

PROCUREMENT POLICY  
OF  
UTTAR PRADESH MEDICAL SUPPLIES CORPORATION LIMITED

**PART - I**  
**DRUGS & MEDICAL CONSUMABLES**

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## 1. Introduction

Uttar Pradesh Medical Supplies Corporation Limited (UPMSC LTD.), an undertaking of the Government of Uttar Pradesh established under Company's Act 2013, is a nodal agency for procurement of drugs, medical equipments and other healthcare commodities for various government medical institutions in the state. The procurement is to be done on the request of head of the departments (Director General Medical Health, Director General Medical Education, Director General Family Welfare) & 4 project directors with deposit of funds.

This document lays down the directives to be adopted by UPMSC for procurement of quality drugs & medical consumables for all health facilities/institution of the state by adopting fair and transparent system by providing equal opportunities to all prospective agencies.

## 2. Governing Acts/rules/guidelines

This policy document is based on "UTTAR PRADESH PROCUREMENT MANUAL (Procurement of Goods), 2016". UPMSC is a dedicated agency for procurement and distribution of drugs and medical consumables where quality and timely availability are of paramount importance. An efficient procurement/sourcing mechanism is the first step in extending seamless access to essential medicines. Hence it will be important to have a specific purchase policy for timely procurement of quality drugs while abiding core principles of public procurement.

**Short title:** This rule may be called "UPMSC drug procurement policy".

## 3. Scope of procurement

The Corporation should do procurement on the following grounds:

- a. Indent of various directorates, autonomous institutes under Department of Health and Family Welfare, Department of Medical Education and Department of Animal Husbandry with deposit of funds.
- b. Procurement for other Govt. organizations / UN agencies if so is approved by Board of Directors (BoD).

#### **4.METHODS OF PROCUREMENT:**

**a. Direct purchase without quotation:**

Purchase of goods up to the value of **Rs. 25,000/- (Rupees Twenty-Five Thousand) only** on each occasion may be made without inviting quotations or bids on the basis of certificate to be recorded by the competent authority authorized by Managing Director, UPMSC.

**b. Purchase of goods by purchase committee:**

Purchase of goods costing above Rs. 25,000/- (Rupees twenty-five thousand) only and up to **Rs. 2,50,000/- (Rupees two lac fifty thousand) only** on each occasion may be made on the recommendations of a duly constituted Purchase Committee consisting of three members of an appropriate level as decided by the Managing Director. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Price comparison can also be done by referring e-commerce web-sites and online orders may also be placed.

**c. Purchase of goods through GeM:** Corporation may procure items under **GeM** as per provision laid down in GFR 2017 & directives of Govt. of UP by directly placing orders to the registered suppliers.

**d.** Corporation may also procure drugs under **Purchase Preference Policy** from Central Public Sector Enterprises if so is required under any direction of GOI or Govt. of Uttar Pradesh.

**e. Purchase of goods by obtaining bids:** Except the cases covered under 4.a, 4.b, 4.c & 4.d, following standard procedure should be adopted: -

**i. Limited tender enquiry:**

Purchase through Limited Tender Enquiry may be adopted in the following circumstances.

- The competent authority certifies that the demand is urgent and should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.
- There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.
- The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped, is remote.

### **Procedure of Limited Competitive Bidding:**

- a. Copies of the bidding document should be sent directly by speed post/registered post/courier/e-mail to firms/companies, which are borne on the list of registered suppliers for the goods in question. The number of supplier firms/companies in Limited Tender Enquiry should be more than 3 (three). Further, web based publicity should also be given for limited tenders. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.
- b. In case registered bidders in sufficient numbers are not available, invitation to bid should be sent by writing directly to an adequate number of manufacturers or authorized dealers, who can supply the subject matter of procurement selected in a nondiscriminatory manner to ensure effective competition.
- c. Sufficient time should be allowed for submission of bids in limited tender enquiry cases. A minimum period of 7 (seven) days, 3 (three) days in case of emergency, shall be given to the firms/companies to offer their bids.
- d. Bid security shall not be obtained in case of limited competitive bidding, but performance security deposit shall be obtained from the successful bidder.
- e. The remaining procedure of open competitive bidding shall apply mutatis mutandis in this method of procurement including preparation of Notice Inviting Bids (NIB) and bidding documents

### **ii. Open tender:**

1. The open tender system, i.e. invitation to tender by advertisement, should be used as a general rule for procurement of goods. E-Tendering process shall be adopted for this purpose.
2. In all cases of open tender, it is essential that wide publicity is given to the tender notification. Notification of tender shall be published in the State Public Procurement Portal in addition to posting on the UPMSC website. An abridged notice shall also be published in at least one Hindi and one English well known newspapers having wide circulation so that the information reaches prospective suppliers.

3. If approximate value of tender is more than worth Rs.10 crores, then short advertisement should be published in at least two national daily and two regional daily newspapers in addition to website publications. The tender notifications are may also sent to pharmaceuticals manufacturing associations for wide publicity.
4. Minimum 21 days should be given for bid submission.
5. Notice inviting tenderer (NIT) must be published on the websites viz. [www.etender.up.nic.in](http://www.etender.up.nic.in) and [www.upmsc.in](http://www.upmsc.in)
6. **Short tender enquiry:** In case of urgent requirement or re-tender, short tenders giving 10-15-days time can also be floated.
7. **Tender Document:** For all tenders of the corporation, there should be a clearly defined bidding document\*, which should contain following sections:
  - i. Schedule of Requirements
  - ii. Eligibility criteria
  - iii. Instructions to Bidders and important days/last date of submission and time
  - iv. Conditions of Contract including delivery time and penalty provisions.
  - v. Specifications and allied Technical Details.
  - vi. Annexures/ Standard Forms, if any, to be utilized by the purchaser and the bidders
  - vii. Integrity Pact as per CVC directives to be signed by each supplier.

\*The text of the bidding document shall be self-contained and comprehensive without any ambiguities. All essential information, which a bidder needs for sending responsive bid, shall be clearly spelt out in the bidding document in simple language.

- f. **Alternative procurement:** In cases where prospective bids are not obtained through open tender, Corporation can do procurement from the most cost effective source among the following agencies. However not more than 2 month's requirement shall be done at any particular instance.
  1. Public sector undertaking firms: KAPL, IDPL, RDPL BPCL & HAL.
  2. Procurement from vendors approved by Other State Medical services corporations: RMSCL, TNMSC, GMSCL and other similar corporations.
  3. If any product or company gets debarred/blacklisted during rate contract period and the product under contract is desired, then corporation can buy it from next responsive bidder for the product.

**g. Procurements for External funding agencies such as UN agencies:** For procurement under externally funded projects such as World Bank, the procurement guidelines and Financial Rules and Regulations of the funding agency shall be followed.

## **5. Eligibility Criteria:**

- Procurement through open tendering shall be done directly from manufacturers, having valid manufacturing license or direct importer of drugs, holding valid import license.
- Bidder must have valid license to manufacture/import the item of drug quoted as per specification in the tender from the competent authority & have at least 3-year experience as a manufacturer/importer for each drug quoted unless it falls under new drug category.
- The premises at which quoted product is to be manufactured shall have Valid GMP & GLP certification (As per revised schedule 'M' & L-1 of D & C Act 1940)/WHO GMP certification.
- Minimum average annual turnover in the last three years should be Rs. 20 Crores for parenteral products and oral formulations & Rs.5 Crores for external formulations. For sutures & surgical, minimum average annual turnover of last three financial years shall not be less than Rs.1 crore. In case of retender on ground of non-receipt of responsive bids or specific items for which getting prospective bidders with high turnover is less likely, the tender committee of UPMSC may recommend lowering the turnover eligibility criteria before the tender is floated. In such case turnover criteria can be lowered with approval of Managing Director, UPMSC.
- The bidding company shall not have suffered financial loss of more than one in preceding three financial years. In case Global bidding, accounting year will be calendar year. The financial criteria for Start Up companies shall be as per Government of India policy.
- The company/firm which has been debarred/blacklisted either by tender inviting authority or by any state government or central government organization shall not be eligible to participate in the tender during the period of blacklisting.
- The company/firm which has been convicted by any Court of Law of the Country under the provisions of Drugs & Cosmetics Act, 1940, Drug (Prices Control) Order or any other Criminal Law, shall not be eligible to participate in the tender.

- Procurement under method 4.a & 4.b can be done from wholesalers having valid license.

## **6. Tender fee:**

The tenders would generally be with multiple items with option for bidders to bid for selected items based on their preference & eligibility. All major tenders shall be e-tenders & hence to promote more participation and reduce overall cost to bidders, tender fee shall be Rs.2250/- only including taxes. Tender fee shall be received through NEFT/RTGS transaction.

## **7. Earnest Money Deposit (EMD):**

EMD acts as a safe guard against bidder's withdrawing/altering its bid during the bid validity period. EMD shall only be asked in case of open tender. Submission of EMD shall be mandatory unless exempted in accordance with State MSME Policy. EMD shall be minimum of Rs.2 Lacs for participating for up-to 10 items, for each additional item up-to total 25 items, additional EMD of Rs.20000/- per item shall be required, for participating for more than 25 items, EMD shall be fixed amount of Rs.5 Lacs in total. Hence if a bidder quotes for more than one drug, the Earnest Money Deposit payable by such bidder shall be the aggregate total of the Earnest Money Deposit for all the drugs quoted by such bidder. However, minimum EMD worth Rs. 2 lacs have to be submitted irrespective of number of items for which bid is quoted & by submitting EMD of worth Rs. 5 lacs, the bidder can participate in any number of item.

EMD shall be submitted online through NEFT/RTGS and receipt of the same shall be uploaded in e-Tender portal along with other documents. EMD shall be deposited from bank account of bidder only.

### **Validity of EMD**

The EMD should remain valid for a period of 45 days beyond the final tender validity period. This time period must be indicated in the bidding documents. Should it become necessary to extend the validity of the bids and the bid securities, UPMSC shall request in writing all those who submitted bids for such extension before the expiry date thereof. Bidders shall have the right to refuse to grant such extension without forfeiting their bid securities. The bidders who refuse to grant the UPMSC's request for an extension of the



validity of their bids and bid securities, will have their bid securities returned to them. They shall be deemed to have waived their right to further participate in that bidding.

### **Forfeiture of EMD**

EMD of a tenderer shall be forfeited, if the tenderer withdraws or amends his tender or impairs or derogates from the tender in any respect after expiry of the deadline for the receipt of tender but within the period of validity of his tender. Further, if the successful tenderer fails to furnish the required performance security within the specified period, his EMD will be forfeited. For partial default or non-acceptance of contract for any item (on justified ground like typographical error in quoted rate), 1 % of total contract value of the item shall be forfeited from the EMD. If the amount would be higher than the EMD amount itself then the bidder has to pay the difference amount within 10 days of such intimation & in case of non-compliance the bidder shall be debarred from doing business with UPMSC for 2 years.

### **Refund of EMD**

EMD furnished by all unsuccessful bidders should be returned to them without any interest whatsoever, not later than 30 (thirty) days after conclusion of the contract. EMD of the successful tenderer should be returned, without any interest whatsoever, after receipt of performance security as called for in the contract.

## **8. Tender opening, evaluation & award of contract:**

Encrypted bids in e-Tendering portal shall be opened as per advertised schedule with Digital signature of a multi member committee authorized by MD, UPMSC. The bids should be evaluated by committee constituted with approval of MD, UPMSC. Documents should be evaluated as in compliance with the tender document.

### **a) Inspection:**

Quality of drugs should be given highest priority. UPMSC may depute a team including official from FSDA along with UPMSC official/ officials from user department or any senior UPMSC official to inspect manufacturing units with a defined protocol. GMP inspection may be carried out at all manufacturing premises from which bid is quoted. Manufacturing facility, which is not up-to the benchmark standard, may be rejected. Once rejected the facility will be declared in-eligible for participation in tender

up-to two subsequent years. Manufacturing units which are inspected once and found suitable, need not be inspected for next three years.

**b) Finalization of vendor:**

List of technically qualified bidders & non-qualified bidders (with reasons) shall be published as provisional list on the official website of corporation. A window period of 2 days shall be given for submission of grievance by disqualified bidders if any & the same shall be addressed within next 2 working days. No representation shall be entertained after the prescribed window period of two days. The final list of technically qualified & disqualified bidders then shall be uploaded in UPMSC website with due approval of MD, UPMSC.

Financial bid shall only be opened for the bidders who are technically qualified. Tenders/vendors can be finalized irrespective of no. of bids obtained however sufficient proof for price justification should be established in case of single bid/offer.

**c) Award criteria:**

Contract will be awarded to the qualified Bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, subject to the bidder agrees to all terms and condition of the tender. In case of non-acceptance of agreement, the Purchaser will proceed to the next-lowest evaluated Bidder. This contract will be called Principal Contract.

**d) Price preference for state SSI & MSME:**

Latest directive of state Government shall be adhered for price preference in procurement.

**e) Multiple supplier empanelment:**

MD, UPMSC shall have the rights to call other eligible firms those are willing to match L-1 Rates. If such firms are found, then the order quantity may be dispersed in ratio of 60% for L-1 & 40% for those who match L-1. MD, UPMSC shall have the sole right to decide number of bidders to be empanelled depending up-on the nature of drugs/requirement. Preference will be given to the closest bidders to L1 in case multiple bidders shows willingness to match L1 price. This contract will be called Parallel contract.

**f) Right to reject:**

- After negotiation with the bidder and before passing the order accepting a tender, if the tender accepting authority decides that the price quoted by such bidder is higher by the percentage as may be prescribed over the schedule of rates or prevailing market price, the tender shall be rejected.
- The tender accepting authority before passing the order of accepting a tenderer, may also reject all the bids for reason such as changes in the scope of procurement, lack of anticipated financial resources, court orders, calamities and other unforeseen circumstances.
- If any drugs not approved by the tender committee and/or UPMSC board, retenders shall be invited for those items and the same shall be placed once again in front of the tender committee and UPMSC board for approval as per the value of the item.

**9.Contract management**

**a) Agreement:**

A written agreement has to be done with the firm to whomsoever any contract is awarded. Declaration submitted by the bidders during submission of tender can also be considered as legal agreement if it is asked in stamp paper. Apart from the agreements with L-1 bidder & matched bidders, UPMSC may also do contract with other bidders who are willing to supply drugs/goods at their quoted prices.

**b) Security Deposit (Performance security):**

Performance security acts as a safeguard against unsatisfactory performance or violation of contract agreement by the supplier on the contract. Performance security shall be solicited from all successful bidders. Ordinarily, performance security will be 5% of the value of the contract as stated in the bid document. Performance security may be furnished in form of an Account Payee Demand Draft/FDR/BG from a nationalized/ scheduled bank approved by RBI. Performance security is to be furnished within 15 days after notification of the award and it should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier. For convenience of contract management, security deposit shall be collected with 36 month's validity.

**c) Supply terms, Delivery time, Liquidated damage, Penalty clauses:**

The tender document should spell out the delivery time, late delivery charges (liquidated damage) and penalty clauses clearly. These conditions can vary depending upon the items to be procured. The tender committee of UPMSC will recommend the condition and MD, UPMSC will be final the authority to approve same. Supplies may be accepted up-to 30 days beyond the stipulated delivery period with penalty for delayed supply (liquidated damage) of 0.2 % per day on value of goods supplied with delay. Beyond 30 days of scheduled supply period, the purchase order shall stand cancelled and penalty of flat 20 % shall be levied on value of unexecuted portion.

**d) Special conditions of supply & handling of deviations:**

Special conditions like requirement of packaging materials (i.e. packaging standards), components required in unit packing, logo grams to reduce chances of pilferage etc. shall be clearly spelt out in tender document. UPMSC shall use standardized checklist to verify the consignments received against any purchase order for its correctness and compliance to the tender conditions.

- Deviation such as non-printing of logogram, presence of brand name etc. shall be considered as minor deviation and consignment shall be accepted with such deviation. However, penalty provision shall be made in the tender document to discourage such non compliances.
- Drugs with difference in specification, difference in packing material, difference in drug license number, missing packing component (like dropper, measuring cap etc.), supply of biological products without maintenance of cold chain wherever asked for shall not be accepted.
- In general, drugs with minimum 80 % residual shelf life shall be accepted. Minimum residual shelf life of 60% shall be acceptable for vaccines & imported drugs. However, consignment with lower residual shelf-life can be accepted if the supplier undertakes to take back the unconsumed quantity if expired and pay back the corresponding amount. In any case, drugs with below 50 % residual shelf life shall not be accepted
- UPMSC shall have a defined protocol for handling of product received with deviation detailing types of deviation, reporting, approval levels, timelines etc.

**e) Quality Assurance:**

Sample of all batches of all product received through UPMSC central procurement shall be subjected to physical verification for tender condition, statutory compliance & confirmatory quality testing by the empanelled NABL accredited drug testing laboratory/Govt. laboratory for confirmation of quality. Drugs shall be deemed finally accepted & eligible for payment when batch is declared as of standard quality based on reports of empanelled lab. If a sample of a batch is declared as not of standard quality, another portion of retained sample received from the warehouse(s) shall be sent to another two empanelled laboratory for confirmation of results. If the sample is declared not of standard quality by any one of the two laboratories, then batch has to be returned to the supplier. Unless the firm is liable for blacklisting on grounds of NSQ supply, a replacement order for the NSQ quantity shall be issued. Timelines & supply conditions for replacement of NSQ goods shall be same as for any fresh purchase order. Quantity corresponding to NSQ batch shall be deemed as non-supply and flat 20 % penalty shall be levied on the value of corresponding quantity. In case the supplier does not take the stock of NSQ drugs back as per prescribed timeline, the stock of NSQ shall be destroyed after lapse 90 days.

**Exemption from testing:** Biological products which are mandated to be tested at govt. laboratories like CRI Kasauli, NIB, Noida etc. and are accepted with quality certification from such labs and shall be exempted from mandatory retesting after receipt at UPMSC warehouse (E.g.: ASV, ARV). Corporation may also consider exempting other high cost medicines/imported products like albumin, anticancer drugs with approval from Board of Directors for such exemption based on a threshold value of the sample.

Corporation (UPMSC) shall adopt a clear quality assurance policy/process approved by Board of Directors.

**f) Risk Purchase:**

In case of NSQ (Not of standard Quality) supply or failure of execution of purchase order within stipulated delivery period, UPMSC shall be at liberty to make alternative purchase of items for which purchase orders have been placed from open market or from any other bidder who might have quoted higher rates, at the risk and cost of the

supplier and in such cases UPMSC shall have every right to recover the cost and impose penalty as specified in tender document.

**g) Testing & handling charge:**

A total amount of 1.5 % on value of goods received shall be deducted from payment to be made to the supplier as testing & handling charge. This must be clearly mentioned in tender document.

**h) Payment:**

Timely payment is the best incentive that can be extended to attract vendors to participate in tenders and execute supplies in time. Further a well-defined and time bound payment process enhances transparency & system credibility. Payment shall be made purchase order wise. Payment against any purchase order shall be made to the supplier within 45 days of completion of supply based on quality clearance status. The payment shall be made through NEFT/RTGS only. A statement of payment with details of all deductions shall be furnished to the concerned suppliers for their reference. In case of partial supply (Supply below 90 % of the order quantity) payment process shall be initiated after completion of 120 days from purchase order.

**i) Debarring / Blacklisting:**

- If the supplier fails to execute at least 50% of the order quantity for any particular drug for more than two purchase orders, then the supplier shall be debarred for supply of that particular drug for a period of two years.
- If any one batch of any drug is found to be spurious or adulterated, the vendor shall be blacklisted as whole for three years.
- If two batches of any drug supplied by a vendor are found not of standard quality (except spurious or adulterated), then the vendor shall be blacklisted for that particular drug for a period of three years.
- If a supplier is blacklisted for more than two products for quality issues, then the supplier shall be debarred as whole for a period of three years.

- The bidder/supplier who have submitted forged documents in tender or in correspondence to any subsequent communication from UPMSC shall be debarred to participate in the tenders for a period of 5 years.
- Goods against orders placed prior to blacklisting/debarring any supplier shall be received as per normal protocol.

**j) Rate contract validity & flexibility of procurement:**

The tenders floated by UPMSC will also be 'Rate Contract'. The rates quoted by the bidder shall remain valid for two years from the date of signing of contract and the purchaser will have the option to extend the period of price firmness for a further period of up to six months, during which UPMSC may place order for the supply of same item procured under this tender. During validity of rate contract orders can be placed in fragmented portions as per need. There shall be no binding on minimum quantity to be procured. However, cumulative procurement shall not go beyond 125 % of the tentative requirement published in tender document. In case where procurement beyond the above stipulated limit is required, same can be done with due approval from Board of Directors.

**k) Revision of rates with reference to DPCO notifications:**

DPCO notifications regarding price ceiling has to be adhered by the supplier. If contract price/rate of any drug is higher than the DPCO price, then it has to be revised as per ceiling limit. It would be mandatory for the supplier to execute the supplies in such revised price & penal action shall be taken for non-compliance.

**10. Competent Authorities/ Committees:**

MD, UPMSC will have the full authority to constitute various internal committees depending up-on nature and volume of procurement. MD, UPMSC shall have final authority of approving the rates (for award of contract) in case of multiple responsive bids. Rates for items where only single responsive bid is obtained approval can be accorded by the Board of directors of UPMSC or a committee of directors nominated by the board.

**11. Resolution of disputes:**

UPMSC and the supplier shall make every effort to resolve, amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection

with the contract. Every dispute, difference, interpretation or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of this agreement or subject matter thereof which cannot be mutually resolved shall be referred to arbitration in accordance with the Arbitration and Conciliation Act. The seat of arbitration shall be at Lucknow. The language of Arbitration shall be in English. Governing law shall be Indian and State Laws.

**All other clauses which are not defined herein but mentioned in “UTTAR PRADESH PROCUREMENT MANUAL (Procurement of Goods), 2016” shall be applicable. Provisions which are not defined at either document can also be applicable if the same is defined in tender condition. In addition, CVC guidelines as revised from time to time shall also be followed.**