

Procurement Guidelines

(For RCH-II Project)

Prepared

by

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Procurement Guidelines **(For RCH-II Project)**

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Procurement Guidelines

(For RCH-II Project)

Introduction

The implementation of the various National Programmes in the Health Sector entails procurement of contraceptives, drug-kits, vaccines, drugs, equipments, hiring of experts for specific tasks, and civil works etc. These “Guidelines for Procurement” provide the essential information and step-by-step procurement procedures in brief to achieve these objectives. However, the States may be required to customize the procedure described herein to meet the requirements of existing system preferably by way of development of a State specific Operation Manual.

For additional guidance on this subject, DGS&D manual can be referred. DGS&D booklets Governing the contracts and standard tender forms e.g. bank guarantee for EMD, bank guarantee for performance security, performance statement etc. are available on website www.dgsnd.gov.in or www.dgsnd.nic.in. The choice of the procurement procedures may be decided by the Executive Committee of the State for the entire procurement or for each of the procurements on case-to-case basis.

This document is intended for procurement officers to achieve the uniform system of procurement in all the States. This document is also intended to guide the implementing agencies to understand the procedures to be followed for procurement. The rights and obligations of the purchaser and the contractor of goods and works are governed by the tender documents and by the contracts signed by the purchaser with the contractor and not by these guidelines.

The aim of the procurement process should be to ensure that necessary supplies of right quality are obtained at reasonable cost through a fair and transparent system.

(a) **General**

Under RCH-II, it is envisaged to procure through Indian Institutions. However, because of reported irregularities in RCH-I procurement, it has been decided to shift the responsibility to these institutions after they build sufficient procurement capacities. Till such time that the procurement implementation is shifted to the relevant Indian Institutions under mutual agreement of the World Bank and the Government of India, all ICB procurements, contracts estimated to cost more than US\$200,000 for (i) goods and works under NCB; and (ii) consultancy services for firms, and individual consultants costing more than US\$50,000 will be carried out by a qualified procurement agent. The agent should either be sole sourced UN agency or an agency selected through Quality and Cost Based Selection (QCBS) of the World Bank guidelines. Since the selection of such an agency would take some time, in order to maintain regular supply of goods and services, it has been decided that procurement would be made by an entity under the TOR and arrangements satisfactory to the Association as defined in the relevant Development Credit Agreement (DCA). It has been further clarified that Empowered Procurement Wing (EPW) of MoHFW would be such an entity and the above procurement could be made under the oversight of the International Consultant Organization hired with the assistance from DFID for capacity building of EPW.

The pooling partners will only finance procurement of pharmaceuticals or medical supplies procured through ICB or LIB or from UN Agencies. The EPW may also procure pharmaceuticals and medical supplies directly from UN Agencies with prior approval of the Bank. EPW at the central level will handle all contracts below US\$200,000 (except ICB). MoHFW is currently responsible for the central procurement of pharmaceuticals, medical supplies and equipments for RCH programme and its subsequent distribution to the States and UTs. As the procurement capacities of the States are built, the Centre would pass on the responsibility for procuring pharmaceuticals, medical supplies and equipments progressively to the States. At present, the States may procure following local shopping procedure as described in these guidelines.

Methods of procurement to be adopted as well as procurement reviews by the Bank will be decided based on the total value of the tender rather than the value of each individual contract/ schedule/ lot/ slice.

(b) **Procurement of Goods and Works**

I. Procurement Plan and Procedures

While resorting to procurement, specific budget provision should be available for meeting the expenditure in the financial year in which it is to be incurred.

a) Procurement Plan

- Preparation of a procurement plan is an essential requirement. Procurement plan covering civil works, equipment, goods, consultancy services and

resource support shall be prepared on a firm basis for first year of the programme and on a tentative basis for the subsequent years.

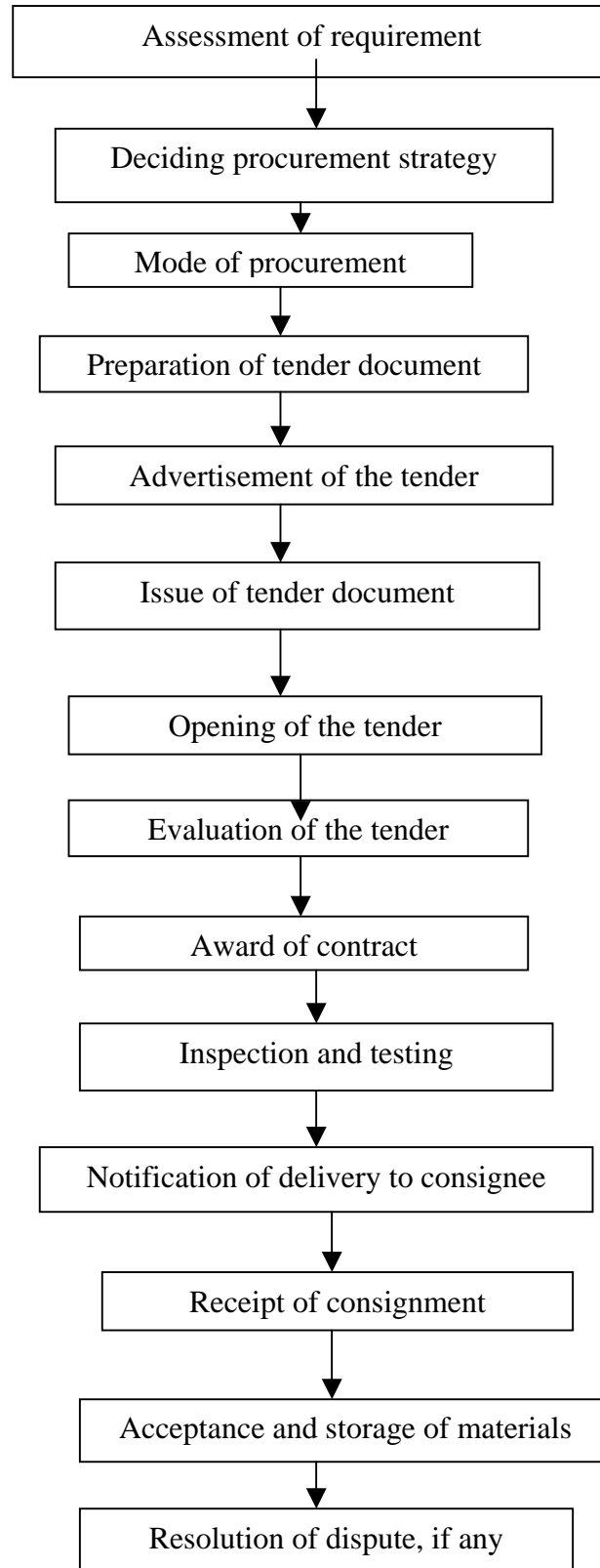
- Procurement plan shall be prepared every year for proper monitoring and execution.
- Procurement plan shall be prepared contract wise.
- Method of purchase shall be based on the value of the contract, urgency of the demand, type of goods/services and availability of different sources of supply etc
- Limit of value per contract applicable to the particular procurement procedure shall be strictly adhered to.
- It shall be ensured that the procurement is based strictly on actual need.

b) Procurement Procedure

The procurement procedure broadly consists of the following steps:

1. Assessment of requirement
2. Deciding procurement strategy including technical specifications
3. Mode of procurement
4. Preparation of tender document
5. Advertisement of the tender
6. Issue of tender documents
7. Opening of the tender
8. Evaluation of the tender
9. Clearance of World Bank/ DFID, whenever required
10. Award of contract
11. Notification of delivery to consignee
12. Inspection and testing
13. Receipt of consignment
14. Acceptance and storage of the consignment.
15. Resolution of disputes, if any

Procurement Steps



II. Forecasting/Assessment of the Requirement

Bulk requirement of the stores for State level/district level should be assessed prior to the beginning of the financial year to get the competitive prices and action for procurement should be initiated in accordance with the purchase procedures. While forecasting the requirement, the following factors should be considered:

- Average time period required in complete procurement cycle. In some cases, it can take 8 to 12 months to complete the procurement cycle.
- The trends in usage at the time of requirement.
- Current stock of the store, where is the stock located, when is the product due to reach the expiry date and what is the projected time scale for distribution.
- Storage capacity for receiving the bulk consignment. In case the storage capacity is limited, it would be required that the procurement/supply of commodities be phased over time rather than arriving as one consignment.
- List of consignees and their storage capacity.
- The problem, if any, encountered with the procurement and distribution over the last few years.

Consolidating several programme procurement requirements can offer potential savings through price discounts and reduces the purchaser's administrative cost associated with having to process multiple orders.

III. Deciding on Procurement Strategy

It is important to agree on the procurement strategy before initiating the tendering. For example purchase of drugs having limited life shall require different procurement strategy than purchase of say hospital beds. Issues like pre-qualification of suppliers to reduce the procurement cycle time in case of life saving drugs and having multiple supply lines for essential items should also be considered. Similarly for civil works, options like work contract on lump-sum basis or based on bill of quantities can be explored. The procurement strategy should cover:

- key objectives of the procurement for the project;
- chosen procurement option;
- chosen procurement route (Open, Restricted);
- key milestones (check that enough time will be allowed for various proc steps);
- key documents e.g. requirements specification.

Key factors influencing the procurement strategy relate to the degree of complexity, innovation and uncertainty about the requirement, together with the time needed to achieve a successful outcome.

IV. Mode of Procurement

The methods of procurement normally followed are:

- A. Global tender/International Competitive Bidding (ICB)
- B. Open advertised tender/ National Competitive Bidding (NCB)
- C. Limited Tender (National / International)
- D. Shopping (National / International)
- E. Single tender/ Direct Contracting
- F. Procurement of Civil Works through Panchayati Raj Institutions (PRIs)

(A) Global tender/ International Competitive Bidding (ICB)

This method is generally adopted where the supplies need import and foreign firms are expected to participate irrespective of the value. In case of RCH procurement this method is adopted where the estimated cost of the procurement is more than equivalent of US \$ 1,000,000 for goods and US \$ 2,000,000 for works.

Requirement

- Apart from wide publicity nationally, Invitation to bid shall also be forwarded to Embassies and trade representatives of the countries of likely supplier/contractor of the goods and works and also to those who have expressed interest in response to the general procurement notice.
- Invitation to bid will also be published in UNDB, DgMarket and DFID website in cases where estimated value of the contract is more than US\$ 200,000 equivalent. This publication will be arranged by the World Bank/ DFID.
- Use of standard tender document.
- Sale of tender documents should start only after publication of Invitation to bid.
- Bidding period 45 to 90 days from the date of start of the sale of bidding document.
- Other procedure for global tender will broadly be same as that of Open advertised tender in respect of bid opening, bid evaluation, notification and publishing of award, complaint redressal etc..

(B) Open advertised tender / National Competitive Bidding (NCB)

- i. Open Tender is the competitive bidding procedure normally used for public procurement in the country and may be the most efficient and economic way of procuring goods or works, by their nature or scope. The procedures shall provide for adequate competition in order to ensure reasonable prices. The method to be used in the evaluation of tenders and the award of contracts shall be made known to all bidders and not be applied arbitrarily.
- ii. Open Tender is the normally adopted method of procurement.
- iii. Civil works, and also goods, could be procured under contracts awarded in accordance with the procedures prescribed under open tenders.
- iv. Various steps involved in procurement under open tender procedure have been enumerated in clause 1 (b).

V. Notification /Advertising: Timely notification of bidding opportunities is essential in competitive bidding:-

- (a) Invitation to bid shall be published in daily newspapers with wide circulation all over India, at least in one national English and one regional language daily. If the advertisement is for more than one item, it should also be indicated whether the evaluation would be item-wise or as a package. The bidders shall be allowed the option to submit the bids for any one or more schedules specified in the 'Schedule of Requirements' and to offer discounts for combined schedules. The advertisement should also be placed at the website of the department.
- (b) If it is a condition in the invitation for tender that Earnest Money (it should be a specific amount rather than a %) is to be deposited by the supplier / contractor, the bid of a supplier / contractor not complying with this requirement, shall be rejected.
- (c) In a package, the Earnest Money is indicated taking into account all the items. This cannot be changed later on. Once it is decided that the contract is for a package the Earnest Money for that package is to be indicated and the same cannot be changed according to each item.
- (d) The last date for receipt of tender shall be the day following the date for close of the sale of tender documents.
- (e) Tendering period shall not be less than 30 days from the date of start of sale of tender documents.

- (f) Tenders can be sold from different places but the tenders shall be received at one place to avoid problems arising out of late/delayed tenders. Tenders should normally be opened immediately after the deadline for receipt time.
- vi. **Tender Documents:** For procurement undertaken by EPW of MOHFW, GOI Task Force NCB documents as amended from time to time for works/ goods acceptable to the Bank will be used.. Sale of tender document should begin only after the publication of notification for tender in newspaper. The tender documents shall furnish all information necessary for a prospective bidder to prepare a tender for the goods and works to be provided. Tender documents should be made available to all who seek them after paying the requisite fees, if any, regardless of registration status and they should be allowed to bid.

Clarity of Tender Documents: Tender documents shall furnish clearly and precisely for the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, specification/technical specification, minimum performance requirements, the warranty and maintenance requirements, if any, and the method of evaluation. The basis for tender evaluation and selection of the lowest technically suitable and evaluated tender shall be clearly outlined in the instructions to tenders and/or the specifications.

Tender documents should state clearly whether the bid prices will be fixed or price adjustments will be made to reflect any changes in major cost components of the contract.

- vii. **Standards and Technical Specifications:** The implementing agency shall specify the generally accepted standards of technical specifications. Unbiased technical specification shall be prepared with no mention of brand names and catalogue numbers. In case the item to be procured is not covered under BIS or I.P. and specifications are to be framed, specifications may be prepared by a committee of experts associating the trade, if required. The functional performance, design, quality, packaging and additional requirements should be clearly spelt out in the specifications. The specifications should be generic and should not appear to favour a particular brand or supplier.

Technical specifications, bill of quantities and civil drawings should be prepared before tendering. Specifications for the articles to be procured should be drawn up in every case with clarity. No deviations from the specifications after opening of tender should be allowed.

- viii. **Validity of tender:** Bidders shall be required to submit tender valid for the period specified in the tender documents. Normally, the bid validity period shall not exceed 90 days.

- ix. **Earnest Money:** Earnest Money of normally 2% of the estimated cost of the item or works shall be the appropriate amount, which should be indicated, in a specific amount. The earnest money shall be in the form of a demand draft / banker's cheque/bank guarantee from a scheduled bank, which should be valid up to 45 days beyond the validity period of the tender. The earnest money of unsuccessful bidders shall be refunded soon after the final acceptance of tenders. The earnest money shall be forfeited in the event of withdrawal of the tender within the original validity once submitted or in case a successful bidder fails to execute necessary agreement within the period specified.
- x. **Pre bid conference:** A pre-bid conference (date/venue to be indicated in the bid document) may be arranged wherein potential bidders may meet with the representatives of the implementing authority to seek clarifications on the tender documents. Copy of minutes of the pre-bid conference should be furnished to the bidders who had already purchased the bid documents and also along with the bid document sold to the parties purchasing the document subsequent to the pre-bid conference.
- xi. **Terms and Methods of Payment:** Payment terms shall be in accordance with the practices applicable to the specific goods and works. Tender documents should specify the payment method and terms offered.
- xii. **Conditions of Contract:** The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the implementing agency and of the Supplier or Contractor, and the functions and authority of the engineer, architect, or construction manager, (if one is employed by the implementing agency) in the supervision and administration of the contract. Special Conditions related to specific item should also be clearly specified in the tender document.
- xiii. **Performance Security Deposit:**
- (a) Tender documents for works and goods shall require security in an amount sufficient to protect the implementing agency in case of breach of contract by the Contractor. This shall be in the form of a bank guarantee or any other instrument and amount should be specified in the tender document. The amount of performance guarantee shall normally be 5% of contract price (valid till 28 days from the date of expiry of defect liability period or the guarantee/warranty period as the case may be).
 - (b) The performance security deposit shall be refunded within one month of the completion of supply of goods/works. It will, however, be refunded after the expiry of guarantee/warranty period (as mentioned above) where there is condition of guarantee/warranty.

- (c) The performance security deposit shall be forfeited in case any terms and conditions of the contract are infringed or the bidder fails to make complete supply satisfactorily or complete the work within the delivery/completion period agreed in the contract.
- xiv. **Retention Money:** In contracts for works, normally 5-10% of contract price shall be recovered for retention money. 50% of such retention money shall be retained till completion of the whole of the works and 50% shall be retained till the end of defects liability period.
- xv. **Liquidated Damages:** Provisions for liquidated damages shall be included in the conditions of contract when delays in the delivery of goods, completion of works would result in extra cost, or loss of revenue or loss of other benefits or inconvenience to the implementing agency.
- xvi. **Tender Opening:**
- The time for the tender opening should be immediately after the deadline for receipt time as discussed above.
 - Tenders shall be opened in public. The bidders or their representatives shall be allowed to be present at the time of opening of bids.
 - All tenders received should be opened. No bid should be rejected at bid opening except for late tenders. Late tenders shall be returned to the bidders unopened.
 - The name of the bidder and total amount of each bid along with important conditions like excise duty, sales tax, delivery terms, delivery period, special conditions, if any, shall be read out at the time of bid opening.
 - Spot comparative statement (minutes of bid opening) must be prepared by the bid opening official and should be signed.
- xvii. **Confidentiality:** After the public opening of tenders, information relating to the examination, clarification, and evaluation of tenders and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the successful bidder is notified of the award of the contract.
- xviii **Examination of Tenders**
- (a) The implementing agency shall ascertain whether the tenders
- Meet the eligibility requirements specified;
 - Have been properly signed;

- Are accompanied by the required earnest money and valid for the period specified in the tender document;
 - Are substantially responsive to the tender documents; and
 - Have the technical and financial capability to successfully execute the contract. For ensuring financial capacity a minimum turnover requirement should be indicated in bid document.
 - Are otherwise generally in order.
- (b) If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions, and specifications in the tender documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once tenders have been opened.

xix. **Tender Evaluation and Comparison**

- (a) The purpose of tender evaluation is to determine the cost to the implementing agency of each tender in a manner that permits a comparison based on its evaluation cost. The tender with the lowest evaluated cost and substantially responsive, but not necessarily the lowest submitted price, should be selected for award.
- (b) The bid price read out at the bid opening shall be adjusted to correct any arithmetical errors for the purpose of evaluation.
- (c) Evaluation of tenders should be made strictly in terms of the provisions in the tender documents to ensure compliance with the commercial and technical aspects.
- (d) The **conditional discounts** offered by the bidder shall not be taken into account for evaluation.
- (e) The past performance of the suppliers/ contractors should also be taken into account while evaluating the tenders. (this should also be indicated in bid document)
- (f) The implementing agency shall prepare a detailed report on the evaluation and comparison of tenders setting forth the specific reasons on which the recommendation is based for the award of the contract.

xx. **Negotiation**

There should not be any negotiation. Negotiations if at all shall be an exception and only in the case of proprietary items. Negotiations shall be held only with the lowest evaluated responsive bidder (L-I). Counter offers tantamount to negotiations and

should be treated at par with negotiation. In case of L-1 backing out, there should be retendering as per extent instructions.

- xxi. **Extension of Validity of Tenders:** As far as possible contract should be finalized within the original validity of the offers mentioned in the tender. An extension of bid validity, if justified by exceptional circumstances with the approval of next higher authority, shall be requested in writing from all bidders (of valid tenders only) before the expiry date. Bidders shall have the right to refuse to grant such an extension without forfeiting their Earnest Money, but those who are willing to extend the validity of their bid shall also be required to provide a suitable extension of Earnest Money.
- xxii. **Post-qualification of Bidders:** If bidders have not been pre-qualified, the implementing agency shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the technical capability and financial resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the tender documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the implementing agency shall make a similar determination for the next-lowest evaluated bidder and so on.
- xxiii. **Repeat Orders (goods/ equipment)**
- Quantities in contracts awarded may be increased/decreased as per the prevailing State procedure up to 15% of the quantity originally ordered by repeat orders after recording reasons provided that such orders shall be given before the date of the expiry of last supply and also subject to the condition that prices have since not reduced and purchases were required on urgency basis.
- xxiv. **Rejection of All Tenders**
- (a) Tender documents usually provide that implementing agency may reject all tenders. Rejection of all tenders is justified when none of the tenders are substantially responsive or when negotiations with the L1 bidder have failed. However, lack of competition shall not be determined solely on the basis of the number of bidders. If all tenders are rejected, the implementing agency shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new tenders.
- (b) If the rejection of all tenders is due to lack of competition, wider advertising shall be considered. If the rejection is due to most or all of the tenders being non-responsive, new tenders may be invited.
- (c) Rejection of all tenders and re-inviting new tenders, irrespective of value shall be referred to the **competent authority for approval after examining whether technical specifications need any change.**

(C) Limited Tender (National/International)

Limited Tendering is nothing but NCB without advertisement and rather by inviting bids from qualified suppliers as per the MOHFW list and other known suppliers broad enough to ensure receipt of competitive bids. This method shall be used only in exceptional circumstances.

This procedure could be adopted where

- There are only a limited number of suppliers of the particular goods or services
- Demand is urgent in nature
- Exceptional reasons exist justifying departure from full Advertised Open Tender.

Other procedures under Limited tender will be same, as that of Open advertised tender.

In all such cases approval of the competent authority to dispense with open advertised tender should be taken.

(D) Shopping

- (a) Shopping is a procurement method based on comparing price quotations obtained from several suppliers, usually at least three to ensure competitive prices.
- (b) Goods including drugs and equipment, and civil works estimated to cost the financial ceiling prevailing in States or less per contract (subject to a maximum value of US\$ 50,000 equivalent) may be procured under Shopping.
- (c) It is an appropriate method for procuring readily available off-the-shelf goods or standard specifications commodities of small value or simple civil works of small value.
- (d) Approval of competent authority may be obtained for items to be purchased or civil works to be constructed/ renovated/ repaired along with specifications, estimated costs and agencies from whom quotations should be invited.
- (e) The requests for quotations shall be made indicating the description, specification, and quantity of the goods, terms of delivery or specifications of works, as well as desired delivery or completion of time and place. If the quotations are called for more than one

item/works, it should also be indicated whether the evaluation would be for each item-wise or for civil works or as a package.

- (f) Quotations could also be obtained by telex or facsimile. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.
- (g) Rate contracts entered into by Directorate General of Supplies and Disposal (DGS&D) will be acceptable for procurement under shopping.

(E) Single Tender /Direct Contracting

- (a) The Single Tender system may be adopted in case of articles including drugs and equipment, which are specifically certified as of proprietary in nature, or where only a particular firm is the manufacturer of the articles demanded or in case of extreme emergency.
- (b) The single tender system without competition shall be an appropriate method under the following circumstances:
 - (i) Extension of existing contracts for works or goods awarded with the prescribed procedures, justifiable on economic grounds;
 - (ii) Standardization of equipment or spare parts to be compatible with existing equipment may justify additional purchases from the original supplier;
 - (iii) The required item is proprietary and obtainable only from one source;
 - (iv) Need for early delivery to avoid costly delays;
 - (v) Works are small and scattered or in remote locations where mobilization costs for contractors would be unreasonably high; and
 - (vi) In exceptional cases, such as in response to natural disasters.

(F) Procurement of Civil Works through Panchayati Raj Institutions (PRIs)

For small works of a value upto 6 lakhs, the States may decide to get these executed through PRIs wherever considered appropriate. In the RCH-II, construction/ repair of sub- centers would fall within this threshold limit. Wherever works are entrusted to PRIs, it should be ensured that these institutions do manage to obtain

contributions from the community. The extent of such contribution may be decided by the States. It should also be ensured that adequate arrangements for supply of standardized designs and preparation of estimates, supervision of construction, maintenance of quality control, and rendering appropriate accounts are in place.

(G) Fraud and Corruption

The borrowers (including beneficiaries of Bank loans), as well as Bidders, Suppliers, Contractors, and Consultants under Bank-financed contracts shall observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
 - (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the borrower, designed to establish bid prices at artificial, non competitive levels; and
 - (iv) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question;
- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
- (d) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Bank-financed contract; and

- (e) will have the right to require that a provision be included in Bidding Documents and in contracts financed by a Bank loan, requiring Bidders, Suppliers, Contractors and Consultants to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

(V) Award of Contract:

Implementing agency shall award the contract, within the period of the validity of tenders, to the bidder who meets the tender conditions in all aspects, has the necessary technical capability and financial resources and whose bid is substantially responsive to the tender documents and has the lowest evaluated cost. The purchaser can, if so desired depute a team of 3-4 officers to the premises of manufacturer to whom the contract is proposed to be awarded, to satisfy itself that the manufacturer has capability to produce the required quantity and also the necessary quality testing and assurance facilities to meet the required standards. Based on the report of this committee, the purchaser may decide to award the contract to the successful bidder offering the lowest or reasonable price after approval of the appropriate authority.

Single bids should also be considered for award, if it is determined that publicity was adequate, bid specification/conditions were not restrictive or unclear and bid prices are considered reasonable.

(VI) Inspection, Sampling and Testing procedure

The inspection authority and procedure for sampling and testing should be clearly specified in the tender document. The purchaser must select a set of accredited testing laboratories for testing the samples and choose an inspection agent qualified to conduct random sampling in accordance with ISO requirements. The purchaser should request a written confirmation from the supplier that the results of the testing laboratory chosen for qualification and compliance testing will be accepted by the supplier. The name of the testing lab should be incorporated in the tender document. The authority to collect random samples should be specified. The purchaser may require verification of the WHO GMP certification of the supplier, for all ICB procurement of pharmaceuticals. The pooling partners will support procurement of pharmaceuticals and medical supplies under NCB and Shopping only after concerns regarding revised Schedule M have been addressed in a way that is satisfactory to the pooling partners.

The purchaser will decide whether 100% pre- dispatch inspection is required at the manufacturers' premises, depending on the items to be purchased. Some times it is important to verify that each manufactured batch complies with the specifications before it is finally dispatched to the consignee. When a consignment is ready for dispatch, the supplier will inform the purchaser that the consignment is ready for the testing. Purchaser then instructs the inspection agency to carry out the inspection viz. visit the supplier's factory and draw samples from the batches offered for inspection, in

accordance with sampling guidelines. The inspection agency will send the samples directly to the designated testing laboratory chosen by the purchaser for quality testing. Based on the results of the test, the batch may be cleared for dispatch. To avoid later dispute on the testing results, if feasible, a representative of the supplier may be invited to witness the testing of the sample at the laboratory.

In case of procurement of kits, where the kits are assembled by another party, before supplying the final kits to the purchaser, the inspection and quality control procedures should be clearly mentioned in tender document.

The above procedure applies mainly for procurement of drugs. In case of procurement of other goods, they may be inspected on arrival at purchaser's premises for any possible damage/defect either in manufacturing or in transit. In case of complex capital goods, the inspection at manufacturers' premises may also be required.

If the stores do not meet the performance requirement, they should not be accepted. If there are any disputes or doubts about the quality of the products, a procedure of resolution of dispute may be followed as per the terms of the contract.

A suitable inspection agency may be hired to ensure adherence to the laid down quality standards.

(VII) Notification of Delivery to Consignee

Notification of delivery or dispatch in regard to each and every installment shall be made by the supplier to the Purchase Officer. The supplier shall further supply to the consignee a packing account quoting number of Supply Order and the date of dispatch of the stores. All packages, containers, bundles and loose materials part of each and every installment shall be fully described in the packing account and full details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the stores on arrival at destination. The railway receipt, consignment note or the bill of the lading, if any, should be drawn in the name of the consignee and should be sent to him by registered post acknowledgement due immediately on dispatch of stores, quoting the No.(s) and date(s) of the corresponding Inspection Note(s) in relation to the stores covered by the said Railway Receipt, the consignment note or the Bill of Lading, as the case may be. The contractor shall bear and reimburse to the purchaser, demurrage charges, if any paid by the reasons of delay on the part of the supplier in forwarding the Railway receipt, consignment note or bill of lading.

(VIII) Receipt of consignment

In case of imported stores, the purchaser should be aware of the Custom clearance requirement prior to issuing the contract. A clear procedure (i.e. who will clear the goods and pay the duties, loading and unloading of the consignment, transport of the consignment to the premises of the consignee etc.) for custom clearance should be specified in the contract.

At the time of the delivery of the stores, the consignee should accept the stores on “said to contain” basis and should issue the provisional receipt certificate in the standard format (sample attached). After opening the packages and detailed examination of the stores the consignee will issue the final acceptance certificate if he is satisfied with the quality of the goods. Notwithstanding the pre-qualification or the inspection of the goods/services by the inspection agency, consignee has the right to further inspect and test the goods but within a reasonable time (say upto 60 days) and if the goods fails to meet the specifications given in the contract, he should reject the goods and ask the supplier to replace the goods or rectify the defects.

(IX) Storage

Experience has demonstrated that properly packed, good quality goods (except some drugs and vaccines or specific items) do not deteriorate when stored at average temperatures found in tropical climates. Air-conditioning is generally not necessary if the goods are properly packaged and stored in a clean, dry and well-ventilated environment.

If quality assurance measures have been strictly followed during the manufacturing process the conditions of warehousing and storage play a major role in ensuring that quality goods received reach final users in good condition. They should be left in their original packaging while in storage. The batch number and marking on the cartons should be recorded to ensure that every batch is traceable and distributed on a first in first expiry basis. The drugs, which require special storage including maintaining proper temperature should be stored in appropriate condition.

(X) Resolution of Disputes

The dispute resolution methodology should be very clearly indicated in the contract document. As far as possible, disputes may be resolved with mutual agreement between purchaser and buyer through alternate dispute resolution methods to avoid going through arbitration and litigation stage.

There are a number of possible causes of disputes during the execution of contract. These may involve:

- Interpretation of the terms and conditions of the contract
- Delay in delivery / completion of the works
- Delay in release of payment
- Independent laboratory test results
- Condition of the items on arrival at consignee and after delivery
- Rate of the items, variation in quantity in civil works contract etc.
- Design/specification issues.

Disputes over Laboratory Results

Disputes over product acceptance usually arise when independent testing determines that the product is not in compliance with the required specification or standard. It is also possible for a manufacturer to dispute a decision made by the inspection agency regarding product packaging or appearance.

In most cases, manufacturers accept the results of independent laboratories and replace Batches that have been rejected. When the manufacturers do not accept the test results, they usually present test results or other evidence to suggest that the independent laboratory tests are incorrect and do not accurately represent the quality of the product tested. Procedures for dealing with such disputes should be covered in the contract.

Decisions on Re-testing

Re-testing should only be undertaken when there is reasonable evidence that the laboratory has made a mistake. Before considering a re-test all the available data should be reviewed. If a manufacturer disputes a test result, the following issues should be considered in deciding whether to allow a re-test:

- What is the margin by which the product has failed to comply?
- Is the manufacturer's history of production for the client a good one?
- What is the nature of the difference between the manufacturer's and the laboratory's test results? Where appropriate, the laboratory should keep the failed samples of goods so that the manufacturer can examine them.
- Samples of the failed batch could be sent to the designated appellate testing laboratory as specified in the contract.

The amount of information available for review depends on the type of test. In all cases, the manufacturer should bear the cost of a re-test, unless it can be demonstrated that it is likely that the laboratory has made a mistake. To avoid the dispute over laboratory results, it is always desirable to invite the representative of the supplier to witness the testing of samples.

XI. Laws Governing The Contract

1. The contract shall be governed by the laws of India in force.

2. The courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.
3. Irrespective of the place of delivery, the place of performance or place of payment under the contract or the place of issue of advance intimation of acceptance of tender, the contract shall be deemed to have been made at the place from where the acceptance of the tenders have been issued.

XII. Arbitration

- (i) In the event of any question, dispute or difference arising under the contract conditions or any special conditions of contract, or in connection with the contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of an Officer, from the department other than the department who has decided the contract having sufficient knowledge of Law, appointed to be the arbitrator by the Purchaser. The award of the arbitrator shall be final and binding on the parties to this contract.
- (ii) In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, shall be lawful for the purchaser to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid,
- (iii) It is further a term of the contract that no person other than the person appointed by the purchaser as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitration at all.
- (iv) The arbitrator may from time to time with the consent of all parties to the contract enlarge the time for making the award.
- (v) Upon every and any such reference, the assessment of the costs incidental to the reference and award respectively shall be in the discretion of the arbitrator.
- (vi) Subject as aforesaid, the Arbitration Act, amended up to date and the rules there under and any statutory modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this clause.
- (vii) The arbitrator shall be requested to give reasoned award.
- (viii) The venue of arbitration shall be the place from which formal Acceptance of Tender is issued or such other place as the purchaser at his discretion may determine.

Suitable clause may be incorporated in the Tender Enquiry to obtain the consent of the bidder to accept the arbitration clause.

XIII. Extension of Contract (Works)

Normally a contract once awarded should not be extended. Under exceptional circumstances, extension of existing contracts upto 50% of the original contract value may be considered, if it is justifiable on economic grounds.

XIV. Complaint Redressal Mechanism (also applicable to service procurement)

In order to deal with the complaints received from the contractors/ suppliers effectively, a complaint handling mechanism should be available at the national level as well as at state level, and immediate action should be initiated on receipt of complaints to redress the grievances. All complaints should be handled at a level higher than that of the level at which the procurement process is being undertaken and the allegations made in the complaints should be thoroughly enquired into. If found correct, appropriate remedial measures should be taken by the appropriate authorities.

In case any individual staff is found responsible, suitable disciplinary proceedings should be initiated against such staff under the applicable government conduct rules. The existing provisions under the Indian law including the instructions of central vigilance commission should be followed in this regard.

XV. Procurement Audit (also applicable to service procurement)

All the procurement done by the Central and State governments (including PRIs) are subject to post audit by Comptroller and Auditor General (CAG)/State Audit Departments and by the Development Partners (DPs). Hence, all the documents related to the procurement should be filed and kept systematically and safely.

XVI. Review by the World Bank (also applicable to service procurement)

(a) It is the Bank's policy to require that Borrower's, as well as bidders, suppliers, and contractors under Bank financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers, and contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

(b) Contracts which are (i) not subject to prior review by the Bank, and (ii) awarded following these guidelines will be post reviewed by the Bank.

(c) The Borrower shall retain all documentation with respect to each contract (excluding contracts subject to prior review by the Bank) during project implementation and up to two years after the closing date of the Loan Agreement. This documentation would include, but not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by the Bank or its Consultants. The Borrower shall also furnish such documentation to the Bank upon request. If the Bank determines that the goods, work or services were not procured in accordance with the agreed procedures, as reflected in the Loan Agreement and further detailed in the Procurement Plan approved by the Bank or that the contract itself is not consistent with such procedures, it may declare misprocurement as established in the procurement guidelines. The Bank shall promptly inform the Borrower the reasons for such determination.

(c) Hiring of Consultants

Background:

Definition of services includes training, workshops, IEC activities (printing or distributing material through an agency), contraceptive distribution services, research and studies, hiring of procurement agents, hiring of consultants, NGO services, PPP agreements and other similar contracting.

General Considerations

- High-quality services;
- Economy and efficiency;
- Give qualified consultants an opportunity to compete
- Encouraging the development and use of national consultants
- The importance on transparency in the selection process

The procedures to be followed in all cases are given below in brief.

Steps

- Establish the need for the assignment and outsourcing the services
- Preparation of the Terms of Reference (TOR)
- Preparation of cost estimate and the budget
- Agreeing on the Contracting Strategy
- Advertising (for short listing of the firms when the purchaser has no knowledge about the firms who could take up the assignment)
- Preparation of the shortlist of consultants
- Preparation and issue of Request for Proposal (RFP)
 - Letter of Invitation (LOI)
 - Information to Consultants (ITC)
 - Proposed contract
- Receipt of proposals
- Opening and Evaluation of technical proposals
- Evaluation of financial proposal
- Combined evaluation of quality and cost
- Negotiations and award of the contract to the selected firm

1. Preparation of the Terms of Reference (TOR)

The Terms of Reference should include:

- A precise statement of objectives
- An out line of the tasks to be carried out
- A schedule for completion of tasks
- The support/inputs provided by the client
- The final outputs that will be required of the Consultant
- Composition of Review Committee (not more than three members) to monitor the Consultant's works
- Review of the Progress Reports required from Consultant
- Review of the final draft report
- List of key positions whose CV and experience would be evaluated.

II. Preparation of cost estimate and the budget

The Cost Estimates or Budget should be based on the assessment of the resources needed to carry out the assignment, staff time, logistical support, and physical inputs (for example, vehicles, office space and equipment). Costs shall be divided in to three broad categories;

- (a) Fee or remuneration;
- (b) Reimbursable costs; and
- (c) Miscellaneous expenses.

III. Contracting Strategy:

Before starting the tendering exercise, it is essential to agree on contract strategy viz. going for lump-sum or time based contract, individual vs. firm, advertising vs. internal short listing, terms of payment etc. Above US\$ 200,000 equivalent normal procedure would be Quality and Cost Based Selection (QCBS), which will follow the Bank's Consultancy Guidelines.

IV. Advertising

In case a short list of 3-6 consultants cannot be drawn by the purchaser by its own knowledge, the adverting through newspapers is the right way to compile the short list. Advertisement is issued asking the potential service providers to indicate their interest in the assignment and provide abridged CVs of the proposed team members, their previous experience in similar type of assignment and the financial statement of the organisation through last 3 years balance sheets. The advertising may be considered in the following media:

- Regional Newspapers;
- National Newspapers;
- International Newspapers;
- Technical Magazines; and
- Purchaser's Website.
- In United Nations Development Business (UNDB), dgMarket and DFID website for contracts estimated to cost more than US\$ 200,000 equivalent.

V. Short listing

If the assignment has been advertised, the expressions of interest received shall be evaluated to arrive at shortlist of the consultants. In preparation of the shortlist first consideration shall be given to those firms expressing interest, which possess the relevant qualifications. The shortlists shall comprise three to six firms. In contracts below US\$ 500,000 equivalent, shortlist may comprise national consultants only.

Govt. owned enterprises can be considered for award of consultancy assignment. However, such enterprises directly under the administrative control of the Purchasing Department/ Organisation should not generally be considered for such assignment.

VI. Types of Contracts

Various types of contracts are as under:

- Lump Sum – These contracts are used for assignments in which the content and the duration of the work is clearly defined. Payment is made upon delivery of outputs. The main advantage of this type of contract is that it is easy to administer. Examples of Lump Sum contracts include Feasibility Studies, Environmental Studies, Detailed design of a standard structure etc.
- Time Based - these contracts are used for assignments in which it is difficult to define the scope and the duration of the work to be performed. Payment is based upon an hourly, daily, or monthly rate, plus reimbursable expenses using actual expenses or agreed-upon unit prices. This type of contract provides for a maximum total payable amount that includes a contingency for unforeseen work and duration, price adjustments etc. Examples of Time Based contracts include Preparation of data, Complex Studies, Supervision of construction of civil works, Training assignments, Advisory services etc.
- Percent contracts relate to the fee paid to the consultant based upon the estimated or actual project construction cost or the cost of the goods to be procured or inspected. Percentage is established based upon market norm or standard practice in the

industry. Examples of percent contracts include Architectural services, Engineering services, Procurement services, Inspection agents etc.

VII. Request for Proposals (RFPs)

The RFP shall include:

- A Letter of Invitation (LOI), which will include evaluation criteria
- Information to Consultants
- Terms of Reference
- Draft of the proposed contract

A sample evaluation criteria is given below:

Evaluation Factors		
Quality (Each should have a sub-criteria not exceeding three)	Experience	5 to10
	Methodology	20 to 25
	Key Personnel*	55 to 60
	Transfer of Knowledge (if required)	5
Total		100

Minimum qualifying marks (say 70%) for technical proposal should be indicated in the RFP document.

*The individuals shall be rated in the following three sub-criteria, as relevant to the task:

- (a) General qualifications: General education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries and so forth;
- (b) Adequacy for the assignment: Education, training, and experience in the specific sector, field subject, and so forth, relevant to the particular assignment; and
- (c) Experience in the region: Knowledge of the local language, culture, administrative system government organization, and so forth.

VIII. Opening and Evaluation of Proposals

The technical proposals are to be opened publicly and evaluated based on the evaluation criteria given in the RFP document. The commercial proposals of only those bidders who secure more than minimum qualifying marks should be opened.

IX. Negotiations and Signing of Contract:

If required, negotiations on technical and commercial aspects (if permitted by the state's guidelines) should be held with the lowest qualified bidder and on conclusion of the same the contract should be signed.

Normally no penalties are imposed on the consultants, be it a firm or individual, for unsatisfactory performance or delay in completion of the assignment/ services in the agreed time frame. It is hence suggested to do the performance evaluation of the consultant on completion of each assignment and keep the same in view while short-listing them for any future assignment.

X. Single source selection may be appropriate only if it presents a clear advantage over competition and on account of the following reasons:

- For tasks that represent a natural continuation of previous work carried out by the firm.
- Where a rapid selection is essential (emergency operation).
- For very small assignments (say up to US\$ 20,000 equivalent or Rs. 10 Lakhs); or
- When only one firm is qualified or has experience of exceptional worth for the assignment.

XI. Each contract for individual consultants is expected to cost below US \$ 50,000 equivalent only. For hiring of individuals, it is necessary to finalise the job description, qualification and experience required and terms of engagement. Thereafter an advertisement (if the assignment is complex) may be put into the national/ regional newspapers indicating the above details. The applications received shall be scrutinized and ranking shall be prepared. Thereafter the top-ranked individual shall be invited for interviews/discussions and would be offered the assignment.