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India

PUBLIC PROCUREMENT

Contributing firm

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This country-specific Q&A provides an overview of public procurement laws and regulations applicable in India.

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INDIA

PUBLIC PROCUREMENT



1. Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL)

There is no comprehensive or any specific legislation that governs public procurement contracts in India. The legislative framework on public procurement (which mostly takes place through a tender process for large procurements) is presently based on guidelines contained in rules, procedures and manuals formulated by the Government, which apply to government departments and public sector undertakings (PSUs). These are, namely:

- General Financial Rules, 2017 (**GFR**) and the Delegation of Financial Power Rules, 1978 (**DFPR**):

The general rules regarding public procurement are provided under the GFR, which are applicable to all ministries and departments of the Government. GFR are supplemented by the DFPR, which are based on the principles of the GFR and empower the Central Government to sanction expenditure for public procurement contracts.

In line with the GFR, a few state governments like Tamil Nadu, Karnataka, Rajasthan, Andhra Pradesh, Assam and certain PSUs have developed their own financial rules which govern public procurement. Additionally, certain states such as Tamil Nadu and Karnataka have enacted specific rules and regulations governing public procurement called the Tamil Nadu Transparency in Tenders Act, 1988 and the Karnataka Transparency in Public Procurement Act, 1999, respectively.

- Manual for Procurement of Goods, 2017 (**MPG**); Manual for Procurement of Works, 2019 (**MPW**); and Manual for Procurement of Consultancy and Other Services, 2017 (**MPCS**):

These manuals contain the guidelines on procurement of goods, works, consultancy and other services. The Ministry of Finance, Department of Expenditure issues the revised version of these manuals from time to time. These administrative guidelines are supplemented by manuals and policies governing procurement by individual ministries/departments, such as defence, telecom and railways.

In addition to the above, the Directorate General of Supplies and Disposals under the Ministry of Commerce and Industry (**DGS&D**), which is the central purchasing and quality assurance organization, also issue guidelines to strengthen transparency and integrity in public procurement. Further, the Central Vigilance Commission (**CVC**) which is created to address governmental corruption, has framed tender guidelines.

At present, there is no relationship between government contracting/public procurement laws in India with any international or foreign bodies such as WTO, EU and UNCITRAL.

- Defence Procurement Manual, 2009 (**DPM**) and Defence Acquisition Procedure, 2020 (**DAP**):

New defence procurement management structures and systems were set up in the Ministry of Defence (MoD) which came into effect from 30 December 2002 and that are applicable to procurements resulting from the 'buy' decision of the Defence Acquisition Council. DPM 2009 and DAP 2020 provide comprehensive guidelines for acquisition for the defence sector. In September 2020, MoD released the DAP to streamline the procurement process and provide a boost to indigenous arms manufacturing. Given the specific requirements of procurement in the defence sector, the DPM and DAP lay down the procedures relating to public procurement in the defence sector and provide for measures to ensure expedited decision-making along with simplified contractual procedures. Broadly, these guidelines contain procedures for the following:

- Buy and make through transfer of technology;

- and
- Buy, innovate and make (Indian)
- The Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860:

These legislations impose criminal liability and penalties on bidders who may indulge in fraudulent, corrupt or malicious practices.

2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements?

The GFR provides guidelines for all contracts, except those having a very low value of approximately less than INR 25,000 (approx. USD 400). Examples of such contracts vary from those for procurement of goods, PPP contracts, engineering procurement and construction (EPC) contracts, concession agreements and operation and management (O&M) contracts.

Further, a government entity may, after consultation with the appropriate authority, outsource a contract to a specifically preferred contractor. In such a situation, the proposal must contain a detailed justification, explaining the circumstances leading to the said outsource.

While GFR is an umbrella regulation which governs the process for public procurement, various departments and utility sectors have introduced rules/guidelines which supplement the GFR in public procurements in their departments and sectors. For instance, the Electricity Act, 2003 provides for a bidding process for determination of tariffs. Additionally, the New Exploration Licensing Policy framed under the Petroleum and Natural Gas Regulatory Act, 2006 provides for the evaluation of bids according to the transparent quantitative bid evaluation criteria that evaluates the financial and the technical capability of the bidders, the proposed work schedule as well as the monetary package.

While the defence sector is governed by the DPM and DAP, the railways are governed by a number of specific laws and use the Indian railways e-procurement systems (IREPS) for procurement.

There are other sectors which have issued rules and regulations to guide the public procurement process, such as the telecom sector which is guided by the National Telecom Policy and the energy sector wherein the Ministry of New and Renewable Energy released a National Policy on Biofuels and a Strategic Plan for New

and Renewable Energy Sector. In fact, in 2017, the Government issued guidelines for wind power procurement to enable the distribution licensees to procure wind power at competitive rates in a cost-effective manner. Even the pharmaceuticals sector has introduced the Pharmaceutical Purchase Policy 2013 which aims to reserve the procurement of certain medicines from the Central PSUs.

Regulations have also been introduced to encourage micro, small and medium size enterprises to participate in the public procurement process. The Public Procurement Policy for Micro and Small Enterprises Order, 2012 provided that a minimum of 25% of annual value of goods/services of the Central Government and PSUs must be procured from micro and small enterprises. Further, a special provision has been added to encourage women owned micro and small enterprises. Out of the total annual procurement from micro and small enterprises, 3% from within the 25% target was to be earmarked for procurement from micro and small enterprises owned by women.

To encourage the 'Make in India' policy of the Government and to enhance income and employment by promoting manufacturing and production of goods and services in India, the Ministry of Commerce and Industry has issued a Public Procurement (Preference to Make in India) Order, 2017. This order was subsequently revised in 2018, 2019, 2020 and 2021. The applicable rules of GFR allow the Central Government to provide (by way of notification) mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

In addition to all the above-mentioned sector specific guidelines, DGS&D has been authorised to undertake procurement on behalf of those ministries/departments which lack the expertise to undertake such processes on their own.

3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction?

The GFR provides guidelines for procurement of goods starting at a value of INR 25,000. The GFR does not provide for one threshold of value of contracts which are required to be governed by the guidelines issued in the GFR. It prescribes specific rules for various thresholds of contracts. For instance, it provides for constitution of a local purchase committee for purchase of goods in the range of INR 25,000 to INR 2,50,000. In order to promote local manufacturers and suppliers, the Government has

increased the limit of tenders for procurement of goods, services and works from outside India to INR 2 billion.

4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.

To summarise, there are no specific legislations in India that govern public procurement. The legislative framework on public procurement is based primarily on guidelines contained in rules, procedures and manuals. These guidelines generally apply to contracts having value of either equal to or above the limit of INR 5 million. However, the basic principles underlying such guidelines would be applicable to all contracts, including those valued below INR 5 million and the parties to such contracts are bound to act in a just, fair, equitable and transparent manner.

5. For the procurement of complex contracts*, how are contracts publicised? What publication, journal or other method of publicity is used for these purposes?

Public procurement is generally conducted through a tendering process. The Supreme Court of India has held that the notifications for inviting tenders are required to be advertised in well-known daily newspapers with all the relevant details of the tender.

As per GFR, it is mandatory for all ministries and departments of the Central Government to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (**CPPP**). CPPP enables the tenderer to download the tender schedule and submit the bids online.

Further, as per guidelines of the CVC, notifications for public tenders are required to not only be published in trade journals and newspapers, but also on the website of the concerned public authority along with all the relevant bid documents forming part of the tender.

In this regard, certain states in India have formulated specific requirements for the publication of notices inviting tenders. For instance, the State of Rajasthan requires the notices inviting tenders for procurement contracts which are above INR 10 million to be published on the notice board of the procurement authority, in one regional newspaper, one state-level newspaper as well as in one all-India-level daily newspaper having wide circulation. While, in the State of Tamil Nadu, tender

notices for contracts that have an estimated value above INR 750 million, are to be mandatorily published in all editions of Tamil Nadu's English and regional language newspapers, as well as the Indian Trade Journal.

The time period within which the bidders have to respond to the notice inviting tenders is at the discretion of the relevant authority publishing these notices and varies depending upon the nature of the procurement. The Bill states that in fixing the last date for submission of bids, the procurement entity must take into account the need of the bidders and accordingly the bidders must be provided with reasonable time to prepare and submit their bids.

6. For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders?

In cases wherein the procurement of contracts involves an initial selection stage, before invitation to tender documents are issued, the bidders are usually selected on the basis of the eligibility criteria determined by the procurer/ authority. Such eligibility criteria are not fixed or tailor made and are usually formulated to promote competition and transparency.

In the case of defence procurement contracts, at the first instance, a request for information (RFI) is issued to all original equipment manufacturers (OEMs) and upon receipt of information from these players, the criteria and specification of procurements are set out and finalised, after which the tenders are issued. Since most of the utilities are owned by government entities or PPP entities, they are required to follow the applicable procedure for procurement for selection of the bidders.

7. Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so what are those grounds of mandatory exclusion?

The GFR provides that a bidder may be debarred/ blacklisted (i) for up to three years, in case they have been convicted of corruption or of a criminal offence as part of execution of a public procurement contract; and (ii) for up to two years for breach of the code of integrity.

The CVC recommends that government procurement entities should adopt an Integrity Pact (**Pact**) with the bidders/ contractors. The Pact is adopted by almost all

parties in the public procurement process and would cover instances of bribery and corruption.

The model Pact provides, that in case the bidder or the contractor before being awarded the contract or during its execution has engaged in or committed a transgression which is in violation of its commitments (as mentioned below) or has put its reliability or credibility in question, the procuring entity is entitled to disqualify such bidder/ contractor from the tender process and/or impose a ban on business dealings with such bidder/ contractor.

The commitments of the bidders/ contractors include:

- The bidder/ contractor shall not give any of the employees of the procuring entities involved in the tender process, any material or other benefit in order to obtain any advantage during the tender process or during the execution of the contract.
- The bidder/ contractor shall not enter into an undisclosed agreement or understanding (formal or informal) with the other bidders. In other words, the bidder/contractor must not take any action which will restrict competition or introduce cartelization in the bidding process.
- The bidder/ contractor shall not commit any offence under the provisions of the Prevention of Corruption Act, 1988 or the Indian Penal Code, 1860.

The general principle is that the government or any government authority must exercise any discretionary power vested in it in a fair and non- arbitrary manner in the selection process. Any exclusion of a bidder can otherwise be challenged in the Indian courts.

8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures.

Procurement procedures in India, are based on the bidding process. The different kinds of bidding procedures typically followed in India are briefly discussed below-

- *Open competitive bidding*: In this type of bidding, the bids submitted by the parties are opened to the public. This type of bidding creates a transparent bidding process, wherein the interested parties are made aware of the selection of the bidder.

- *Restrictive bidding*: In this procedure, the invitation to bid is only sent to a limited number of bidders that have been prequalified through a screening process.
- *Two-stage bidding*: Two-stage bidding process is usually taken up where a heightened sense of professional proficiency is required. In such cases, two separate bids (technical and financial) are invited from the procurers.
- *Single source procurement/ Spot purchase*: As opposed to the other procedures covered above, this method is non-competitive and is used in exceptional circumstances after obtaining the approval of a competent authority. The special/exceptional circumstances could be an emergency, limitation of cost or continuance of previous work.

In addition to the above procurement methods/procedures, other methods may also be notified by the Government.

The timelines for procurement in all the above processes varies depending upon the nature of the procurement and the terms of the tender, and may range anywhere between 6 to 15 weeks.

It may also be noted, that the decision of the procurer to subscribe to one of the above procedures depends upon the subject matter and the nature of procurement. The procuring entity is required to ensure that the method chosen must be consistent with the criteria of prequalification and any restrictions that are imposed before execution.

9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured?

Approach for procurement for a relatively low value contract is usually the same as complex contracts and procuring entities are bound to act in a just, fair, equitable and transparent manner.

10. What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?

The current best practice that is adopted over and above ensuring compliance with the relevant procurement

regime is the electronic procurement regime or 'eProcurement' involving the submission of bids through the online portal created for this purpose. For encouraging electronic submission of bids, the Government has created CPPP within which all the prerequisites and authentications are carried out and the documents are also published. As a process, prior to submission of bids on the portal, the bidders are required to enroll themselves on the CPPP.

11. Please explain any rules which are specifically applicable to the evaluation of bids.

There are no specific rules which have been prescribed to evaluate the bids. The evaluation and selection process and mechanism are subject to the requirements prescribed in the bid documents, which may vary. However, the Supreme Court of India has laid down principles in various judicial precedents which are used as guidelines for evaluation of bids. These principles broadly provide for fairness, transparency, equality, non-arbitrariness and non-discriminatory treatment of bids.

Based on these principles laid down by the Supreme Court of India, the procuring entity usually evaluates the bids on the basis of:

- a. Price or economic efficiency;
- b. Quality of goods/ raw material;
- c. Costs of operation;
- d. Terms of payment;
- e. Guarantee;
- f. Technical competence; and
- g. Professional competence

In addition to the abovementioned principles, a commonly adopted method for the selection of bids is the selection of the lowest bid (*referred to as the L1 method*). This method is usually adopted in case of rate contracts or lump sum contracts.

Another commonly used method for evaluation, is the selection of the highest bidder method (referred to as the H1). This method is usually adopted in cases of revenue sharing contracts or a contract where an upfront premium is payable to the procurer. Yet another method of evaluation is wherein the bidder requires the shortest concession period is selected. This method is usually adopted in concession projects involving a fixed revenue stream.

The procurer may also select a bidder based on their combined scores from the evaluation of their technical bid and financial bid calculated on the basis of a predetermined weightage basis.

However, procurers are not bound to evaluate and select bids based on these methods and select the bid quoting the highest price or the highest evaluated bidders and have the discretion to select another bidder if they are convinced that the selection process was fair, just and reasonable.

The Procurement Policy Division of the Ministry of Finance, Government of India on 29 October 2021 issued guidelines which would act as "general instructions" within the meaning of Rule 6(1) of the GFR, 2017. The guidelines are aimed at ushering in reforms in public procurement and public project management. The formulation and release of the guidelines came as a measure of periodic review of the existing procurement procedures.

The guidelines were prepared under the aegis of the Central Vigilance Commission (CVC) after a thorough review and consultation process involving experts from various fields of public procurement. Similarly, the Comptroller and Auditor General (CAG) and the National Institution for Transforming India (NITI) Aayog carried out a detailed analysis of the existing procedures and rules for public procurement to suggest changes in strategies to meet present and future challenges in public procurement. The guidelines attempt to incorporate in the realm of public procurement, innovative rules for efficient and quick execution of public projects. A few of the improvements carried out in the existing regime include prescribing strict timelines for payments when due. Further, timely release of ad-hoc payments of 70% or more of the bills raised by vendors is expected to improve the financial position and liquidity amongst the contractors more particularly the Micro, Small and Medium Enterprises (MSMEs).

The guidelines also prescribe alternative methods for selection of contractors apart from the prevailing ones. In cases where it is deemed appropriate, quality parameters can be given weightage over cost during evaluation of proposals in a transparent and fair manner, through what is termed as Quality cum Cost Based Selection ("**QCBS**"). QCBS can be employed in cases where the procurement has been declared to be a Quality Oriented Procurement (QOP) or for procurement of non-consulting services where the value of the procurement does not exceed INR 10 crores (INR 100 million).

12. Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction)

the reasons for the score of the winning bidder.

At the outset, there is no obligation on the procuring authority/bodies to provide reasons for their award or selection of a bidder to the other unsuccessful bidders. However, since Government entities fall within the purview of 'state' under Article 12 of the Constitution of India, they are bound by the provisions of the Right to Information Act, 2005 and may be required to disclose their reasons in case an unsuccessful bidder makes a formal request under the Right to Information Act, 2005.

The exceptions to the disclosure *inter alia*, includes such information the disclosure of which:

- would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the 'state', its relation with any foreign state, or lead to incitement of any offence;
- has been expressly forbidden to be published by any court or disclosure of which may constitute contempt of court;
- would cause a breach of privilege of the parliament of India or a state legislature; and
- includes the information such as commercial confidence, trade secrets or intellectual property rights and cabinet papers including records of deliberations of the council of ministers, secretaries and other officers which are not required to be disclosed.

13. What remedies are available to unsuccessful bidders in your jurisdiction?

The unsuccessful bidders may challenge the bidding process by invoking the writ jurisdiction of the concerned High Courts or the Supreme Court of India, as the case may be. In the event, the unsuccessful bidder manifestly establishes before the writ court that the procuring entity while evaluating the bids violated the principle of fairness, transparency and equal treatment and the procurement process has been carried out in an arbitrary and discriminatory manner, the writ court may cancel the contract awarded to the bidder. The writ court may also direct the procuring entity to initiate the procurement process afresh so that irregularities occurred during the evaluation stands corrected in compliance with the afore-stated settled principles. The courts are however careful before interfering in the bidding process. In various decisions, courts have held that the terms of invitation of tender are not open to judicial scrutiny. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

14. Are public procurement law challenges common in your jurisdiction?

It is not uncommon for bidders to challenge the public procurement process in India. The challenge itself may not cause reputational harm, though a bidder may possibly suffer such harm due to its blacklisting by the procurer for a specified time period. The challenge also does not usually affect the prospects of future procurement contracts, as the evaluation criteria for each procurement is separate and independent unless a bidder has been blacklisted for a certain period of time. The above concerns however often weigh on the minds of the bidders.

The cost involved in such procurement challenge claims depends upon a number of factors including process of challenge, the number of hearings involved and the legal fees charged by counsels.

15. Typically, assuming a dispute concerns a complex contract, how long would it take for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case).

The adjudication of disputes in Indian courts can be time consuming and cumbersome. A dispute raised against the procurement process by way of a writ jurisdiction may be resolved within 2-3 months but could take up to a few years based on various factors such as the complexity of the case, nature of dispute and the forum where the dispute is raised.

The key stages in the resolution of a dispute involving a challenge to the procurement process, would include (i) filing a writ petition before the concerned state high court; (ii) admission of writ petition by the concerned court; (iii) reply/counter affidavit to the writ petition by the procurer; (iv) rejoinder to the reply by the petitioner; and followed by (v) submission of oral arguments before the court.

16. What rights/remedies are given to bidders that are based outside your jurisdiction?

The rights/ remedies available to foreign bidders/ bidders based outside India are the same as those afforded to bidders in India. Further, since, the Constitution of India mandates equality before law and prohibits discrimination, the foreign bidders would not be treated differently but as per rule of law. There is also no preferential treatment given to any bidders from any

particular jurisdiction or country including members of GPA or EU.

17. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract?

There is no discrimination in the bidding process for subsidiary entities of an overseas bidder and Indian bidders. The subsidiary of an overseas-based bidder, will be afforded the same rights and remedies as a nationally owned company bidding in India. The Indian subsidiary would be treated as a domestic entity in seeking remedies before Indian courts.

However, certain procurement criteria may provide for additional requirements for foreign bidders (upon being declared as successful bidder) such as, incorporation of an SPV/ subsidiary in India, wherein the foreign bidder is required to maintain certain level of ownership or control during the period of the contract. Certain bids may also have conditions regarding supply of certain quantity of goods which are manufactured locally.

18. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues?

There is no specialist court/ tribunal which has been authorised to deal with matters specifically relating to public procurement issues. The unsuccessful bidders, who may want to challenge the bidding process can invoke the writ jurisdiction of the concerned High Courts or the Supreme Court of India, as the case maybe.

The adjudication of disputes arising out of or in relation to the public procurement contracts, will either fall with the arbitral tribunal or the civil courts having jurisdiction to entertain such disputes, depending upon the terms of the contract and the value of the claim sought.

19. Are post-award contract amendments/ variations to publically procured, regulation contracts subject to regulation in your jurisdiction?

At the outset, contracts in India are governed by the provisions of the Indian Contract Act, 1872, pursuant to which the parties to a contract are free to mutually amend the contract. However, amendments or variations to the terms and specifications of the contract after the

bid has been procured is usually not acceptable by the procurer and may be permitted only on a case-to-case basis under extraordinary circumstances. The intent behind dealing with the amendments or modifications, is always to prevent losses to the public exchequer and therefore, only where the modifications and amendments are considered to be necessary and inevitable, such amendments to the contract may be allowed after considering its financial consequences.

In relation to the changes to the identity of the supplier as a result of sale or insolvency may be permitted, subject to the terms and conditions of the contract as well as the prior permission of the procuring authority. Depending upon the terms of the contract, such changes may also result in a right to termination by the procuring authority.

20. How common are direct awards for complex contracts (contract awards without any prior publication or competition)?

Direct awards are not common in India. Having said that, there may be certain situations where such direct awards or procurement from a single source are permitted. The Supreme Court of India, in this regard has held that though the normal course of action while undertaking public procurement is an auction or calling for tenders, there may be certain exceptional circumstances wherein the usual course of auction and bidding may not be pursued.

The GFR 2017, provides that contracts may be awarded on a nomination basis or procurement from a single source may be resorted to, in the following limited circumstances:

(i) In case the procurer or the awarding authority has knowledge that only a particular firm manufactures the required goods; or (ii) In case of any emergency; or (iii) For the purpose of standardization of machinery or spare parts to be compatible to the existing sets of equipment.

An award resulting from single source procurement may be challenged on grounds such as (i) the process being in violation of the Constitution of India and/or violation of any applicable laws in force; (ii) the lack of transparency in conducting the procurement process; or (iii) unreasonableness or arbitrary conduct resorted to for procurement.

21. Have your public procurement rules

been sufficiently flexible to allow contracting authorities to respond to the ongoing COVID-19 pandemic? What measures have been most used and in what areas have any difficulties arisen? How have these evolved over the past year and is it likely that lessons learned from procurement during this period will give rise to longer term changes?

The Government took immediate steps to relax the procurement as COVID-19 spread across India and the lockdown was initiated. These steps were primarily taken to ease the procurement and transportation of medical and other essential supplies.

It went a step further to even ease the challenges faced by the parties supplying and in the process of completing their contractual obligations towards the Government. While some relaxations were introduced early-on during the lockdown in March, 2020, with the continuation of the challenging circumstances, certain other steps were taken to troubleshoot the difficulties faced by suppliers.

These measures have been briefly discussed below-

1. The Department of Expenditure, Ministry of Finance vide an office memorandum issued in March, 2020 provided for special instructions for procurement by certain ministries/departments. These included, the Department of Pharmaceuticals, Ministry of Health and Family Welfare, Ministry of Textiles, Department of Consumer Affairs and Ministry of Civil Aviation.

These instructions were issued as an attempt to promptly procure and provide medical and other essential supplies.

- a. The applicable rules in GFR 2017 provide for option of procurement of goods and non-consulting services from a single source or a particular contractor in case of an emergency/exceptional situation. But adapting to the needs of pandemic times, the Department permitted procurement of goods and such services from more than one source in case the entire quantity required is not available or immediately available from one source. In fact, it also

permitted procurement at different rates, in case the circumstances were unavoidable.

- b. The GFR 2017 also mandates that the procurement of goods and services available on the online portal of the Government, namely, Government e-Marketplace (**GeM**) must be through GeM. However, this was relaxed for procurements made during emergency/exceptional circumstances from single source or a specifically chosen contractor.
 - c. The Government also permitted procurement from Indian missions and through multiple methods of procurement, in case the entire quantity required is not available through one method.
2. In addition to the specific special instructions issued, the Ministry of Home Affairs declared COVID-19 as a '*notified disaster*'. This allowed the rules governing public procurement during disasters to be triggered and become applicable. For instance, as per the GFR 2017, selection of supplier by direct negotiation/nomination on the lines of single tender mode of procurement of goods is considered appropriate in case of emergency arising from natural disasters wherein timely completion of assignment is of utmost importance.

Also, in view of the challenges faced by parties having ongoing contractual obligations towards the Government, certain reliefs were introduced over a period of time. These have also been discussed below-

1. As a primary step in February, 2020, it was clarified that COVID-19 should be considered as a case of natural calamity and force majeure clause as provided in the Manual of Procurement of Goods, 2017 issued Department of Expenditure, maybe invoked.

Pursuant to the initial clarification, further disruptions affected transportation, manufacturing and distributions of goods and services across India. In fact, the limitations placed on the movement of goods and individuals, due to the lockdown severely affected the fulfilment of contractual obligations of supply of goods, services and works. This led to a further clarification in May, 2020, that the disruption of supply chain caused due to spread

of COVID-19 will be covered under the force majeure clause, which could be invoked following the prescribed procedure.

All contractual obligations in construction/work contracts, goods and services contracts and PPP contracts which were required to be completed on or after February 20, 2020 were extended for a period of 3-6 months, as maybe decided, without imposition of penalty. However, the invocation of subject to that the parties were not in default of any obligations as on February 19, 2020.

2. Another key relaxation was issued in relation to return of the performance security deposited by the contractor. This was introduced due to the liquidity challenges caused by the restriction on the movement of materials and individuals. Discretion was also provided to the concerned departments/agencies to return the performance security deposited initially, in case the contractor has not defaulted in his obligations or has invoked the force majeure clause.
3. In November 2020, due to the ongoing financial crunch affecting the execution of the contracts in a timely manner, the performance security was reduced to 3% of the value of the contracts from the existing 5-10%.

4. Recently, in May 2021, for efficient sourcing of covid-related goods and services, the Government relaxed the local content norm of public procurement till September 30, 2021. An order was issued by the Department for Promotion of Industry and Internal Trade (**DPIIT**), putting on hold the applicability of the Public Procurement (Preference to Make in India) Order, 2017 and all related amendments with respect to procurement of supplies required for containment of COVID-19.

As can be assessed from the measures introduced, the majority of difficulties were faced by Government in immediate procurement of essentials on a large scale, which led to issuance of special instructions. While, contractors with ongoing obligations, tackled issues relating to smooth supply, liquidity and other financial crisis and the Government provided relief as and when such issues cropped up.

Although the economy has been in and out of recovery and movement has opened up over the past 2 years since the pandemic has been ongoing, it is difficult to determine in case the relaxations offered will continue after normalcy is achieved. It is possible, that procurement, wherever required on an immediate basis, may be permitted from more than one source to fulfil the requirement of the Government. This may however require outlining the scope of 'emergency/exceptional situation' as mentioned in the relevant GFR 2017 rules.

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