderers should attach a copy of the current and valid “type-approval certificate” for the product offered in PDF format in the template Attach Documents on ‘Techno-commercial Bid Details form.

**10.2** Firms not borne on the approved list of RDSO must attach the proforma for assessment of technical/manufacturing capability as per **Annexure-4**

in PDF format in the template Attach Documents on 'Techno-commercial Bid Details' form.

**10.3** In case developmental/educational orders are placed on firms not approved by RDSO, the samples of materials manufactured by them would need to be got "type-tested" from RDSO and approval obtained before commencing bulk supplies.

**11.0 Declaration for infringement of IPR by tenderer/supplier**:

All prospective manufacturer/supplier shall note that: Northern Railway shall not be responsible for infringement of patent rights arising due to similarity in design, manufacturing process, use of similar components in the design & development of this item and any other factor not mentioned herein which may cause such a dispute. The entire responsibility to settle any such disputes/matters lies with the manufacturer/supplier. Northern Railway stands indemnified for claims whatsoever arising out of such issues.

Details / design / documents given by prospective tenderer shall not infringe any IPR and they are responsible in absolute and full measure instead of Northern Railway, for any such violations. Data, specifications and other IP as generated out of interaction with Railways shall not be unilaterally used without the consent of Northern Railway and right of Northern Railway on such IP, will deemed to be acceptable to them.

**12.0 Security Deposit (SD)/ Performance Security for Stores contracts except M&P**

**12.1** There shall be no exemption from submission of Security Deposit (SD) for any tender or by any tenderer except the following:

**a.** Stores contract cases of value up to ₹ 25(Twenty-five) Lakh.
**b.** Other Railways and Government Departments.
**c.** Indian Ordinance Factories.
**d.** PSUs owned by Ministry of Railways and PSUs for the group of items that are manufactured by them.
**e.** In tenders issued against PAC, OEM in whose favor PAC has been issued shall be exempted from submitting SD. KVIC shall be exempted from SD for items supplied by them.
**f.** Vendors registered with Northern Railways for the trade group of the item tendered shall be exempted from SD for orders valued up to their monetary limit of registration.
**g.** Vendors appearing in the approved vendor lists of RDSO/ PUs/ CORE for the tendered item, subject to approval status being valid on the date of tender closing.
**h.** Vendors registered with Railway Board/Northern Railways for supply of medicine, medical equipment and consumables shall be exempted from SD for these items.

**Note:**

Apart from claiming damages from vendors, in case of failure to comply with the contractual obligations, Railways shall record poor performance of the vendors for taking suitable penal action as per extant instructions.

**12.1.1** The bidder(s), who stand disqualified as per the declaration furnished by them in Bid Securing Declaration, will not be exempted from submitting SD for all tenders published during the period of their disqualification.

**12.2 Forms of Security Deposit (SD)/ Performance Security**

**12.2.1** The Security money can be deposited in any of the following forms:

Deposit receipts, Pay orders, Demand Drafts, Guarantee Bonds issued by Nationalized or Scheduled Commercial Banks, Bonds of Indian Railway Finance Corporation and KRCL Bonds, Government Securities and deposits in the post office saving banks. The Guarantee Bonds/Bank Guarantee should be submitted in the prescribed form as per **Annexure-1**.

**12.2.2** Payment of Security money in the form of pay order/demand draft shall be made in favor of FA&CAO (SAB), Northern Railway, Baroda House, New Delhi-110001.

**12.2.3** Tenderers submitting Security Money in the form of Bank Guarantee (BG) should ensure the following, to avoid rejection/return of the BG:

**a.** The Bank Guarantee should be executed on non-judicial stamp paper of appropriate value as applicable at the place where the bank guarantee is executed.

**b.** The non-judicial stamp paper used for executing the Bank Guarantee should have been purchased in the name of executants Bank.

**c.** Every page of Bank Guarantee should be signed by the authority executing it and the Bank Guarantee should be duly numbered.

**d.** All corrections/alterations, if any, made in the Bank Guarantee should be duly attested by the executants Bank.

**e.** The Bank Guarantee should be in the prescribed format **(Annexure-1)** and completely in the typed form.

**12.3** Security deposit shall remain valid for a minimum period of 60 days beyond the date of completion of all contractual obligations.

**12.4** Amount of Security Deposit will be as indicated below:

| Contract Value | SD (rounded off to nearest higher ₹10(Ten)) |
|---|---|
| Up to ₹ 25 Lakh | Exempted. |
| Above ₹ 25 Lakh and up to ₹ 50 Crore | @ 5% of Contract Value subject to max ₹ 50 Lakh. |
| Above ₹ 50 Crore | ₹ 1 Crore. |
| In exceptional cases, Railways reserves the right to increase the upper ceiling limit of SD, up to 5% of the contract value. | |

**12.5** The successful tenderer shall have to deposit SD within 21 days of issue of Letter of Acceptance.

**12.6** In the event of successful tenderers failing to deposit/ submit SD in acceptable form within the prescribed period as aforesaid (Para 12.5 above), the EMD submitted by such successful tenderers shall be automatically adjusted towards SD. In case where available EMD amount is less than required SD and the successful tenderer does not deposit the balance SD amount within stipulated time, then EMD shall be forfeited and case be dealt similar to that of withdrawal of offer by the tenderer as per extant instructions.

**12.7** No claim shall lie against the Railway in respect of interest on cash deposits or Government securities or depreciation thereof.

**12.8** Refund of security deposit becomes due when the contract is satisfactorily completed in accordance with terms & conditions of the contract and submission of “No Claim Certificate” in the format given in **Annexure-2**. Purchaser’s decision in this regard shall be final and binding on the supplier.

## 13.0 Advice of Dispatch of Stores

**13.1** The supplier should ensure that Railway Receipts/PWB under which the material is booked to a Railway consignee (in case of delivery by Rail allowed in contracts) are prepared in the favor of “consignee” and not “self” failing which they will be required to take the delivery themselves and deliver the consignment to the consignee. When suppliers submit the original RR/PWB along with other documents to paying authority for claiming advance payment, a photocopy of RR/PWB should be sent simultaneously to consignee.

**13.2** All dispatch documents i.e. RR/PWB Challan, Inspection certificate etc. should be sent to the consignee and copies of advice of dispatch must also be sent to the PCMM, Northern Railways, Baroda House, New Delhi, 110001.

**13.3** The contractor shall submit monthly report concerning the progress of the contract and/or supply of stores to the Purchaser and Consignee. The submission and acceptance of such report shall not prejudice the rights of the purchaser in any manner.

## 14.0 Alteration of Specifications, Patterns & Drawings

The purchaser reserves the right to alter from time to time, the specifications, patterns and drawings and from the date that may be specified by him the articles shall be supplied in accordance with the specifications, patterns and drawings, so altered. In the event of any such alteration involving an increase or decrease in the cost or in the period required for production, a revision of the contract price and of the time fixed for delivery shall be made in relation to the articles the subject of the alterations. The decision of the purchaser on the question on whether the alteration involves an increase or decrease in the cost, or in the period required for production shall be final and binding.

## 15.0 Liquidated Damages

**15.1** In case of failure on the part of the supplier to arrange supplies as per the delivery schedule/installments fixed in advance, save force majeure conditions and delays attributable to purchaser, the purchaser reserves the right to levy liquidated damages which shall be levied as per Para 702 (a) of IRS Conditions of contract for delayed quantity which have remained unsupplied for that period.

**15.2** Recovery of Liquidated Damage (LD) shall be levied @1/2% (half percent) of the price of the store per week or part of the week during which delivery is accepted and the upper limit for recovery of LD in supply contracts is 10% (ten percent) of the value of contract irrespective of delays, unless otherwise provided, specifically in the contract.

## 16.0 Action in case of default of the firm in execution of contract

### 16.1 Risk Purchase

Risk Purchase clause shall not be applicable.

### 16.2 General Damages (GD):

In case of failure on the part of contractor to effect deliveries as per terms & conditions of the contract, as amended from time to time, Purchaser shall have right to levy damages from the supplier for failing to comply with the contractual conditions, not by way of penalty, an amount equal to 10% of Order value as General Damages of the cancelled value of the contract. Similar action may be taken if the progress of supply is not on pro rata basis commensurate with delivery period.

**16.3** If the contractor fails to deliver the Stores or any installment thereof within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before expiry of such period, purchaser would be entitled to effect recoveries from the firm as enumerated below:

**a.** Where actual or potential loss has been incurred due to the failure of the Supplier to put in supplies within the contracted delivery period and the Purchaser has no option but to cancel the contract with General Damages within the ceiling of amount, calculated under the contract, will be levied. The Purchaser shall be entitled to recover from the Contractor as compensation to the Railway, a sum to extent of 10% of the cancelled value of the contract.

**b.** Wherever SD has been exempted for any reason, and the supplier fails to supply goods as per Conditions of Contract, as amended from time to time, Purchaser shall have right to levy damages from the supplier for failing to comply with the contractual conditions, not by way of penalty, an amount equal to 10% of Order value as General damages. These damages shall be treated as recoveries outstanding against the vendor and dealt with accordingly.

**c.** For severable contracts, in case of failure by contractor to meet deliveries for any lot, Purchaser may cancel the contract by levying damages from the supplier for failing to comply with the contractual conditions, not by way of penalty, an amount equal to 10% of Order value as General damages commensurate to that lot.

**d.** Further to the extent SD has been taken(Say of value “A” (which is less than10% of the value of the contract)) in such cases, the GD will be leviable for the difference amount i.e., GD leviable (say “B”) will be equal to 10% of outstanding value of contract minus the value of SD submitted (A). In such cases amount ‘A’ shall be forfeited and the GD amount ‘B’ shall be recovered from the firm.

**16.4 Recovery from the defaulting firms**

If a contract is cancelled in terms of Para 16.3 above, then the purchaser would be free to recover the amount from any outstanding bills of the defaulting firm. In case, no bill of the defaulting firm is pending then the amount may be recovered from any outstanding bills of the sister concern of the defaulting firm. This will apply to all sorts of recovery like EMD, SD or recovery of advance payment made where supply gets rejected subsequently or any other recovery due from the firm.

**16.5** Adverse performance of such firms shall be recorded and shall be intimated to the approving authority and shall also be taken into account in future tender cases on merit.

## 17.0 Payments

**17.1** All Suppliers may submit their Bills on-line through their IREPS login. No Manual Bill submitted off-line shall be entertained except cases where system of offline bill submission is within place.

**17.2** For cases where offline bill submission is permitted

Suppliers are requested in their own interest to observe the following instructions to avoid delay in payment of their bills for materials supplied for stock purposes and dispatched to the Northern Railway Stores Depots mentioned in contract.

**a.** Receipt Note sent to the supplier as acknowledgement of receipt and acceptance of Stores delivered to the consignee should be attached with the bill which is to be prepared in ink on prescribed form and submitted in duplicate to the Financial Adviser and Chief Accounts Officers, Stores Accounts Branch, Northern Railway, Baroda House, New Delhi-110001.

**b.** Where the condition of advance payment on proof of dispatch is accepted and specified in the Purchase Order, the supplier will submit advance payment bill (in duplicate) supported with challan, inspection certificate, proof of dispatch/delivery etc. as per terms of the contract to the FA&CAO/Stores Account Branch, Baroda House, New Delhi-110001, endorsing a copy of the forwarding letter to the Controller of Stores as well as to the Consignee. The bills for balance payment should be submitted in the manner as indicated at (a) above for payment.

**17.3** For materials supplied against orders placed for direct dispatch to the consignee on this Railway on non-stock basis i.e. other than those cases mentioned in clause 17.2 above, the supplying firm will prepare their 100% payment bills in duplicate, in ink on prescribed forms and submit the same as under: -

**a.** One copy of the bill marked “ORIGINAL” with all dispatch documents as per terms of contract directly to the consignee.

**b.** Another copy of bill marked “DUPLICATE/NOT FOR PAYMENT” to the Controlling Officer of the consignee mentioned in Supply Order.

**c.** Where the condition of advance payment on proof of dispatch is accepted and specified in the Direct Dispatch Order, the suppliers will submit advance payment bill (in duplicate) along with the documents as per Para 17.2 (b) above to the Paying Authority of the consignee indicated in Supply Order. Original copy of the balance payment bill should be sent to the consignee and “DUPLICATE/NOT

FOR PAYMENT" copy to the Controlling Officer of the consignee as specified in such Supply Order.

**17.4** The Supplier is also required to furnish the following certificate on their bill for advance payment.

"We have personally examined and verified and do hereby certify that stores in respect of which payment is being claimed have been actually dispatched under RR/PWB No…. dt……, and further that these goods are the exact materials as indicated in challan No dt. and covered by inspection certificate No…….dt……We also certify that the above referred challan, RR/PWB and inspection certificate have been sent to consignee by Registered Post/Speed Post on We shall hold ourselves personally responsible for correctness of this statement."

**17.5** The bill for payment should also be accompanied by the following certificate to be furnished by the Suppliers who are registered with GST authorities for availing Input credit:-

"We certify that no additional Input Credit on the stores supplied by us have accrued under the GST scheme in force on the date of supply, after we submitted quotations and submitted the present bill".

**17.6** The firm should submit their bills only for the supplies made by them during the scheduled delivery period or as extended from time to time. For supplies made after expiry of scheduled delivery period, firms should first obtain necessary extension of delivery period from the competent authority before submission of their bills.

**17.7** In case the bill is submitted to FA&CAO (SAB) supported by amendment to purchase order extending delivery period reserving Railways right to impose liquidated damages, the payment of bill would be released deducting full liquidated damages (LD) @ 0.5% per week or part thereof of the value of delayed stores.

**17.8** Following points may also be observed by the suppliers while submitting the bills for payment in offline mode

**a.** Consignee's name and Purchase Order reference should be given on the bill as well as in all correspondence in connection therewith for facility of connecting the papers and arranging early payment.

**b.** The firms are advised that bills for payment should only be submitted for the amounts permitted on the Purchase Orders, and in case further amounts are claimed, an amendment should be obtained from the Controller of Stores, Northern Railway, Baroda House, New Delhi before bills are submitted.

**c.** All offline Bills should be submitted in forms S-2817 in duplicate, marked 'Original' and 'Duplicate" These bill forms can be had from the office of Controller of Stores, Northern Railway, Baroda House, New Delhi on payment @ ₹60/- per book containing 100 forms each in cash to the Divisional Cashier, Northern Railway Baroda House, New Delhi or through Crossed Demand Draft in favour of the FA&CAO (SAB), Northern Railway, Baroda House, New Delhi.

**d.** The nomenclature of the material supplied shown in the bills should be strictly in accordance with description given in the Purchase Order.

**e.** The offline Bills should be signed and pre-receipted with revenue stamp. All corrections should be attested. Fluid should not at all be used on the bill.

**f.** Rate and Quantity should be mentioned both in figures and words.

**g.** Status/Category of offline Bill should be mentioned i.e. whether Advance/Balance/100%/ PVC etc.

**h.** All Columns of offline bill should be properly filled i.e., Vendor Code, Bank Account No. and Branch, Purchase Order No./Contract No. Date, PL No. etc.

**i.** Wherever PVC is applicable, basis of PVC may be given, with relevant documents.

**j.** Copy of Amendment letter issued by Stores Department, if any, be enclosed.

**k.** Transport Receipt/Challan for freight charges should be enclosed along with the bills.

**l.** In case of Advance Payment, following documents should also be enclosed along with the offline bills:-

**(i)** Receipt delivery Challan duly signed and stamped by Gazetted Officer/Clear Railway Receipt.
**(ii)** Original Inspection Certificate.
**(iii)** Excise Invoice (original-for buyer) wherever applicable.
**(iv)** MODVAT declaration

**m.** In case of 100% and Balance Bills, the following documents to be enclosed along with the offline bills:-

**(i)** Receipt Note Part-II
**(ii)** ED gate pass wherever applicable.

**n.** All other relevant documents as per contract provisions.

## 18.0 Fall Clause -

**18.1** Fall Clause shall be applicable only in Rate Contracts & as under-

**1.** The price charged for the stores supplied under the Contract by the contractor shall in no event exceed the lowest price at which the contractor sells the stores or offer to sell stores of identical description to any persons/organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway undertaking, as the case may be, during currency of the contract. The lower price will be applicable to supplies made after the date of coming into force of such reduction or sale or offer to sell at a reduced rate.

**2.** If at any time during the said period the contractor reduces the sale price, sells or offers to sell such stores to any persons, organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be at a price lower than the price chargeable under the contract, they shall forthwith notify such reduction or sale or offer of sale to the purchaser and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer of sale, shall stand correspondingly reduced.

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

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

## 19.0 Rejected Material

**19.1** Materials peculiar to railways such as parts and fittings of rolling stock except raw materials, which have been rejected during inspection and which could not be rectified are required to be defaced by the inspecting authority to avoid recycling of such rejected materials, and to avoid ultimate failures of assets. All such rejected materials peculiar to railways should be mechanically defaced to prevent sale to railways again.

## 19.2 Franking Clause on Acceptance and Rejection

The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. The goods are being passed/rejected without prejudice to the rights of the buyer under the terms and conditions of the contract.

## 20.0 Marking of Store

Contractor/Manufacturer must inscribe/engrave/screen-print/emboss vendor's name/identification marks as well as month and year of manufacture on item supplied to Northern Railway as per the relevant drawing/specification/description. In case it is not stipulated in the drawing/specification/description, then the location of these identification should be such that they do not affect the functional utility and structural stability of the components/ materials, and also do not get obliterated on wear and tear.

For very small items where marking on individual item is not possible, the vendor will arrange to print Vendor's name/identification marks as well as month and year of manufacture on standard packing, after obtaining specific approval from the purchaser in each case. The decision of the purchaser on whether such approval is to be granted or not shall be final and binding.

## 21.0 Packing Instructions

**21.1** Notwithstanding any packing condition stipulated in the tender documents or in the tendered drawings/specifications, it shall be the responsibility of the Contractor to appropriately pack the stores so that they are received by the consignee at destination without any loss, destruction, damage or deterioration due to any cause whatsoever.

**21.2** The supplier will submit the packing list for each consignment truck-wise and paste/print/paint labels on individual items mentioning the item description and reference as mentioned in packing list to facilitate ease of receipt and accountal at depot.

**21.3** Wherever feasible, supplier will pack items set-wise to facilitate receipt and accountal of materials. As far as possible, packing should be done in such a way that it will facilitate easy stacking and vertical space utilization.

**21.4** All suppliers shall ensure that the supplies including packing materials must comply Plastic Waste Management Rules 2016 and amendments thereof.

## 22.0 Warranty/Guarantee

Warranty clauses as per IRS Conditions of Contract or as specified in tender schedule will be applicable.

In case, there is a discrepancy regarding warranty period mentioned in specification/description and standard warranty clause as per IRS condition of contract, then warranty period mentioned in specification/description shall prevail.

## 23.0 Handling of rejection of pre-inspected item and warranty rejection:

**[Authority Railway Board`s letter Nos. 2022/RS(G)/779/7(3390005) dated 17.10.2022, 29.11.2022 & 26.12.2022.]**

Two kinds of rejection occur in case of pre-inspected supplies made by vendor.

### 23.1 Pre-inspected material rejected by consignee at the time of receipt:

**(i)** In case of rejection of pre-inspected goods at consignee end, the material rejection advice/rejection memo should be sent by consignee to all concerned i.e. firm, purchaser, pre-inspecting agency, paying authority as per the contract etc. without fail.

**(ii)** Financial recovery: In case payment has been made to the firm for the material, the concerned paying authority as per contract should note the rejection advice details in its recovery register for effecting recovery of payment made, as the case may be.

**(iii)** If the firm desires to have joint inspection, joint inspection of rejected material will held with pre-inspecting agency and the time. In case of failure of either of the two parties to associate with joint inspection, the joint inspection should be held by the consignee with whichever of the two parties comes for joint inspection. Irrespective of whether the party(ies) attend joint inspection or not, the modality of joint inspection etc will have to be completed within 21 days of communication of rejection advice to the supplier (in line with IRS Condition of Contract clause 703). For imported material, the time limit will be 45 days.

**(iv)** Firm may be permitted to collect the rejected goods only after the firm has deposited the payments already made by Railway (if any) to the firm or equivalent amount has been recovered for this purpose.

**(v)** In case of replacement supply against the rejected goods, the same should be pre-inspected by same pre-inspecting agency who passed the material earlier. In line with IRS Conditions of Contract clause 703, no inspection charge will be paid by Railway to the inspection agency for the replacement supply.

**(vi)** However, in case of component level rejection in an pre-inspected item (which is an assembly) the replacement supply of that component can be accepted based on firm's internal inspection certificate/guarantee certificate and final inspection by consignee.

**23.2 Material rejected in warranty:**

**23.2(i) Materials are rejected in warranty in the following situations:**

**(a)** The material rejected was issued to the user (shop/shed etc.) from its associate stores depot.

**(b)** The material rejected was received by the user from a PU or from a stores depot which is not the associate stores depot of the user.

**Cat 23.2(i)(a)**

For warranty failure in shop/shed of material issued from its associate stores depot: All warranty claims will be lodged by the associate depot officer after getting the warranty rejected material from user under advice note of return stores with reasons of warranty rejection indicated therein. Before lodging the warranty claim the associate depot officer will satisfy himself about the correctness of PO and ensure that other details including reason(s) of warranty rejection are available with the advice note of return stores. The warranty claim will be processed following procedure indicated in sub-para 23.1 (i), (ii), (iii) and(iv) of para 23.0 above except for the following changes: The 'rejection advice mentioned in para 23.1(i) will be replaced by the 'warranty rejection advice'. The time which can be taken for the completion of modality of joint inspection as per para 23.1(iii) will be 45 days (instead on 21 days) from the date of communication of rejection advice to the supplier. More time is being given for joint inspection because this is a case wherein supplies have already been taken into the use system of Railways. Thus, either the pre-inspection agency or the firm or the Railways may like to have a more detailed understanding of the failure.

**Cat 23.2(i)(b)**

For Warranty failure in shop/shed of material received from PU (either under sale issue note or as a purchased component of rolling stock manufactured at the PU) of from a stores depot (under inter depot transfer/sale issue note) which is not the associate stores depot of the end user.

**(i)** In such cases it may not be convenient for the end user to return the material to the stores depot (against which the original supply was made by the vendor to Railway). Thus in all such cases, the warranty rejected material will be kept in safe custody by the end user and the stores depot(which received the original supply) will be advised by the end user

about the warranty rejection duly indicating the reason(s) of rejection with a confirmation that the rejected material is under end user's custody.

**(ii)** The stores depot (which received the original supply) will raise warranty claim on the firm. Before lodging the warranty claim, the depot officer will satisfy himself about the correctness of PO and ensure that other details including reason(s) of warranty rejection are available from the end user. The warranty claim will be processed following procedure indicated in sub-para 23.1 (i), (ii), (iii) and (iv) of para 23.0 above except for the following changes: The 'rejection advice' mentioned in para 23.1(i) will be replaced by the 'warranty rejection advice'. The time which can be taken for the completion of modality of joint inspection as per Para 23.1(iii) will be 45 days (instead of 21 days) from the date of communication of rejection advice to the supplier. More time is being given for joint inspection because this is a case wherein supplies have already been taken into the usage system of Railways. Thus, either the pre-inspection agency or the firm or the Railways may like to have a more detailed understanding of the failure.

For imported material or the consignment, the time limit in 23.2(i)(a) and 23.2(i)(b) (ii) will be 90 days instead of 45 days.

**23.2(ii) Warranty quantity replacement:**

The warranty quantity replacement will be accounted under warranty R-note by the depot officer (which raised the warranty claim as in sub-para 23.2(i)(a) above).

Financial recovery (if any made) against the warranty failure will be refunded to the firm on warranty quantity replacement.

**23.2 (iii) Inspection of the replacement supply against warranty rejection:**

**(A)** For cases of replacement supply against warranty failure falling in the category 23.2(i)(a) above, the replacement supply should normally be inspected by the same inspection agency which inspected and passed original supply. Thus for 23.2(i)(a), any change in inspecting authority for the warranty replacement will necessitate a formal amendment in contract.

**(B)** In case of warranty rejection of item of the 23.2(i)(b) above, it may in some cases be difficult to re-use the services of inspecting agency which passed the original supply. Similarly for some items, the end user/consignee may not have the requisite inspection facility/expertise.

Thus for warranty rejection falling under the clause 23.2(i)(b):

**(i)** The replacement supply can be inspected by the same inspecting agency which inspected and passed the original supply. Payment of inspection charges will be borne by supplier.

OR

The replacement supply can be inspected by authorized representative of consignee.

OR

The replacement supply can be made by firms own internal inspection certificate.

**(ii)** The decision on the above will rest with the depot officer who raised the warranty claim and will be indicated in the warranty claim notice.

**(C)** However, in case the warranty failure is of a component of an assembly supplied, the component can be accepted on firm's own Guarantee Certificate/internal inspection certificate and consignee's final inspection under both the clauses 23.2(i)(a) and 23.2(i)(b) of warranty failure.

**23.2(iv)** Place of warranty replacement- For warranty replacement of cases under clause 23.2(i)(a), in order to ensure correct accountal of warranty replacement, the place of warranty replacement will be the depot which received the original supply. For warranty replacement of failure falling under clause 23.2(i)(b) above, an exemption can be made and the place of replacement supply can be indicated by the depot officer (at his option) in the warranty claim notice to the firm to be the end-user's place.

**23.2(v)** For warranty replacement of the para 23.2(i)(b), due care will be taken by the end user to ensure that accountal of replacement supply etc. are properly taken care of. After settlement of warranty claim the rejected material will be handed over by the end user to the firm's representative. The end user will also inform the depot officer who raised warranty claim about the replacement.

**23.3** At the option of the depot officer/end-user, rectification of the material rejected (under clause 23.1 and 23.2) may be permitted within railway premises by the firm only after the firm has refunded the payment (if already made by Railway) or equivalent amount has been withheld for this purpose. However, from the date of communication of rejection, the rectification activity has to be completed within 21/45 days for indigenous/imported material respectively for the rejection of the category

23.2. If more time is taken beyond this, applicable ground rent will be levied on the firm.

**23.4** In order that quantity shortfall due to warranty failure of clause 23.2(i)(a) is made up, the depot officer may prepare an additional demand (equal to the quantity failed in warranty) for procurement, once recovery towards warranty has been confirmed by Accounts. Any warranty replacement subsequently made will automatically get reflected in stock and thus there will not be any net extra procurement. It will however ensure timely availability of materials.

## 24.0 Settlement of Dispute/Arbitration

***[Authority Railway Board`s Transformation Cell letter No.2018/TF/Civil/Arbitration Policy dated 12.12.2018]***

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996 and as amended from time to time.

## 24.1 Conciliation of Disputes:

All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by any of the parties to the concerned "Chief Materials Manager (CMM)" or "Divisional Railway Manager" or “Executive Director” through “Notice of Dispute”. CMM or Divisional Railway Manager or Executive Director shall, within 30 days after receipt of “Notice of Dispute”, notify the name of sole conciliator to the parties.

The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.

If the parties reach agreement on settlement of the dispute, they shall draw up a written settlement agreement duly signed by parties and conciliator. When the parties sign the settlement agreement, it shall be final and binding on the parties.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of dispute that is the subject matter of the conciliation proceedings.

The conciliation proceedings shall be terminated:

1. By the signing of the settlement agreement, on the date of agreement; or
2. By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration; or

**3.** By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration;

**24.2 Matters Finally Determined by the Railway:**

All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the General Manager (for the purpose of para 24.0 the term General Manager shall imply Additional General Managers of Zonal Railways, General Managers for Production Units, Director General (Railway Stores), Member of the Railway Board, Head of the Orgainsation in case of contracts entered into by other organizations under the Ministry of Railways) and the General Manager shall, within 120 days after receipt of the representation, make and notify decisions on all matters referred to by the Contractor in writing. Provided that matters for which provision has been made in any Clause of the Special or General Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the Arbitration Clause. **Provided further that where Railways has raised the dispute, para 24.2 shall not apply.**

**24.3 Demand for Arbitration:**

**24.3(i):**

In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or if the Railway fails to make a decision within 120 days (as referred in 24.2), then and in any such case, but except in any of the "excepted matters" referred to in Clause 24.2 of these Conditions, parties to the Contract, after 120 days but within 180 days of their presenting their final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration. Provided that where the claim is raised by Railways para 24.3(i) shall not apply.

**24.3(ii)(a):**

The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, shall be referred to arbitration and other matters shall not be included in the reference.

**24.3(ii)(b):**

The parties may waive off the applicability of Sub-Section 12(5) of Arbitration and Conciliation Act 1996 (as amended), if they agree for such waiver in writing, after dispute having arisen between them.

**24.3(iii)(a):**

The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

**24.3(iii)(b):**

The claimant shall submit his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

**24.3(iii)(c):**

Respondent shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal, unless otherwise extension has been granted by Arbitral Tribunal.

**24.3(iii)(d):**

Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

**24.3(iv):**

No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

**24.4: Obligation During Pendency of Arbitration:**

Supplies under the contract shall, unless otherwise directed by the Purchase Office, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not supplies should continue during arbitration proceedings.

**24.5 Appointment of Arbitrator:**

**24.5(a):**

**Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off:**

**(i):** **In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore only),** the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.

**(ii):** **In cases where the total value of all claims in question added together exceeds₹ 1,00,00,000/- (Rupees One Crore only),** the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below Junior Administrative Grade or 2 Railway Gazetted Officers not below Junior Administrative Grade and a retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department may be considered of equal status to the officers in Senior Administrative Grade of other departments of the Railway for the purpose of appointment of arbitrator.

**(iii):** The serving railway officer working in arbitral tribunal in the ongoing arbitration cases as per clause 24.5(a)(i) and clause 24.5(a)(ii) above, can continue as arbitrator in the tribunal even after his retirement.

**24.5(b):**

**Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:**

**(i)** In cases where the total value of all claims in question added together **does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh only),** the Arbitral Tribunal shall consist of a Retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the arbitrator.

**(ii)** In cases where the total value of all claims in question added **together exceed ₹ 50,00,000/- (Rupees Fifty Lakh only),** the Arbitral Tribunal shall consist of three (3) retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

**24.5(c)(i):**

**If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, the General Manager shall proceed for appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.**

**24.5(c)(ii)**

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall

appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

**24.5(c)(ii)(a)**

**Fast Track Procedure:** Parties to the arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in Section 29B of the Arbitration & conciliation Act, 1996, as amended.

**24.5(c)(ii)(b)**

Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s), submitted to arbitration, applicability of time 'Limitation' to any dispute, any violation of agreed procedure regarding conduct of the artibral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of tribunal should be provided to both the parties.

**24.5(c)(iii):**

**(i)** Qualification of Arbitrator (s):

**(a)** Serving Gazetted Railway Officers of not below JA Grade level.
**(b)** Retired Railway Officers not below SA Grade level, one year after his date of retirement.
**(c)** Age of arbitrator at the time of appointment shall be below 70 years.
**(ii)** An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

**(iii)** While appointing arbitrator(s) under Sub-Clause 24.5(a)(i), 24.5(a)(ii), 24.5(b)(i) & 24.5(b)(ii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per annexure shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

**24.5(d)(i):**

The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.

**24.5(d)(ii):**

A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

**24.5(d)(iii):**

A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

**24.6** In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

**24.7** Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

**24.8(a)**

The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble Court otherwise on the matter.

**24.8(b)**

Sole arbitrator shall be entitled for 25% extra fee over the fee prescribed by Railway Board from time to time.

**24.9** The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprises) to make a reference to Micro and Small Enterprises Facilitation Council, if the dispute is in regard to any amount due under Section 17 of the MSMED Act, 2006. In case a Micro or Small Enterprises, being a party to dispute, makes a reference under the provisions in MSMED Act 2006, the provisions of the MSMED Act 2006, shall prevail over conciliation and arbitration agreement as contained in the contract.

**24.10** Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules there under and relevant para of IRS Conditions of Contract and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.

## 25.0 Debarment in Railways

Henceforth debarment in Railways shall be dealt with as per guidelines issued by DoE and following **"additional instructions".** In case of any conflict, debarment guidelines (up to date) of DoE would prevail.

## 25.1 Additional Instructions.

1. Competent Authority for approval for debarment for Ministry of Railways shall be concerned Additional Member. In case Additional Member is not in position, Concerned Board member may nominate concerned Principal Executive Director or Executive Director as Competent Authority.

2. Proposals for debarment shall be sent by procuring units to concerned Directorate in Railway Board. Proposals for debarment out of vigilance/SPE/CBI cases shall be sent by concerned Vigilance Dte of Railway Board to concerned Directorate in Railway Board.

3. Debarment proposals from procuring units shall invariably include opinion of the Vigilance Branch of that procuring unit when complicity of Railway Officers/Staff in the irregularities/fraud indulged in by the firms is suspected by the procuring unit.

4. Debarment proposals from procuring units should contain/enclose detailed information as per format enclosed **(Annexure 7)**. The proposal should be vetted by the Law Officer and should have the approval of the concerned PHOD. In case it is proposed to debar the firm across all Ministries/Departments, the proposal would be forwarded to concerned directorate of Railway Board with the approval of General Manager. For proposals from Vigilance Dte of Board, proposal shall be approved by PED/Vigilance. Complete proposal along with all the documents should be attested by SAG or above level officer.

5. In cases where details regarding Partners/Proprietors/Directors etc. of the firm and also of allied firms could not be linked earlier with the debarment proposal, these details should be furnished promptly by the concerned proposing unit, as and when such information comes to its knowledge.

6. Before sending the proposal to Board for debarment, the unit should remove the name of the firm from its list of approved/registered/ empanelled suppliers, if applicable.

7. The debarment proposal will be examined in Board by the concerned Directorate to examine the adequacy of the facts necessary for issue of Show Cause notice to the firm concerned.

8. Any clarification or additional/supplementary information sought by Board from the firm shall be through the concerned PHOD of the field unit. In vigilance related cases, the information shall be called through vigilance/PHOD, as applicable or considered necessary.

9. Show Cause notice (format as per **Annexure-8**) shall be issued to the delinquent firm indicating clearly the charges (based on the facts as can be proved) through registered post (and also email, if available). In case no reply to the show cause notice is received from the firm within the stipulated time (30 days), followed by reminder for 10 days more, action for processing the case ex-parte against the firm should be initiated. Subsequently, an opportunity shall be given lo the firm for in-person hearing (oral hearing) by fixing a date for hearing. Hearing should be held at the level of minimum Director (or Joint Director if Director is not posted) level officer in Board. Brief for the same shall be prepared and jointly signed by the Director (or joint Director as applicable) and representative of the firm attending the hearing. Firm's reply to show cause notice and their submission in oral hearing will be examined.

10. Views/comments of the concerned proposing unit may also be called on the representation/oral hearing of the firm and duly considered. For cases out of vigilance/CBI/SPE etc, views/comments of Vigilance Dte. may be obtained, if considered necessary. The views/comments so received shall not be binding.

11. Based on above, case should be processed for approval of Competent Authority for debarment of the firm or otherwise.

12. Debarment order, when issued, shall be in the proforma as per **Annexure 9**. Debarment shall be effective from the date of issue of the Debarment order. Debarment order shall specify the specific time period for which it will be effective. The order shall also mention name of the allied firms and names of all the partners/proprietors/directors/all members etc. of the firm and its allied firms. In case of JV/consortium, name of all the partners shall be mentioned. If details regarding partners/proprietors/directors/all members & partners of JV/consortium, etc. of the firm and its allied firms, come to notice at a later date, those shall be circulated to al. Debarment order will also indicate the reason(s) in brief that led to debarment of the firm. The fact that the representation has been

considered and oral hearings have also been conducted (as applicable) should invariably be mentioned in the debarment order. If no representation was received in response to the show cause notice or the firm has not availed the opportunity of oral hearing given to it, the same should invariably be indicated in the debarment order.

13. Debarment Order will be applicable to all units of Ministry of Railway including field units, subordinate/attached offices, autonomous bodies, CPSUs, etc. under the Ministry of Railways and will be sent to them. Firm shall also be informed about debarment order through registered post (and also email, if available). A copy of debarment order shall be sent to CRIS and CEO/GeM. Order of debarment shall be uploaded on the website of Indian Railways, i.e. indianrailways@gov.in and IREPS portal.

14. The debarred firm, including its allied firms, shall be debarred from participation in any procurement process of Ministry of Railway, including all field units, subordinate/attached offices, autonomous bodies, CPSUs, etc. under Ministry of Railway. No contract of any kind whatsoever shall be placed with the debarred firm including its allied firms.

15. Any representation from the debarred firm shall be dealt with by the concerned directorate in Board. The revocation of debarment order before expiry of debarment period, if there is adequate justification for the same, shall be done with the approval of concerned Board member.

16. Court cases arising out of debarment orders issued shall be processed/dealt with by the concerned procuring unit

17. In case it is considered that the misconduct is grave enough and there are sufficient/strong evidence on record to believe that the firm has been engaged in activities requiring debarment across all Ministries/ Departments, after issue of debarment order for Ministry of Railway and with specific approval of concerned Board Member, the proposal shall be expeditiously sent by concerned Directorate to Secretary/Expenditure with a self-contained note, all relevant documents and clear recommendations regarding debarment across all Ministries and period thereof.

18. CPSEs/attached offices/autonomous bodies under Ministry of Railways shall independently deal with the debarment cases pertaining to their organization as per para 8 and 10 of the DOE order. In cases where it is considered that the misconduct is grave enough and there are sufficient/ strong evidence on record to believe that the firm has been engaged in activities requiring debarment for either Ministry of Railway as a whole or across all

Ministries/Departments of Govt of India, after issue of debarment order for their organization and with specific approval of head of the organization (CEO/CMD/MD), the proposal shall be expeditiously sent to the concerned Directorate in Board with a self-contained note, all relevant documents and clear recommendations regarding debarment for Ministry of Railway as a whole or across all Ministries/Departments of Govt of India and period thereof.

19. The Competent authority for approval of debarment for all proposals (new/old) shall be as per these instructions (i.e. AM or PED/ED as applicable).

20. However, provisions of DoE O.M. dated 02.11.2021 (**Annexure- 10**) shall be applicable for all proposals (new/old). Debarment order shall also be issued accordingly.

21. These instructions shall be applicable for all types of contracts.

**ANNEXURE-1**
***(Refer Para 12.2.1, 12.2.3(e))***

**PROFORMA FOR BANK GUARANTEE FOR CONTRACT PERFORMANCE GUARANTEE**

Ref …….. Date……..
Bank Guarantee No……..…….....

To

**The President of India,**
**Acting through the FA&CAO(SAB)/NDLS,**
**Northern Railway, Baroda House,**
**New Delhi- 110 001**

**1.** Against contract concluded by the Advance Acceptance of the Tender No……., dated ……..covering supply of ……(Hereinafter called the said contract) entered into between the President of India and …… (hereinafter called the 'Contractor'), this is to verify that at the request of the Contractor we, ……. Bank Ltd., are holding in trust in favour of the President of India, the amount of ……(write the sum here in words) to indemnify and keep indemnified the President of India (Govt. of India) against any loss or damage that may be caused to or suffered by the President of India (Govt. of India) by reason of any breach by the Contractor of any of the terms and conditions of the said contract and/or the performance thereof. We agree that the decision of the President of India (Govt. of India), whether any breach of any of the terms and conditions of the said contract and/or in the performance thereof has been committed by the Contractor and the amount of loss or damage that has been caused or suffered by the President of India (Govt. of India) shall be final and binding on us and the amount of the said loss or damage shall be paid by us forthwith on demand and without demur to the President of India (Govt. of India).

**2.** We, ……... Bank Ltd., further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for satisfactory performance and fulfilment in all respects of the said contract by the Contractor i.e. till…… (viz. the date upto 2 months after the date of the last despatch/delivery of the goods ordered) hereinafter called the 'said date' and that if any claim accrues or arises against us (……... Bank Ltd.), by virtue of this guarantee before the said date, the same shall be enforceable against us (……... Bank Ltd.), notwithstanding the fact that the same is enforced within six months after the said date, provided that notice of any such claim has been given to us……... …… Bank Ltd., by the President of India (Govt. of India) before the said date. Payment under this letter of guarantee shall be made promptly

upon receipt of notice to that effect from the President of India (Govt. of India).

**3.** It is fully understood that this guarantee is effective from the date of the said contract and that we…….. Bank Ltd., undertake not to revoke this guarantee during its currency without the consent in writing of the President of India (Govt. of India).

**4.** We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor in any suit or proceedings pending before any court or Tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by use under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor shall have no claim against us for making such payment.

**5.** We…….. Bank Ltd., further agree that the President of India (Govt. of India) shall have the fullest liberty, without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract or to extend time of performance by the Contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by the President of India (Govt. of India) against the said contract and we…….. Bank Ltd., shall not be released from our liability under this guarantee by reason of any such variation or extension being granted to the said Contractor or for any forbearance and/or omission on the part of by the President of India or any indulgence by the President of India to the said Contractor or by any other matter or thing what-so-ever which under the law relating to sureties, would, but for this provision, have the effect of so releasing us from our liability under this guarantee.

**6.** This guarantee will not be discharged due to change in the constitution of the Bank or the Contractor.

Date…….Signature…….

Place…… Name…….
Witness ……

**ANNEXURE-2**
***(Refer Para 12.8)***

## No Claim Certificate

PO/Contract No……Date ……..……
For supply of..... (Brief description of material)
Quantity-……Units (as per PO).

The above contract has been completed and I/We have no claim on Northern Railways in respect of the said contract.

The security deposit amount of ₹…….....……(Rupees ……..…..) lodged by us with Northern Railways in the form of ……(Deposit receipts, Pay orders, Demand Drafts, Guarantee Bonds etc.) may therefore please be refunded to me/us.

**Place:**

**Date:**

**Signature and full address of the Contractor**

**ANNEXURE-3**
***(Refer Para 2.5(v)(a))***

## Proforma for Performance Statement

## (FOR A PERIOD OF LAST 5 FINANCIAL YEARS & CURRENT FINANCIAL YEAR)

Tender No. ……Date of opening ……

Name of the firm…….

| No. | Order placed by (full address of ) | Order No. & date | Description of stores | Unit Price, ED, ST & FOR | Date of completion | | Remarks indicating reasons for late delivery, if | Have the stores been satisfactorily supplied |
|---|---|---|---|---|---|---|---|---|
| | | | | | As per contract | Actual | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Signature and Seal of tenderer(s)

**ANNEXURE-4**
***(Refer Para 2.5(v)(b), 10.2)***

## Proforma for Equipment and Quality Control

Tender No……..... Date of opening……....

Name of the firm……....

Note:-All details required only for the items tendered

**1.** Name & Full address of the firm.

**2.** Telephone & Fax No. Office/Factory/Works.

**3.** E mail address.

**4.** Location of the manufacturing factory.

**5.** Details of Industrial Licence, wherever required as per statutory regulations.

**6.** Details of Plant & Machinery erected and functioning in each Deptt. (Monographs & description pamphlets be supplied if available).

**7.** Details of the process of manufacture in the factory in brief.

**8.** Details & Stock of raw material held.

**9.** Production Capacity of item(s) quoted for, with the existing plant & Machinery.

9.1 Normal

9.2 Maximum

**10.** Details of arrangement for quality control of products such as laboratory testing equipments etc.

**11.** Details of Staff

**11.1** Details of technical supervisory staff-in-charge of production & quality control

**11.2** Skilled labour employed

**11.3** Unskilled labour employed

**11.4** Maximum No. of workers (skilled and unskilled) employed on any day during the 18 months preceding the date of application.

**12.** Whether stores are tested to any standard specification, if so, copies of original test certificates should be submitted in triplicate.

**13.** Are you registered with the Directorate General of Supplies & Disposals, New Delhi. If so, furnish full particulars of registration, period of currency etc.

**14.** Are you a Small Scale Unit, registered with National Small Industries Corporation Ltd., New Delhi. If so, furnish full particulars of registration, currency period etc.

Signature and Seal of tenderer(s)

**ANNEXURE-5**
***(Refer Para 2.5(iii))***

**Proforma for Manufacturer Authorization Form**

No…… Dated…….

**To,**

**The President of India,**
**Acting through the Principal Chief Materials Manager,**
**Northern Railway, Baroda House,**
**New Delhi- 110 001**

Dear Sir,

Subject: PCMM/N.Rly/New Delhi's Tender No……...

We…… an established and reputed manufacturer of ……, having factories at……..……do hereby authorize M/s…….(Name and address of Agents) to represent us, to bid, negotiate and conclude the contract on our behalf with you and against Tender No……due on

No company/firm or individual other than M/s ……are authorized to represent us in regard to this business against this specific tender.

Yours Faithfully

(Name)
For & on behalf of M/s……..(Name of Manufacturers)

Note:-This letter of authority should be on the Letter Head of the manufacturing concern and should be signed by a person competent and having the power of attorney to bind the manufacturer.

**ANNEXURE-6**
***(Refer Para 4.6.5(a))***

## Proforma for NEFT Mandate Form

From: M/s. ---------- Date: ----------

**To:**

**FA & CAO,**
**Northern Railway,**
**Baroda House, New Delhi-110001.**

Sub: NEFT payments

We refer to the NEFT being set up by Northern Railway for remittance of our payments using RBI's NEFT scheme. Our payments may be made through the above scheme to our under noted account.

NATIONAL ELECTRONIC FUNDS TRANSFER MANDATE FORM

| | | |
|---|---|---|
| 1. | Name of City | |
| 2. | Bank Code No. | |
| 3. | Branch Code No. | |
| 4. | Bank's Name | |
| 5. | Branch Address | |
| 6. | Branch Telephone/ Fax No. | |
| 7. | Suppliers Account No. | |
| 8. | Type of Account | |
| 9. | IFSC Code for NEFT | |
| 10. | IFSC Code for RTGS | |
| 11. | Supplier's Name as per Account | |
| 12. | MICR Code No. | |
| In lieu of Bank Certificate to be obtained as under, please attach a bank cancelled cheque or photocopy of a cheque or front page of your bank pass book | | |

I hereby declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I would not hold the user institution responsible. I have read the option intimation letter and agree to discharge responsibility expected of me as a participant under the scheme.

Date Signature of the Customer

Certified that the above particulars are correct as per our record.

Stamp and Signature
Of authorized official of the bank

**ANNEXURE-7**
***(Refer Para 25.1(4))***

## FORMAT OF DEBARMENT PROPOSAL FROM PROCURING RAILWAY UNIT

| | | |
|---|---|---|
| 1. | Name of the firm & address: | |
| 2. | Date of Registration/approval on the Railways: | |
| 3. | Whether registered as MSME and registration details | |
| 4. | Detailed reasons for proposal of Debarment: | |
| 5. | Definite recommendations about the specific period (as per the provisions in the enclosed DOE O.M.), for which debarment is proposed to be applicable and justification | |
| 6. | Justification for debarment and period of debarment | |
| 7. | Draft statement of charges/misconduct indicating clearly and precisely the charges/misconduct which should be based on facts as can be proved, distinct from mere allegations, along with investigation report of the SPE/Vigilance, if any. | |
| 7.1 | Draft show cause notice to the firm | |
| 8. | Whether the firm has been removed from the List of approved/registered suppliers: | |
| 9. | Constitution of the firm (Public Ltd./Private Ltd./Partners/JC/Consortium | |
| 10. | Name of the Directors/Partners/Proprietors: | |
| 11. | Names and details of Allied firms | |
| 12. | Names of partners/proprietors/Directors of allied firms | |
| 13. | Whether proposed action will create difficulty due to firm being sole supplier on proprietary basis, details thereof | |
| 14. | Whether proposed action will create difficulty due to the category of items dealt by firm have inadequate number of sources. If yes, details thereof | |
| 15. | Comments of vigilance as applicable | |
| 16. | Whether proposed debar across All Ministries/departments. If yes, justification for the same | |
| 17. | Departmental Investigation report, if any | |
| 18. | Investigation report of SPE/Vigilance, if any | |
| 19. | Approval of PHOD/GM as applicable | |
| 20. | Enclose all relevant documents | |

**ANNEXURE-8**
***(Refer Para 25.1(9))***

**FORMAT for SHOW CAUSE NOTICE**

**भारत सरकार GOVERNMENT OF INDIA**
**रेल मंत्रालय MINISTRY OF RAILWAYS**
**(रेलवे बोर्ड) (Railway Board)**

**SHOW CAUSE NOTICE**

No. Dated

**Sub: Debarment of M/s ..……. and its allied firms.**

M/s..... are hereby informed that ……. (Procuring entity) had placed the following Purchase orders on them for supply of the following materials/Equipments.

Details of Stores Indented

| Purchase Order No. and date | Description of the materials |
|---|---|
| | |

It has been observed that M/s..... indulged in the malpractices/irregularities as detailed in the enclosed statement of charges/misconduct.

In the circumstances, the Government of India proposes to debar Ms..... and also its allied firms, if any. from participation in any procurement process under this Ministry for a period of ……. (in words) months/years.

M/s……. and also its allied firms are hereby given an opportunity of showing cause against the action proposed to be taken.

Any representation which M/s..... and also allied firms may make in this regard will be considered. Such representation should be made in writing and submitted in duplicate so as to reach the undersigned not later than …….. days from the date of issue of this memorandum. In case no representation is received by the date mentioned above, it will be presumed that M/s……..... and also its allied firms have no representation to make against the proposed action and a final decision shall be taken on merit of this case.

Receipt of this memorandum may please be acknowledged.

**DA: Statement of Charges/Misconduct**

**Signature …….**
**Name …….**
**Designation & Address …….**

To
M/s……..

**ANNEXURE-9**
***(Refer Para 25.1(12))***

## FORMAT OF DEBARMENT ORDER

**भारत सरकार GOVERNMENT OF INDIA**
**रेल मंत्रालय MINISTRY OF RAILWAYS**
**(रेलवे बोर्ड) (Railway Board)**

**DEBARMENT ORDER**

No. Dated

To

**M/s.....**

**Sub: Debarment of M/s ……. and its allied firms**
**Ref:**
**1. This Ministry's Memorandum No. ……dated…….**
**2. Your letter No. …… dated……...**

The representation made by you vide your letter no..... dated……. and submissions made by you during oral hearing on …… have been carefully considered and Ministry of Railways (Railway Board) have decided to debar you and your allied firms from participation in any procurement process under this Ministry for a period of ……... months/years from the date of this debarment order.

| | |
|---|---|
| Reason (in brief) for debarment of firm: | |
| Hearing conducted: oral/ex-parte | |
| Name of the Directors/Partners/Proprietors | |
| Name of Allied firms covered under this order | |
| Names of partners/proprietors/Directors of allied firms | |

**Please acknowledge receipt of this order.**

**DA: A copy of reasoned order**

**Yours faithfully,**

**(Signature of Issuing Authority)**
**(Name)**
**Designation of Issuing Authority**
**(For and on behalf of Government of India)**

Copy to:

All Railway Units, Autonomous bodies, Attached/subordinate offices, CPSUs under Ministry of Railway MDICRIS, CEO,GeM.

**ANNEXURE-10**
***(Refer Para 25.1(20))***

No. F.1/20/2018-PPD
Government of India
Department of Expenditure
Ministry of Finance
Procurement Policy Division

169-A, North Block, New Delhi.
2nd November, 2021.

## OFFICE MEMORANDUM

**Subject: Guidelines on Debarment of firms from Bidding.**

1. Attention is drawn towards Rule 151 of General Financial Rules (GFRs), 2017 regarding 'Debarment from Bidding' which is reproduced as under:

(i) A bidder shall be debarred if he has been convicted of an offence-

(a) under the Prevention of Corruption Act, 1988; or
(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

2. This department has received a reference from Department of Commerce with a proposal that the task of universal banning of firms as per Rule 151 (ii) of GFRs as above may be undertaken by Department of Expenditure or should be decentralized to individual line Ministries/Departments as DGS&D had been wind up on 31.10.2017. Central Public Procurement Portal (CPPP) or the Department of Expenditure can then maintain a

master data of all such banned firms and it can be made available in public domain.

3. In context of above, all issues regarding debarment have been reviewed in consultations with major procuring Ministries/Departments and it is decided to issue attached **'Debarment Guidelines'** in suppression to all earlier instructions on this subject.

## Guidelines on Debarment of firms from Bidding

1. The Guidelines are classified under following two types:

   (i) In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.

   (ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MOF).

**Definitions**

2. Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.

3. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

   a. Whether the management is common;
   b. Majority interest in the management is held by the partners or directors of banned/suspended firm;
   c. Substantial or majority shares are owned by the banned/suspended firm and by virtue of this it has a controlling voice.
   d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
   e. All successor firms will also be considered as allied firms.

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

**Debarment by a Single Ministry/ Department**

5. Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/ organizations, keeping in view of the following:

a. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
b. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.
c. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
d. It shall not be circulated to other Ministries/Departments. It will only be applicable to all the attached/subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/Department issuing the debarment Order.
e. The concerned Ministry/Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
f. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.
g. Ministry/Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
h. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
i. Debarment is an executive function and should not be allocated to Vigilance Department.

6. Code of Integrity as contained in Rule 175 of the GFRs is reproduced as under:

No official procuring entity or a bidder shall act in contravention of the codes which includes

(i) prohibition of

(a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.
(b) any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.

(c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.
(d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.
(e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.
(f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.
(g) obstruction of any investigation or auditing of a procurement process.
(h) making false declaration or providing false information for participation in a tender process or to secure a contract.

(ii) Disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

7. It is possible that the firm may be debarred concurrently by more than one Ministry/Department.

8. Ministries/Department at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/Autonomous Bodies etc. In such cases, broad principles for debarment in para 5 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies.

9. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal.

10. In case of debarments under para 8 as above, revocation the debarment orders before expiry of debarred period should be done only the approval of Chief Executive Officer of concerned CPSUs etc.

**Debarment across All Ministries/Departments**

11. Where a Ministry/Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case

and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/Departments is in accordance with rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

12. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/Department forwarding such proposal.

13. Ministry/Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries/Departments shall be rejected.

14. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.

15. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/Departments/Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of debarment order.

16. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

**Revocation of Orders**

17. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.

18. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

**Other Provisions (common to both types of debarment)**

19. No contract of any kind whatsoever shall be placed to debarred firm inducing its allied firms after the issue of a debarment order by the Ministry/Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage biding) nor debarred on the date of contract. Even in the

cases of risk purchase, no contract should be placed on such debarred firms.

20. If case any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L -1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

21. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.

22. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should he clearly specified in the "Debarment Order".

23. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.

24. The Period of debarment shall start from the date of issue of debarment order.

25. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.

26. Ordinarily, the period of debarment should not be less than six months.

27. In case of shortage of suppliers in a particular group, such debarment may also hurt the interest of procuring entities. In such cases, endeavor should be to pragmatically analyze the circumstances, try to reform the supplier any may get a written commitment from the supplier that its performance will improve.

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