

INDEX

1. Procurement objectives and purchase policies.
2. General principles of entering into contracts.
3. Store planning and management.
4. Technical particulars of tender.
5. Methods of purchase.
6. Earnest money and performance security.
7. Element of price and their variations.
8. Evaluation of tenders and formulation of purchase proposal.
9. Rate Contract.
10. Post contract management.
11. Inspection of stores.
12. Payment of cost of stores supplied against contract.
13. Purchase of stores manufactured in foreign countries.
14. Delegation of purchase powers.
15. Registration of firms.
16. Settlement of disputes.

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CHAPTER 1
PROCUREMENT OBJECTIVES AND PURCHASE
POLICIES

1.1 PROCUREMENT OBJECTIVES

The main objectives of public buying are :-

- a) To procure the stores and services of requisite quality and in required quantity necessary for performance of duties by the government departments.
- b) To procure stores as per the required delivery schedule so as to minimize the inventory and cost thereof
- c) To procure the stores on a competitive basis at the most economical manner ensuring value for money.
- d) To ensure transparency, and equitable approach in the procurement process.

1.2 PURCHASE POLICY

The purchase policy of Government procurement, follows the principles contained in General Financial Rules (GFR). The salient features of which are :-

- a) To Purchase the stores and services required for public service, in such a way as to encourage development and availability of indigenous products and services to the optimum extent.
- b) To provide the price and/or purchase preference upto specified limit as may be prescribed by the Government from time to time, to the notified sectors/agencies. Following types of preferences are provided to KVIC, ACASH (Associations of Corporations and Apex Societies of Handloom), WDO Dehradun, SSI Units and Public Sector Undertakings:-
 - i) Product reservation
 - ii) Purchase Preference
 - iii) Price Preference
- c) To make available products and services of latest affordable technology and quality

2. PRODUCT RESERVATION

A) PURCHASE OF KHADI ITEMS –

PROCUREMENT FROM KVIC.

- i) All items of handspun and handwoven textiles items, termed as 'Khadi' are reserved for exclusive purchase from KVIC. List of all such khadi items is given in Annexure– 3.I
- ii) Purchase of Khadi Items should be made from KVIC and the payment made as per price finalised by Cost Accounts Branch of Ministry of Finance.
- iii) All the items to be purchased from KVIC are required to conform to relevant Indian Standard Specifications as applicable for these items.
- iv) The supply orders on KVIC is to be placed based upon their capacity. For determination of the capacity, , reliance may be placed on the report of Cost Accounts Branch of Min of Finance or a certificate from KVIC duly signed by their internal/statutory Auditor. Normally, the quantity in a year should not exceed their annual capacity plus 10%

B) PURCHASE OF HANDLOOM TEXTILES ITEMS INCLUDING BARRACK BLANKETS :

PROCUREMENT FROM KVIC/ACASH /WDO

- i) All items of Handloom Textiles required by Central Government Departments are reserved for exclusive purchase form KVIC, notified Handloom Units Through the Association of Corporations and Apex Societies of Handloom (ACASH) and Women's Development Organisation WDO Dehradun.
- ii) The Handloom Textile items are to be purchased from KVIC, ACASH and WDO Dehradun dividing the qty. equally among them subject to the capacity of individual agency. However, for requirements below Rs.5.00 lakhs, order can be placed on any one agency.
- iii) The payment of Handloom Items to the above agencies will be made as per prices finalised by Cost Accounts Branch of Ministry of Finance.
- iv) DGS&D also enters into a rate contract with KVIC and ACASH for supply of certain handloom/textile items. Hence, where there is an existing rate contract, the same should be utilized, before issuing tender enquiry to these agencies.

v) The inspection of stores supplied by ACASH shall be carried out as per existing procedure, for other supplies. For civil demands, no capacity verification will be required before placing order on ACASH. However in respect of Defence demands, with inspection by Defence Authorities, capacity verification of the units will be carried out, and orders placed only on receipt of satisfactory and capacity verification report.

vi) Testing arrangement will generally be provided by the ACASH notified units. Where the same is not available, testing charges for testing the stores in outside laboratories by the inspectors will be borne by ACASH or its notified units.

vii) The list of items reserved for purchase from the handloom sector in accordance with the procedure outlined above and the IS specifications to which these items should conform, is given in Annexure – 4.

C) ITEMS RESERVED FOR PROCUREMENT FROM SSI UNITS.

i) This category comprises items in respect of which the demand, can be fully met by KVIC/ACASH/Small Scale Sector Units or any combination of these sectors and such items of stores are reserved for exclusive purchase from them. With regard to these items, other things being equal, where KVIC are in a position to meet the requirements, purchase would be made from KVIC.

ii) Presently, 358 items are reserved for exclusive purchase from small scale sector – as per list given in Annexure V. However, such items, which are included in this list, but are not exclusively reserved for production by SSI units, are also treated as unreserved items.

This list is reviewed at periodical intervals by Standing Review Committee set up under the chairmanship of Secretary (Commerce), and Development Commissioner SSI as Member Secretary

These items will be identified by definite specifications.

3. PRICE PREFERENCE

3.1 Where offers are received from large scale unit as well as SSI units, but some of the lowest offers are from large scale units, the offers of SSI units are to be given a price preference of up to 15% over the lowest acceptable offer from large scale private sector unit, provided that the stores are technically acceptable and satisfy the basic consideration of delivery schedule and capacity.

3.2 However, the price preference admissible to SSI units will be accorded on tender to tender basis, on merits of each case in consultation with Finance. Further, this price preference may be accorded in a manner to provide SSI Units an incentive to grow up and discourage inflation and profiteering

3.3 In cases where the cottage and SSI units have established themselves as a supplier of certain items on competitive terms and enjoys an advantage over large scale unit, no price preference need to be given.

3.4 The price preference would not be granted in the following cases:

- i) Where competition exists amongst the Small Scale units alone or where the items are exclusively reserved for purchases from SSI Units; and
- ii) Where the tenders are received from both the SSI Units and large scale units and the lowest offers are from SSI units and their capacity is more than adequate to meet demand in hand.

3.5 SMALL SCALE UNITS WHEN THEY QUOTE IN CONSORTIUM UNDER THE NSIC/SSIDC/STATE LEATHER DEVELOPMENT CORPORATION / STATE GOVERNMENT HANDICRAFT DEVELOPMENT CORPORATION :

- i) Where the NSIC / State Development Corporation themselves quote on behalf of some SSI Units, their offer will be considered as an offer from SSI Unit registered with the DGS&D/NSIC. The NSIC/ State Development Corporation will shoulder the normal responsibilities applicable under terms and conditions of the DGS&D contracts and fulfil all the contractual obligations on behalf of the units for which they quote.
- ii) These facilities will not apply to the procurement of the under mentioned items :-
 - (a) Paint items for the Railways
 - (b) Drug
 - (c) Medical and Electro-medical equipments
 - (d) Requirements of Defence where inspection is to be carried out by the Defence Inspection Organisation.
 - (e) Items where technical competence, capacity and manufacturing facilities are required to be verified before placement of order.

4. PURCHASE PREFERENCE FOR PUBLIC SECTOR UNDERTAKINGS

- i) Purchase preference to Public Sector Undertakings, is admissible, when they compete with large scale private units in accordance with Govt. policy notified from time to time . Present Policy of the Govt. in this respect is as per Appendix 'A'.

ANNEXURE 'A'

1. In ad-hoc purchases, the purchase preference in favour of PSUs will be applicable as per following guidelines:-

a) Where the quoted prices of Public Sector Undertakings is not within the 10% of lowest acceptable price, such offers may be rejected without any further consideration.

(b) Where the quoted price is within 10% of the lowest acceptable price, other things being equal, purchase preference may be granted at the lowest acceptable price.

2. The above policy of allowing price preference to PSUs was extended up to 31.3.2004. (Proposals have been submitted to Government by Bureau of Public Enterprises, to extend this preference by another two years.). All the Central Govt. PSUs or joint ventures with PSUs, with minimum value added content of over 20% are entitled for consideration of purchase preference, subject to purchase being in excess of Rs. 5.00 Crores.

3. In case where there is a conflict between the incentive to be given to small scale sector and the incentive to be given to the public sector undertaking, the interest of the small scale sector will prevail over that of the PSUs. In other words where the acceptable offer of the small scale unit is lower to or equal to the offer of the public sector enterprises or even within a range of price preference of up to 5% over the public sector undertaking contract would be placed on SSI unit in preference to a public sector unit, provided the price preferences are admissible according to the existing policy and it does not exceed 15% over the lowest offer of a large scale private unit.

4. A Public Sector Undertaking would not be entitled to any price preference when it quotes as an agent of an Indian or foreign manufacturer/supplier. However, where a Public Sector Undertaking is selling goods or services of another Public Sector Undertaking it would be allowed the benefit of price preference.

5. In cases where the products of Public Sector Units have been offered by a Private Sector as the sole selling/authorized agent, the private sector will not be eligible for price preference.

6. The above policy of purchases preference is not applicable to State Government Public Sector Undertakings.

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7. Excepting for purchase preference to be considered as above, in all other matters such as capacity, specification, deliveries, payments etc. the Public Sector Undertakings would be treated at par with the Private Sector Undertakings and will be bound by all commercial obligations, as per terms of the contract and tender enquiry.

8. Instances of bad and indifferent performance of public Sector Undertakings, when noticed, should be brought to the notice of the Ministry/Department controlling the Undertaking.

9. When a public Sector undertaking defaults either in the delivery schedule of material/equipment/service or does not complete particular construction/delivery/erection of a project/equipment satisfactorily, that public Sector Undertaking need not be shown purchases preference for a period of 3 years. This ban of purchase preference to the Public Sector Undertaking will be counted from the last default/unsatisfactory performance by the Public Sector Undertaking and non-eligibility for the purpose of purchase preference will be applicable for the entire range of production of the under manufacture.

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CHAPTER-2

GENERAL PRINCIPAL OF ENTERING INTO CONTRACTS

INTRODUCTION

The Contract Manual issued by the Directorate General of Supplies and Disposals gives information with regards to the elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts. Some of the salient principles relating to contracts generally and those relating specifically to DGS&D contracts are set out briefly in this chapter. For a proper understanding of the general principles of entering into contracts, the Contract Manual should be studied.

1. ELEMENTARY LEGAL PRACTICES:

What is a contract? The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

Proposal or offer: When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

Acceptance of the proposal: When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. In the DGS&D contracts, this is usually done by the issue of an advance acceptance letter/telegram or a formal acceptance of tender.

What agreements are contracts: An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of the above renders a contract unenforceable.

- (a) Competency of the parties.
- (b) Freedom of consent of both parties
- (c) Lawfulness of consideration

(d) Lawfulness of object.

2. **COMPETENCY OF PARTIES**: Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads:-

- (a) Individuals
- (b) Partnerships
- (c) Limited Companies
- (d) Corporations other than limited companies

(a) **CONTRACTS WITH INDIVIDUALS**; Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorising such person should be insisted on. In case, a tender is submitted in business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorised attorney.

(b) **CONTRACTS WITH PARTNERSHIPS**; A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

(c) **CONTRACTS WITH LIMITED COMPANIES**: Companies are associations of individual registered under companies Act in which the liability of the members comprising the association is limited to the members comprising the association is limited to the extent of the shares held by them in such companies. The company after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members or shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar or Companies before entering into a contract. Normally, any one of the Directors of the company is

empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

(d) CORPORATION OTHER THAN LIMITED COMPANIES: Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorised by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

4 CONSENT OF BOTH PARTIES; Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement, may occur in the following cases:-

- (a) When the misunderstanding relates to the identity of the other party to the agreement;
- (b) When it relates to the nature or terms of the transactions;
- (c) When it relates to the subject matter of the agreement.

5. FREE CONSENT OF BOTH PARTIES:

The consent is said to be free when it is not caused by coercion undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party to a contract, whose consent was caused. A party to a contract whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

CONSIDERATION: Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of

consideration is, however, not a ground avoiding the contract. But an Act forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

6. LAWFULNESS OF OBJECT; The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regard it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful. There is hardly any possibility of any of the contingencies herein above mentioned arising in the case of DGS&D contracts.

7. COMMUNICATION OF AN OFFER OR PROPOSAL: The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. DGS&D are not bound to consider a tender which is received beyond that time though there is no legal prohibition for accepting such a tender.

8. COMMUNICATION OF ACCEPTANCE: A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance, or if no time is so prescribed by the lapse of a reasonable time, without communication of acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in DGS&D contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by registered post acknowledgment due.

9. ACCEPTANCE TO BE IDENTICAL WITH PROPOSAL: If the terms of the tender or the tender, as revised and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tender is considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

10. WITHDRAWAL OF AN OFFER OR PROPOSAL: A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the acceptance is put in communication.

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the DGS&D to forfeit the earnest money.

11. WITHDRAWAL OF ACCEPTANCE: An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance which reaches the tenderer before the letter of acceptance will be a valid revocation.

12. CHANGES IN TERMS OF A CONCLUDED CONTRACT: No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

13. DISCHARGE OF CONTRACTS: A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of contract.

A contract may also be discharged:-

(a) **By mutual agreement:-** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract, it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.

(b) **By breach:-** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.

(c) **By refusal of a party to perform:-** On a promisor refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.

(d) **In a contract where there are reciprocal promises,** if one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

14. **STAMPING OF CONTRACTS:** Under Article 5 of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise (not being bought or sold not through a broker) is exempt from payment of stamp duty.

The Stamp Act also provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the government in cases where but for such exemption government would be liable to pay the duty chargeable in respect of such instrument, {Cases in which government would be liable are set out in Section 29 of the Act}.

15. AUTHORITY FOR EXECUTION OF THE CONTRACTS BY DGS&D:

The DGS&D officers are authorised by the President of India in exercise of the powers conferred by Clause (I) of Article 299 of the Constitution to make contracts for services, supply or work on behalf of the Central Government. Copy of the relevant notification issued by the Ministry of Law is given in Annexure-2

The DGS&D makes similar contracts on behalf of the State Governments where so authorised by the State Governments ,and on behalf of governments sponsored companies or corporation or local bodies where so authorised by such companies or corporations or local bodies.

16. CONTRACTS ON BEHALF OF THE CENTRAL GOVERNMENT OR STATE GOVERNMENTS : Article 299 of the Constitution stipulates:-

That all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President or by Governor of the State as the case may be and all such contracts and assurances of property made in exercise of that power shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorizes.

The contracts on behalf of the president or the Governor should, therefore, state in express terms that they are made for and on behalf of the President or the Governor of the State by such officers who are authorised to enter into contracts on behalf of the President of India or the State Government as the case may be.

The contracts on behalf of Union Territories are also to be executed on behalf of the President of India.

These provisions are mandatory. If these are not complied with the contract is not binding on or enforceable against the government, though a suit may lie against the officer who made the contract in his personal capacity . Such contracts are also enforceable by the government and the government cannot sue the other party on the basis of the defective contract.

By virtue of the provisions of Article 299(2) of the Constitution, the official making or executing such contracts on behalf of the President etc. are exempted from personal liability for acts done or purported to be done in the exercise of their official duties.

There cannot be an oral contract binding the government and all contracts with government must be in writing and all terms must be specifically provided therein.

17. CONTRACTS ON BEHALF OF PARTIES OTHER THAN THE CENTRAL GOVERNMENT AND THE STATE GOVERNMENT:

- (a) In case of contracts on behalf of the public sector undertakings, corporations or local bodies, all the documents forming part of the contract are to be expressed to be made, issued or acceptance on behalf of the public sector undertakings, corporations or local bodies. The corporation or local bodies as the case may be, should be named as the purchaser in the Invitation to the Tender and Acceptance of Tender.
- (b) There should be an authorization specific or general in favour of the officers of the Directorate General of Supplies & Disposals from the concerned undertakings or corporations or local bodies to enter into contracts on their behalf.

18. GOVERNING LAW IN PURCHASES MADE BY DGS&D: There is no separate law governing public buying. Therefore, all purchases made and contracts entered into therefor by the DGS&D are governed by the Sales of Goods Act, 1939 and the Indian Contract Act, 1872.

19. GENERAL GUIDELINES FOR ENTERING INTO CONTRACTS BY THE DGS&D; While the various aspects of contract management in the DGS&D are discussed in the respective subject chapters, the following general guidelines for enforcing into contracts have been laid down by the Government of India.

- (a) Save in exceptional circumstances, no work of any kind should be commenced without prior execution of contract documents. Even in cases where a formal written contract is not made, no order for supplies etc. should be placed without at least written agreement as to the price.
- (b) The terms of a contract must be precise and definite and there must be no room for ambiguity or mis-construction thereon.
- (c) No contract involving an uncertain or indefinite liability or any conditions of an unusual character should be entered into without the previous consent of the Ministry of Finance.
- (d) Subject to adequate prior scrutiny of terms, general or special, if any, standard forms of contracts should be adopted, wherever possible. The alternatives used in the standard forms, which are not applicable, should be invariably scored out in consultation with the Ministry of Finance and Ministry of Law.
- (e) In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the contracts and before they are finally entered into.

- (f) The terms of a contract once entered into should not be materially varied without the previous consent of the authority competent to enter into the contract as so varied. No payments to contractor by way of compensation or otherwise, outside the strict terms of the contract or in excess of the contract rates may be authorised without the previous approval of the competent authority.
- (g) No relaxation of specifications agreed upon in a contract or relaxation of the terms of an agreement entered into by Government should be made without proper examination of the financial effect involved in such relaxation. The interest of the public exchequer should be taken due care of before agreeing to any relaxation of agreement or contract.
- (h) In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.
- (i) Before entering into a contract or an agreement, all pros and cons should be considered and validity of contractual documents should be ensured. Effective administrative machinery should also be set up to keep a vigil on the performance of parties concerned.
- (j) Provision must be made in contracts for safeguarding Government property entrusted to a contractor and the recovery of hire charges, if any, therefore.
- (k) When a contract is likely to endure for a long period or where the contract provides for a clear schedule for the fulfilment of the various stages of the contract, it should include a provision for unconditional power of revocation or cancellation at the discretion of the government at any time on the expiry of reasonable notice to that effect. The period of notice should not normally be longer than 6 months.
- (l) All contracts should have a provision for recovery of liquidated damages for defaults on the part of the contractor, unless there are any special instructions issued by the competent authority. The terms of contract for the purchase of perishable stores should invariably include a (separate) Warranty G.F.R.I This form may, however, be modified to suit local conditions.
- (m) It should be ensured that in all contracts where a warranty clause is included, the position regarding delivery of goods in replacement of rejected ones is made clear beyond doubt by adding the words "Free of cost at the ultimate destination" after the words "by the purchaser" in the

penultimate sentence of the said clause, where the incorporation of such a clause is not in consistent with the other conditions of the contract.

- (n) A schedule of qualities with their issue rates of such materials which are supplied departmentally, and are used in the contract work, should form an essential part of the contract. It should also contain an escalation clause pertaining to rates of such materials the prices of which are controlled by Government and which the contractor arranges himself, so that Government may get the benefit of any saving in the quantities of the material actually used in execution.
- (o) The question whether any sales tax, purchase tax, octroi and terminal taxes and other local taxes and duties are to be paid and if so, by which party, should be settled and cleared up before entering into any contract, involving transfer of movable property whatever its nature.
- (p) All contracts for purchase involving import of materials from abroad should as a rule provide for purchases on F.O.B basis and similarly all sales contracts involving transport of materials from India to other countries should be entered into on C.I.F. basis.
- (q) Provided that a departure from the procedure prescribed above may be with the prior concurrence of the Ministry of Surface Transport.
- (r) No work should be done under an agreement/contract beyond the date of expiry of its tenure. Wherever it is considered that the work has to be continued beyond the date of expiry of the tender timely action should be taken for renewing the contract/agreement for the further period required, after a suitable review of the provisions of the old agreement/contract to see whether any modifications therein are required.
- (s) Where escalation in respect of labour overheads, customs duties, freight etc. is provided for in a contract, the basis for the calculation of the same should be clearly indicated.
- (t) "Cost Plus " Contracts should be avoided except where they are inevitable.
- (u) Lump sum, contract should not be entered into except in cases of absolute necessity. Whenever such contracts are entered into, all possible safeguards to protect the interest of Government should invariably be provided for in the conditions of the contract.
- (v) The Comptroller and Auditor General and under his direction other audit authorities have power to examine contracts and to bring before the Public Accounts committee any cases where competitive tenders have not been accepted or where other irregularities in procedure have come to light.

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CHAPTER 3
Store Planning and Management

1. **Equipment & Material Budget** - “Statement of Stores and Services” (3S) required during a financial year should be prepared along with the Annual Financial Statement (AFS) which is required to be submitted to Ministry of Finance by October of the preceding year. Copy of this “3S” shall be forwarded to the Departmental Purchase Wing (DPW) and the DGS&D simultaneously with the submission of the AFS to Ministry of Finance every year. DGS&D shall consolidate the requirements of all the departments, identify common items and shall plan for concluding rate contracts for such items. The consolidated requirement of common user items shall be displayed by DGS&D on its web site by 31st December of the preceding year..

2. **Type of stores and services** -

(i) **Cyclic** - These are fast moving items of regular consumption and are required repetitively during the year, for example, stationery, petrol, other consumables, etc.

(ii) **Non-Cyclic** - These are those stores which are to be purchased against a specific requirement and may not be required regularly, for example, vehicles, arms, computers, livers and uniforms.

(iii) **Capital** - For stores costing Rs. 1 lakh per unit or more with a life of more than 1 year and not requiring annual purchases is categorized as capital store, for example, plant and machinery.

(iv) **Project requirement** - These are those stores which are required for a particular project.

3. **Delivery against R/C items** - DGS&D shall conclude R/C for common user items and shall ensure that delivery against any supply order placed by DDO against the R/C within a period of 2 months of such order and ordinarily 3 months in remote locations.

4. **Minimum ordered size** - Minimum ordered quantity should be decided for all R/Cs by competent authority. DGS&D shall also specify the minimum order size quantity while concluding the R/C. Supply order will be for minimum size/quantity or more.

5. **Stocking of Stores** - The stock level of stores to be maintained shall be decided by keeping in view the minimum size of the order permitted, economy, location, infrastructural considerations, lead time, anticipated requirement, obsolescence, stock out costs and service levels, minimum size of the order contracted, etc. Store levels shall be maintained by each department based on such store levels as are fixed out by HOD for different locations and formations of the department.

6. **Maximum Permissible Store Level** - As a general rule, no department shall stock more than 15% of its annual anticipated requirement at any given point of time. If

the need arises for higher level of stores, decision should be taken by HOD in consultation with integrated finance and the maximum limit should be fixed for different locations/formations. This shall be ensured by HOD.

7. **Staggering of stores** - Generally, firm supply orders should be placed for entire annual requirement through a Single Supply Order with staggered delivery schedule so that delivery coincides with consumption and no unnecessary inventory of stores are built up. As far as possible, delivery and payment for cyclic stores should be on monthly basis keeping in view the prescribed minimum size of orders. In small organizations/offices this cycle can be monthly.

8. **Stocking of capital stores** - Capital stores should be purchased against the specific requirement and no stock shall be maintained for such capital goods without the specific approval of D.O.E.

9. **Project requirement** - (A) Stores required for a specific project should be segregated into two categories viz., (a) those available against DGS&D R/Cs and (b) those requiring ad hoc procurement. (B) For stores available on DGS&D R/C action should be taken to place supply order against the DGS&D R/C. For other stores procurement action should be initiated as per the project plan well in time as per project procurement schedule. The procurement action should generally conform to the rules and guidelines framed by the Central Purchase Organization.

10. **Placement of Indent for Procurement** - After firming up the item, estimated price and quantity to be purchased, indent in the prescribed format should be placed on the purchase wing of department for initiating purchase action. Indent should be unambiguous, containing detailed specification, required delivery schedule, financial arrangement, etc. The details of the past supplies of same or similar stores, if made, should be indicated in the indent alongwith the name and addresses of past suppliers.

11. **Stocking of IT and High-tech products** - Obsolescence level for such products is very high. Efforts should, therefore, be made that no stocks are held for such products and these are purchased as per consumption cycle and project requirements. If, however, the necessity arises for stocking of such items for a short period upto 3 months, the same should be stored with special care under the guidance of manufacturer / supplier.

12. **Surplus/scrap material** - Major changes in design and specifications, introduction of new standards, procedures, obsolescence, excessive stores are the main factors which contribute to accumulation of surplus or obsolete stores. A committee should be formed by HOD every year by rotating members for the purpose of inspecting critically the condition and justification of all the stores held in a stock. The committee shall identify obsolete and surplus stores at various locations. An immediate action should be taken to deal effectively for disposal of surplus and obsolete stores either by sale, issue or transfer to other locations/users. Depending upon the estimated value of such stores, the method of disposal should be decided by HOD in consultation with integrated finance and completed within 3 months of such identification.

The review of surplus/scrap material should be done by the committee every 6 months. If higher periodicity is required for such review in respect of specific stores, the same should be decided by HOD in consultation with the integrated finance.

13. **Selective inventory control** - The concept of economic order quantity and other latest material management concepts in this regard should be utilized depending upon the type of stores and the costs associated with these stores. The technique of selective stores control should also be adopted for different type of stores. This is necessary to avoid locking up of unnecessarily capital in the stores and to take care of fast technical developments taking place specially in the field of manufacturing technology and product profiles. These techniques of selective control may be ABC analysis (based on annual value of consumption) HML analysis (based on unit value of the item), VED analysis (vital essential and desirable mainly of spares), SDE analysis (scars, difficult and easy), FSN (fast, slow and non-moving), etc.

14. **Application of cost reduction techniques** - The application of various costs reduction techniques like variety reduction, standardization, value analysis, forecasting, etc., should be continuous process in store planning and each Head of Department should set norms for the same once in three years.

15. **On-line store management** - Each department shall have computerized store planning and management system by 2008 A.D. All depots and users should be inter-linked to achieve on-line store control and management.

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CHAPTER - 4

Technical Particulars for tenders:

1. Technical Particulars to be specified in the tender shall include the following as applicable:

1. Scope of supply
2. Specifications including technical parameters and product requirements
3. Drawings
4. Requirement of BIS mark, where applicable
5. Reference of sealed sample if any
6. Requirement of advance sample if any at post contract stage before bulk production
7. Special requirements of packing and marking if any
8. Inspection procedure and criteria of conformity
9. Eligibility criteria for tenderers
10. Requirements of special tests if any
11. Requirement of type test certificate if any
12. Requirement of type approval for compliance of statutory requirements of noise/emission etc.
13. Warranty requirements
14. Training, technical support, after sales service and annual maintenance contract requirements, if any
15. Any other requirements

Purchase officer shall ensure that the technical particulars are complete and correct as above before floating tender and that a certificate to this effect has been recorded as under. For this purpose he may take assistance from the concerned technical department or officer.

“It is certified that technical particulars have been checked and are complete and correct to meet user requirements fully and that all dimensions are expressed in metric units.”

2. Specifications and Drawings

The specifications shall be drawn based on actual needs of the users for the products available in the market. Specifications should not over-specify the actual requirements. Specifications shall be drawn in line with the latest technology and care shall be taken to avoid procurement of obsolete and non standard items. While framing specifications there shall be adequate emphasis on factors such as efficiency, optimum fuel/power consumption, use of environmental friendly materials reduced noise and emission levels, low maintenance cost etc.

In order to ensure that the above aspects are taken care of, the specifications may be finalized after consultation with trade and the indentors.

Wherever Indian Standards exists for the stores, they should be invariably adopted for procurement and the stores shall carry BIS (Bureau of Indian Standards) mark. Only in cases where no offers are available with BIS mark or where such sources are not sufficient, stores conforming to Indian Standards without BIS mark may be procured. Where Indian Standards specify more than one option for any raw material to be used a choice can be made for a particular raw material against a tender. For any deviations from Indian Standards, for any additional parameters or for superior values of technical parameters, specific reasons for deviating should be duly recorded with the approval of the Head of Department and Finance concurrence. In such cases Bureau of Indian Standards shall be requested to incorporate necessary changes in the Indian Standards for future.

Some departments publish their own standards which apart from specifying the technical parameters also specify special requirements of packing, marking inspection etc. The technical parameters in such cases may also be marginally different from the Indian Standards. In such cases the general principle shall be to adopt Indian Standards and the departmental specifications could cover only such additional details as packing, marking, inspection etc. as are specially required to be complied for a particular end use.

In cases where Indian Standards do not exist, international standards or departmental standards may alternatively be adopted. Where no standards exist, specification shall be drawn in a generalized and broad based manner. Care shall be taken to ensure that specifications are not proprietary of any manufacturer. Reference to any brand, make or catalogue number must be avoided and where it is unavoidable it should only be as a bench mark and should be followed with words "or at least equivalent" allowing products which are equivalent or better in performance, also to be quoted.

The specification shall define the requirements completely without any ambiguity. Technical parameters shall be specific, measurable / verifiable. Drawings may be supplied where necessary to show arrangement and finer details. All dimensions shall be specified in metric units.

For most of the stores it should be possible to lay down detailed specifications and drawings for procurement and there should not be any necessity of procurement to samples. Wherever, the specifications/drawings have been laid down, no samples should be asked for along with the tenders. In cases, where it is necessary to provide a basis in respect of indeterminable parameters such as shade, feel, finish, workmanship etc., reference may be made to the sealed samples kept with the purchaser or with the indenter for guidance. In some cases it may be necessary to ask for advance samples at post contract stage before giving clearance for bulk production, to check indeterminable parameters as above.

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CHAPTER 5

METHODS OF PURCHASE

The purchase officer should use the method of procurement through the tender proceedings except in case of low value items and those available on Rate/ Running contracts of the Central Purchase Organisation (DGS&D). The methods of procurement are set forth in the subsequent paragraphs.

Purchase Of Goods Without Quotation:

Purchase of goods upto a value upto Rs 15,000/- (Rs Fifteen Thousand only) on each occasion may be made without inviting quotations/ bids by the competent authority on the basis of a certificate to be recorded by him in the following format.

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

2. Purchase Of Goods By Purchase Committee:

Purchase of goods costing above Rs 15,000/- (Rs. Fifteen Thousand only) and upto Rs 1, 00,000/- (Rs. One lakh only) on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order the members of the committee will jointly record a certificate as under.

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

3. Purchase of goods under the Rate Contract (R/C):

The Central Purchase Organization (DGS&D) publishes the specifications, prices and the salient details of R/C products/ goods on its website (www.dgsnd.gov.in). Ministry/Department shall purchase goods under the Rate Contracts by placement of the

supply orders on the rates, terms & conditions of the R/Cs. The standard Supply Order Form (DGS&D -131) should be used for this purpose.

In all cases of urgent needs where there was likely to be delay in getting supplies of DGS&D rate contracted items through operation of such R/Cs, the same item could be purchased from the open market as long as the price to be paid for such item does not exceed that stipulated in the R/C. Such purchases should not exceed Rs 20,000 at a time and Rs One lakh in a year and are to be exercised in accordance with the powers delegated from time to time.

The procedure to be followed by the Central Purchase Organization to conclude R/Cs and method to be adopted in the procurement of R/C items by the indenting officer shall be laid down by DGS&D in detail in the DGS&D manual.

The payment for such items shall be made only by the Accounts Officer of the Central Purchase Organisation and on the forms prescribed for the purpose and shall in no circumstances be made by the Indenting officer themselves.

4. Purchase Of Khadi Goods/ Handloom Textiles:

The Central Government through Administrative instructions has reserved hand spun and hand woven (Khadi) goods for exclusive purchase from Khadi Village Industries Commission (KVIC). Handloom textiles have also been reserved for purchase from KVIC and/ or the notified handloom units of ACASH (Association of Corporations and Apex Societies of Handlooms). Further, the handloom textile items should be purchased from KVIC to the extent that they can supply, before covering the demand on handloom units through ACASH. To the extent these units can make supplies, purchases shall be made from them and for the balance quantity, if any, purchases can be made from other sources.

In the case of KVIC, the rates are fixed by certification committee, and the rates so fixed are reviewed by the Cost Accounts Branch of the Ministry of Finance. In the case of ACASH, the final price will be calculated by ACASH and fixed by the Ministry of Textiles by associating a representative of the Chief Accounts Office of Department of Expenditure, Min. of Finance.

DGS&D also enters into long term contracts with KVIC and ACASH for items of recurrent demands and lays down terms and conditions therein. For other items, the purchase from both KVIC and ACASH should be made on single tender basis. Normal inspection and other procedures shall apply for procurement through KVIC/ ACASH. Testing arrangements will be provided by KVIC/ ACASH or by their notified units and where the same are not available; testing charges for testing outside at approved laboratory should be borne by KVIC/ ACASH/ their units.

5. Purchase of Goods financed by Loans/Grants from International Agencies:

The Articles of Agreement with International Bank for Reconstruction and Development (World Bank) and other International agencies stipulate specific procurement procedures to be followed by the Borrowers. These procurement procedures are finalised and incorporated in the Agreement after consideration and approval of the Ministry of Finance and are to be strictly followed.

6. Purchase Of Goods By Obtaining Bids/ Tender:

Except for the purchase of goods through the methods given in the preceding paragraphs, Ministry/ Department shall procure goods within their delegated powers by following the standard method of obtaining bid/ tender as follows:

- (i) Advertised Tender Enquiry
- (ii) Limited Tender Enquiry
- (iii) Single Tender Enquiry

7. Publication on the Website

Organisation having its own website should publish all its tender enquiries on their website. Other organizations may publish their tender notices and tender enquiries on the DGS&D website. Further, wherever feasible, the organisation, immediately after a decision is taken for the procurement of stores/ group of items (even before finalisation of the technical particulars), should post a general procurement notice of all such items likely to be purchased by them on the website.

DGS&D should create a separate section in their website for publishing the tender notices of the government organisations not having their own website. This facility should be utilised as far as possible.

Hyperlinks should be established between the different procurement/ purchase of individual government departments with the DGS&D website (www.dgsnd.gov.in).

8. Advertised Tender Enquiry (ATE):

Invitation to tenders by advertisement should be used for the procurement of goods of estimated value of Rs 25 lakhs (Rupees Twenty Five Lakhs) and above.

The minimum time for submission of bids may be 3 weeks from the date of publication of tender notice or availability of the bidding documents for sale, whichever is later. In cases where the tender notice and complete bidding documents are available on the website of the organisation and can be downloaded and in case of urgency of

requirement, the time limit of 21 days can be reduced with the approval of the Head of Department.

9. Tender Notice:

The tender notice in case of ATE should be carefully prepared and contain all the salient features of the item and the governing specifications to give a clear idea to the intending tenderer of the stores to be purchased. The Tender Notice should also contain:

- Quantities and destinations,
- cost of the tender/bidding document,
- place(s) and timing of sale of tenders,
- place and deadline for tender delivery,
- place, time & date for opening of bids,
- bid security, amount & form, etc.

Superfluous or irrelevant details should not be given in the tender notice as it will increase the cost of the advertisement.

10. Forwarding Of Tender Notice

The tender notice containing salient details of items to be procured should be posted on the website of the organization and given in the Indian Trade Journal (ITJ) published by the Director General of Commercial Intelligence & Statistics, Kolkata.

The tender notice should also be published in at least one national daily having wide circulation. The organization/ departments publishing it on their website may not advertise it in the newspaper upto an estimated value of Rs 5 Crores.

A copy each of the tender notice should also be sent to NSIC, registered/ known/ likely suppliers, registered Trade Associations/Chambers of Commerce for their advance intimation and giving wide publicity.

Where the Ministry/ Department feels that the goods of the required quality, specifications etc. may not be available in the country and it is necessary to also look for suitable competitive offers from abroad, the Ministry/ Department may send copies of the tender notice to the Indian embassies abroad as well as to the foreign embassies in India. The selection of the embassies will depend on the possibility of availability of the required goods in such countries.

11. Sale Of Bidding Documents

The organisation, whenever feasible, should also post the complete bidding document on its web site and permit prospective bidders to make use of the document downloaded from the web site. There should be clear instructions for the bidder to pay

the prescribed fees etc either through e-payment or by demand draft etc along with the bid.

The sale of tender against Advertised Tender Enquiry should not be restricted and the tender documents should be available for sale freely.

Tender sets preferably be sold till the last date and time fixed for receipt of tenders. However, competent purchase officer can decide the closure of sale of tender documents one day prior to the date of tender opening and clearly indicate the same in the bidding documents.

12. Limited Tender Enquiry (LTE)

This method should ordinarily be adopted in cases of orders the estimated value of which is upto Rs.25 lakhs. However, this can be adopted even when the estimated value of the demand is more than Rs.25 lakhs in the following circumstances:

- (i) When sufficient reasons exist, to be recorded in writing by the competent authority indicating that it will not be in the public interest to call for tenders by advertisement.
- ii) When the competent authority certifies that the demand is urgent and any additional expenditure involved by the elimination of open competition is justified. In all such cases the competent authority must place on record the nature of urgency and reasons why the demand could not be anticipated.
- iii) When the sources of supply are definitely known and possibility of fresh source beyond those being tapped is remote, in all such cases approval of the competent authority to dispense with advertisement should be taken.

LTE shall be issued to the suppliers borne on the list of registered/ approved suppliers for the item (s) being procured and to past successful suppliers. The number of suppliers should not be less than three and efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. The copies of the bidding document should be sent directly to them, free of cost, by speed post/ registered post/ courier/ e-mail.

Sufficient time is to be given to the bidders for preparing their bids and submitting the same.

The organisation having their website should publish the notices as well complete downloadable tender documents on the website for the information of the registered, approved and successful past suppliers of the items

13. Single Tender Enquiry (STE):

Procurement from a single source may be resorted to in the following circumstances: -

- (a) The goods and related services are available only from a particular supplier or a particular supplier has exclusive rights in respect of these items and no reasonable alternative or substitute exists;
- (b) There is an urgent need for the goods, and engaging in tendering proceedings or any other method of procurement would, therefore, be impracticable, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;
- (c) Owing to a catastrophic event, there is an urgent need for the goods making it impractical to use other methods of procurement because of the time involved in using those methods;
- (d) The organization having procured goods, equipment, technology or services from a supplier considers that additional supplies must be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;
- (e) The organization seeks to enter into a contract with the supplier for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities to establish their commercial viability or to recover research and development costs; or
- (f) Items needed for national defence or national security and competent authority determines that single-source procurement is the most appropriate method of procurement.

Proprietary Article Certificate in the following form (Stipulated in GFR) is to be provided before procuring the goods from the single source:

- (i) The indented goods are manufactured by M/s.....
- (ii) No other make or model is acceptable for the following reasons:

- (iii) Concurrence of finance wing to the proposal vide:
- (iv) Approval of the competent authority vide:

 (Signature with date and designation
 of the procuring officer)'

The supplier should preferably be asked to submit a proposal through issue of single tender enquiry. An enforceable contract stipulating terms, conditions, technical details, warranty after sales support etc should be entered into with the supplier. The procedure to invite tenders and further processing may be decided by the competent purchase officer.

14. Purchase of goods through restricted tendering/ competitive negotiations in case of extreme emergency such a national calamity, disaster mitigation:

In extreme emergency situation and for reasons to be recorded the competent purchase authority may undertake the ab-initio negotiations with a sufficient number of suppliers to ensure effective competition. The requirements, guidelines, documents, clarifications or other information should be communicated to all the suppliers called for negotiations preferably in advance. The negotiations should be confidential and the technical details, prices or other market information provided by one supplier during the negotiations should not be communicated to other suppliers without the consent of such suppliers. Following completion of the negotiations, all suppliers, remaining in the proceeding, should be requested to submit their final offer with respect to all aspects of the procurement/ their proposals by a specified time and date. The competent purchase officer should, thereafter, select the successful bidder on the basis of such best and final offer.

15. Consultative Meeting for finalising product and technical specifications.

The Purchasing organisation should undertake a transparent consultation process with the industry/ suppliers before finalising the technical details and other criteria for the procurement. It should be ensured that the procurement is for the standard product; taking into consideration the technical advancement and obsolescence, availability in the market of the competitive products etc.

16. Single Stage Bidding:

In a single stage bidding process, tender enquiry containing detailed functional and technical requirements is issued and the suppliers submit their tenders containing their technical, commercial and financial proposals at the same time. The purchaser awards the contract(s) after evaluation of all the tenders to the lowest evaluated bidder/s, according to the method and criteria specified.

Single stage bidding is commonly used and is most appropriate for relatively straight – forward procurement of fairly standard technologies and ancillary services.

17. Two Stage Bidding:

Tenders should be invited in two parts namely:

- a) Techno-Commercial Bid, and,
- b) Price Bid.

Both the bids should be invited simultaneously with the same date and time of receipt but with the stipulation that the Price Bid of only responsive bidders will be opened only after the techno-commercial evaluation of the offers is completed. Both the bids sealed in separate covers should be put in a single sealed cover, which should be super scribed with the details of the tender as per the requirement of the bidding document.

The technical bids should be opened first on the prescribed tender opening date. The price bids (in sealed cover), after the opening of the technical bids, should all be placed in an envelope which should then be sealed and kept in the safe custody till the date of opening of Price Bids. Further, the tender opening officer/committee should sign on the Price Bids envelopes and should also obtain signatures of at least two trade representatives on the sealed price bids envelope. The price bids should be opened after technical evaluation has been completed on a specified date which should be made known to the all the responsive tendering firms.

Whereas incomplete technical bids and those having major deviations may be ignored, the bids having minor deviations can be further processed and clarifications can be sought or technical discussions held/ undertaken to determine finally the technical suitability of the offer (s) before opening price bids.

Technical specifications, qualification/ eligibility criteria should be finalised after interaction in the consultative meeting to be held before issue of the bidding documents. However, if, based on techno-commercial evaluation of bids, major changes are considered inescapable, the preferred course, if the time permits, would be to scrap the tenders and re-invite the bids. However, in case of urgency of requirement, all the bidders may be given the changes proposed in the technical and other particulars, deviations observed/ clarifications needed in their offer and should be asked to submit their response along with revised prices within a reasonable period. If the response

needed is simple affirmation, or otherwise, of the technical questionnaire/ details but having price implications, the replies including revised prices may be obtained in one cover. However, if the response to technical details is again required to be evaluated and responsiveness decided it may be desirable to again ask the response in two covers but with a short time limit and processed accordingly.

Two-stage-bidding affords independent and objective evaluation of technical proposals as well as commercial terms and conditions and also permits revision/addenda to the technical requirements and bidding documents if considered necessary in the light of the first stage techno-commercial evaluation. It is more suitable for the procurement of highly technical nature and those requiring extensive technical services. Two stage bidding may also be adopted in other cases where tenders are to be evaluated to specific technical parameters and qualification/ eligibility criteria prescribed in the tender documents and if the experience indicates that non-complying/ non-serious bidders might try to subvert the bidding process by quoting unreasonably low prices.

18. Tender Enquiries: Preparation and Issue Of:

This is an important document as the supplier's offer to be received in response thereto would be based on the information given and called for therein. The Tender Enquiry should, therefore, be prepared with utmost care setting out in unambiguous terms the requirements of the purchaser as to the quantity, quality, delivery, destination etc. and any information which may be helpful to the tenderers in the submission of the offers, complete in all respects. All the important clauses relating to Eligibility Criteria, Evaluation Criteria, Earnest Money, Delivery Schedule, pre-despatch inspection, Arbitration, Liquidated Damages/penalties for the delayed supplies etc should be incorporated in the Bid documents so as to fully safeguard the interests of the Government and for evaluation of bids on equitable and fair basis.

19. Standard Bidding Document

GFR provides that terms, conditions stipulation and information may be incorporated in the bidding documents as under: -

- Instructions to Bidders.
- Conditions of Contract.
- Schedule of Requirements.
- Specifications and allied Technical Details.
- Price Schedule (to be utilised by the bidders for quoting their prices).
- Contract Form.
- Other Standard Forms, if any, to be utilised by the purchaser and the bidders.

The guidelines for preparation of the Standard Bidding documents (Tender documents) for different types of goods bidding processes, value of purchases etc are given in the separate chapter. Standard Bidding Documents should be adopted as far as possible for better and competitive response from the industry/ suppliers.

20. Bid Validity

The validity period should not ordinarily be more than three months from the date of opening of the bids. For complicated / sophisticated items, this period may be more than three months. The required duration of the validity in each case should be decided on merits of each case at the time of planning the purchase.

Bidders shall be required to submit the bids, valid for a period specified in the SBD. The validity period should be sufficient to enable the purchaser to complete evaluation of bids, decide placement of contract and award the contract. The period should not be too long, because longer period may push up the quoted prices.

21. Signing of Tender Enquiries:

Tender Enquiry should be issued for and on behalf of the purchaser named in the schedule i.e. the President of India, Governor of State etc. as the case may be, and not “for and on behalf of the purchaser”. The offers received in reply would be deemed to be addressed to the purchaser and it would be possible to establish a legally concluded contract.

22. Amendment to Bidding Documents/ Extension of Bid Opening Date

At times, necessity may arise to modify/ amend/ clarify the bidding documents. Amendment should be clear, unambiguous and specify the clauses/ provisions being amended. Further, the amendment may modify the requirement in a major way and / or where much time is not left for the bidders to respond to such modification and to prepare revised bids. Requests for the postponement of tender opening date received from the tenderers should normally be discouraged but where necessary for reasons to be recorded, the competent purchase officer shall decide on postponement of tender opening date on the individual merits of each case. In such a case, the date of submission and opening of bids should also be extended sufficiently to enable the suppliers to respond as also the bid validity and bid security termination dated should also be suitably extended.

Whenever it is considered necessary to postpone the tender opening date, quick decision must be taken and amendment issued.

In case of LTE, copies of amendment should be sent to all the suppliers to whom the tenders were sent. In case of ATE, copies of the amendment shall be sent, free of cost, to the bidders who have purchased the bidding documents through speed post/ courier/ e-mail and attached prominently in all the unsold copies.

Such notice of extension of date of tender opening of tenders should also be published on the website without delay.

23. Submission of Bid

While submitting the bid, the bidder will return in original (along with the original copy of the bid) the proof of the bidder's purchasing the document from the authorized source.

Sometimes, especially for sophisticated items, the purchase office may need more than one copies of the bid. The no. of copies of the bid required to be submitted by the bidders should be prominently mentioned in the tender documents. All pages of the bid, except for un-amended printed literatures, if any, shall be initialled by the person signing the bid. The original and the copy(s) of the bid should be put by the supplier in an envelope, which will again be put in an outer envelope with proper address and identification mark. The procedure should be specified in the Bidding Documents.

24. Method of Receipt and Custody of Bids :

Receipt, custody and opening of bids should not only be done in a transparent manner, but the procedures and drill for the same must also appear transparent.

Receipt, care, custody and distribution of tenders till opening should invariably be entrusted to officials not involved in the purchase of the item.

The best method for receipt of bids is through a tender box. A designated official should be made responsible for opening of tender box, receiving bulky bids, which cannot be dropped in the tender box and those received by post, courier etc.

A bid without inscription on its cover may be opened in the Receipt Section. The tender Enquiry No., time & date of opening of the bid shall be recorded on the original cover of such bids by the receiving official and thereafter promptly sealed. The sealed original cover will then be put in a new cover on which the relevant details shall be again indicated. Similar procedure shall be followed in case of bids received in torn cover.

All bids shall be documented indicating full particulars of the TE, bidder and other related information and kept in safe custody. All the tenders shall be handed over to tender opening officer unopened under proper acknowledgement on the prescribed time and date.

Head of Department shall prescribe the system in the organization for opening of tender box at prescribed time, receipt and distribution of all tenders so as to maintain sanctity of tenders.

25. Opening of Tenders:

All the bids received on time (i.e. other than Late bids) are to be opened on the prescribed date, time and place as indicated in the bidding document. The bid opening time should be immediately after the deadline for receipt of bids, without any avoidable gap in between.

The bids should be opened in the presence of the authorized representatives of the bidders attending the bid opening. These representatives should bring with them letters of authority from the bidders on their letterheads to this effect. These provisions shall be suitably mentioned in the tender documents.

The bid opening official/s shall prepare a list of the authorised representatives of the bidders attending the bid opening with details, i.e. their names & addresses as well as bidders' names & addresses and obtain their signatures. This list shall be kept in the concerned purchase file for record.

The officer/committee opening the tenders will read out following particulars from each tender opened by him for the information of the representatives attending the opening:-

- (i) Tender No. and the name of tenderers.
- (ii) Articles/nomenclature of the stores
- (iii) Quantity offered in the tender.
- (iv) Unit price –
- (v) Taxes & Duties such as Excise duty, sales tax extra or any other duty/ tax
- (vi) Whether any rebate/discount offered. If so, quantum and conditions if any.
- (vii) Delivery period offered.
- (viii) Terms of Delivery
- (ix) Any other special conditions like packing charges, deviations etc.

Each tender shall be numbered serially, initialled, and dated on the first page. Each page of the schedule or letter attached to it shall also be initialled with date. Further, imported details such as the prices, delivery period etc. shall be circled and initialled.

Alterations in tenders, if any, made by the firms, should be initialled legibly by the officer/committee opening the tenders to make it perfectly clear that such alteration were present on the tenders at the time of opening. Wherever any erasing or cutting is observed, the substituted words should be encircled and initialled and the fact that erasing/cutting of the original entry was present on the tender at the time of opening be also recorded.

In cases where only one tender is received against an advertised or limited tender enquiry it will be opened in the presence of another officer other than the one who would be dealing with the purchase of the item and he will counter sign the tender documents so opened in token of having witnessed the tender opening.

26. Spot Comparative Statement :

The officer/committee opening the tender shall prepare “on the spot” a comparative statement of the quotations received indicating the name of the firm, quantity offered, Unit price, whether ST/ED/Statutory duties are extra or not, Delivery Period, terms of delivery, discount if any, any other special condition like deviations.

27. Late Bids

The bids, or modifications to bids, which are received after the due time & date of receipt of bids are called “Late Bids”. Such Late bids shall not be considered at all in case of ATE & LTE. However, Late bids can be entertained by competent purchase officer in case of Single Tender Enquiry.

Late tenders may be destroyed by the organisation after the purchase decision has been finalised, except in cases where tenderers have been asked to furnish EMD. Late tenders in EMD cases shall be returned unopened to the bidders.

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CHAPTER – 6
EARNEST MONEY AND PERFORMANCE SECURITY

1.0 EARNEST MONEY

Earnest money deposit (EMD) is a token security demanded from a tenderer who intends to submit his offer against a tender enquiry issued by the purchaser specifying required conditions for the same.

As per the General Financial Rules (Note-2, Rule 273), EMD should be called for from the Tenderers, who are participating against tender enquiry.

Objective of taking EMD

The objective of calling the earnest money deposit alongwith tender is to deter non-serious suppliers to participate against the tender enquiries. The value of the EMD should be so fixed as not to act as barrier to genuine tenderers at the same time should not be so low that it fails to deter the non-serious tenderers.

Amount of Earnest Money Deposit (EMD)

- 1) Quantum of EMD required to be incorporated in the tender enquiry will depend on the gross estimated value of tender. EMD should be calculated taking into account the value of all the components and the exact amount of EMD is to be indicated in the Invitation to the Tender Enquiry/Tender Notice.
- 2) As per GFR, EMD can be fixed by the Head of the Department, on case to case basis, subject to the provision of the GFR which says that it should ordinarily be 2% and may not exceed 5% of the estimated value. Keeping in view the basic objective outlined above, suitable stipulations should be devised and incorporated by departments for earnest money deposit while issuing tender enquiries. The competent authority of respected ministry shall decide the quantum of earnest money.
- 3) As a guiding principle it is advisable that EMD is fixed on a reducing scale as proposed below:

Up to Rs 1 Lakh	– No EMD is necessary
Up to Rs. 10 Lakh	– 2% & a minimum of 2500/-
For subsequent Rs.10 lakhs to 1 Cr	– 1%
For subsequent More than Rs. 1 Cr.	– 1/2%

For Rate Contracts (based on the total estimated draws)

Up to Rs 1 Cr.	Rs. 10,000/-
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1 Cr. To 5 Cr.	Rs. 25,0000/-
5 Cr. To 10 Cr.	Rs. 50,000/-
More than Rs. 10 Cr.	Rs. 1,00,000/-

Note: All values to be rounded off to nearest 100/-

Forms of EMD: EMD may be accepted in the form of Demand Draft, fixed deposit receipts and banker's cheques only.

Validity of EMD: EMD should normally remain valid for a period of 45 days beyond the final bid validity period.

Offers of the firms submitted without EMD as demanded are summarily to be ignored.

The EMD of successful tenderers shall be refunded after the Performance Security as called for in the contract is furnished, unless it is adjusted towards Performance Security. EMD furnished by all unsuccessful tenderers will be returned as early as possible after the expiration of the period of tender validity but not later than 30 days of the award of the contract. Failing to do will attract payment of interest on the prevailing bank rate on the EMD beyond 30 days by the department to the tenderer.

EMD by Foreign Suppliers should be furnished through Nationalized Banks only.

EMD will be forfeited, if the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of his tender or o award of contract fails to furnish the required Performance Security.

2. PERFORMANCE SECURITY

Performance Security (PS) is security demanded after placement of contract from a successful tenderer whose offer has been accepted. Performance Security is taken from the contractor for due performance of the contract.

General Financial Rules (Rule 273), stipulates that all firms contracting with government has to submit PS unless exempted by Finance Ministry.

Objective of taking performance Security:

The objective of incorporating Performance Security in contracts is to safeguard government interest in case of breach of contract by the contractor and is a tool to bind the contractor for fulfilling the contractual obligations as laid down in the contract. It is guaranteed pre-estimated damages which can be recovered from the contractor in case of default.

The PS is not meant to compensate for the loss to the purchaser in the event of delay/non performance/breach of contract etc, which may be enormous but should act as deterrent for the contractor for default on flimsy grounds.

Value of Performance Security Deposit (PSD):

GFR stipulates the limits of PS (Rule 273) which stands at minimum of 5% and a maximum of 10% of the contracted value.

HOD's should decide the amount of the PS depending on the case, keeping in view the basic objective outlined above. It should be stiff enough to deter default but at the same time should not tend to block the finances of the contractor especially in the context of bigger contracts. The competent authority of respected ministry shall decide the quantum of SD.

Guiding principles to work out PS are illustrated below:

Gross Value of the Contract or Estimated Drawls in case of Rate Contracts	Supply contract	Supply with installation & commissioning	Integrated Contracts involving supply, installation, Commissioning & integration with other works	For Rate Contracts for DGS&D only (no PS is to be taken by DDO's saperately)
For the first 1 Crore	5%	7.5%	10%	0.75%
For subsequent Rs.1 crore to 5 Crore	3.5%	5%	7.5%	0.5%
For portion more than Rs.5 crore	2.5%	3.5%	5%	0.25%

* All values to be rounded off to nearest 1000/-

Exemption from submitting PSD

- 1) Submission of PSD may be exempted in exceptional cases by Competent Authority
- 2) Petty purchases/contract of value less than 1 lakh.

Forms of PS

Performance Security is acceptable in any one of the forms mentioned below:

- i) Demand Draft on Banks
- ii) Bank Deposit /Fixed Deposit Receipt on Nationalized Banks.
- iii) Bank Guarantee executed on the prescribed format through Nationalized Banks.

Detailed conditions stipulated against each of them are in Annexure 6.1

Performance Security has to be submitted within 30 days of issue of contract failing which contract can be cancelled.

Validity of PS: PS should remain valid for a period of 60 days beyond the date of completion of contract.

Verification of Bank Guarantee as PS

Bank Guarantee submitted as Performance Security Deposit needs to be verified from the issuing bank. Only on receipt of confirmation from the bank same can be accepted.

Performance Security demanded can be adjusted against EMD furnished along with the tender and/or against the pending bills of the contractor.

Purchase Officer shall not clear any of the firm's bills before it is ensured that Performance Security has been furnished by the tenderer and have been verified. If Performance Security is to be adjusted from the firm's bills it should be adjusted fully before any payment is released.

No inspection of store should take place before PS has been deposited & verified. The contractors are not expected to offer the stores prior to submission of the Performance Security

A mechanism for **Safe custody & monitoring** of PS, should be in place to keep a watch on the date of validity of the securities under custody. Heads of the department should issue detailed procedure/guidelines on this.

All organizations shall set up institutional arrangements for taking action well ahead of the date of expiry of the validity of the Performance Security for its renewal.

In case of failure on the part of the contractor to comply with the requirement of Performance Security, it shall be lawful for the competent purchase officer to cancel the contract or any part thereof and invoking the relevant provisions of Conditions of Contract for breach of contract.

Refund of PS: Performance Security is taken for the due performance of an individual contract should be immediately refunded when the contractor duly performs and completes the contract in all respects & not later than 30 days of completion of the contract. Failing to do so will attract payment of interest on the PS on prevailing bank rates beyond 30 days by the purchaser to the contractor.

Performance security taken for the due performance of the contract should be forfeited and credited to the Government, in the event of a breach of contract by the contractor, in terms of the relevant agreement. The decision to invoke the PS should be taken as far as possible by an officer higher in the rank than the one who accepted the guarantee.

Performance cum Guarantee/Warranty security deposit

In contracts where specified security is to be deposited against Guarantee/Warranty obligation before release of final payment, contractor can submit fresh securities or request for adjustment of PS lodged with the purchaser towards Guarantee/Warranty security. In such cases validity of the security should 60 days beyond the Guarantee/Warranty period.

In situations where amount of the Performance Security (PS) and Guarantee/Warranty Security is identical, Performance cum Guarantee/Warranty security deposit can be taken as PS, which will be valid up to 60 days beyond the expiry of Guarantee/Warranty period.

ANNEXURE 6.1

	Form	In whose name to be obtained	Condition of acceptance	Custody
1	Demand Draft on Nationalized Banks	HEAD OF OFFICE	Government will not pay interest on any deposit held in the form of cash	Will be deposited into Government Treasury for credit, in favor of the Department
2	Bank Deposit / Fixed Deposit Receipt on Nationalized Banks.	HEAD OF OFFICE	<p>The deposit receipt should be made out in the name of pledgee. If it is made in the name of the pledger the bank should certify on it that the deposit can be withdrawn only on the demand or with the sanction of the pledgee.</p> <p>The Depositor should agree in writing to undertake any risk involved in the investment.</p> <p>The bank should agree that on receiving signed treasury challan and withdrawal order from the pledgee in respect of the deposit or any part thereof, it will at once remit the amount specified to the pledgee.</p> <p>The responsibility of the pledgee in connection with the deposit and interest on it will cease when issues a final withdrawal order to the Depositor and sends intimation to the bank that he has done so.</p>	<p>Should be kept in the safe custody of the departmental authority which takes the security deposit in accordance with the provisions the General Financial Rules. These should be kept safe custody as valuable documents.</p> <p>Deposits at Call Receipts should be encashed and deposited into Government Treasury for credit in favour of the department.</p>
3	Bank Guarantee through Nationalized Banks	In the name of the Purchaser name in the schedule to the contract	<p>Bank Guarantee will be accepted in the prescribed format only</p> <p>The Guarantee as well as revalidation letters if required should be accepted only on non-judicial stamp paper.</p> <p>The Bank Guarantee should be valid up to 60 days after the date of completion of performance.</p> <p>Acceptance of the Bank Guarantee shall be subject to verification as follows:-</p> <p>The Bank Guarantee shall be subject to verification for its genuineness. For this purpose, the purchaser shall address a registered A.D letter to the concerned Branch of the Bank with a copy to the Manager of the Head Office of the Bank, enclosing a photocopy of the Bank guarantee with each letter requesting them to confirm within 10 days that the Bank Guarantee has been issued by them.</p>	The Bank Guarantee should be kept in safe custody after retaining a photocopy thereof for reference and any action which may arise thereon.

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CHAPTER -7
ELEMENTS OF PRICE AND THEIR VARIATIONS

1. ELEMENTS OF PRICE: The evaluation of tenders is made on the basis of ultimate cost to the user. The quoted price comprises of the following elements:-

• **INDIGENOUS STORES:**

- (i) Basic Price (including packing and forwarding charges)
- (ii) Statutory Duties & Taxes
- (iii) Freight
- (iv) Transit Insurance

• **IMPORTED STORES:**

- (i) C.I.F. Price (including agency commission, if any)
- (ii) Statutory Duties & Taxes
- (iii) Landing and clearing charges; and
- (iv) Inland Freight/ Insurance

2. PRICE VARIATIONS:

(a) It is the general policy that, as a rule, prices should be firm & fixed, and no contract involving any uncertain or indefinite liability or any condition of an unusual character is entered into without the approval of the competent Financial Authority.

(b) However, under the following exceptional circumstances, price variations on account of (1) raw-materials, (2) wages, (3) central excise duty, (4) customs duty, and (5) foreign exchange, should be accepted for ensuring that the prices are in line with the market, and both the seller & buyer are equally compensated:

- (i) where the cost of one of the raw materials is more than 50% of the price of the stores; or
- (ii) where there is an abnormal increase/ decrease (i.e. 25% & above) in the prices of any of the raw materials; the cost of which constitute more than 30% of the price of the stores; or
- (iii) where the delivery period is spread over for more than one year.

(c) Standardized "Price Variation" clauses, incorporated in the Instructions to Tenderers (Form DGS&D-229), should be used for reference purposes. However, the purchase officers of different government departments may suitably draft the price variation clause in consultation with their respective Finance Wing.

2.1 PRICE VARIATION CLAUSE RELATING TO RAW – MATERIAL:

The purchase officers shall ensure to indicate in the tender enquiry, the base price on which the firms should base their rates in respect of variable price quotation, otherwise there will be difficulty in comparison of the quotations on equitable basis if different tenderers base their prices differently. For the purpose of determining the base prices & their variation, they should take the

assistance of commodity prices/ commodity indices (in case commodity prices are not ascertainable), which are published regularly by (1) Central Statistical Organization, (2) Economic Advisor to the Ministry of Commerce & Industry, (3) Public Sector Units, (4) London Metal Exchange, or (5) Any other suitable index.

2.2 PRICE VARIATION CLAUSE RELATING TO WAGES ESCALATION:

It is considered inappropriate to fix any wage escalation clause for any type of stores manufactured indigenously. Where, however, it has been decided to allow wage escalation, the escalation factor should be carefully worked out to ensure that no undue advantage accrues to the supplier.

3. CONSIDERATIONS OF DUTIES AND TAXES IN GOVERNMENT PURCHASES:

3.1 The duties and taxes as levied by the Governments vary from item to item. As a general policy, the statutory variations in the duties & taxes on the stores should be allowed both during the currency of the ongoing contract as well as between the date of tender and the Acceptance of the tender so that both the seller and buyer are equally compensated for rise or fall in the prices of the stores on account of such variations. This is also in accordance with the Section 64A of Sale of Goods Act, 1930.

3.2 In the Tender Enquiry conditions, the tenderers should be asked to specifically state in their offer whether they intend to ask for the duties/taxes as extra over and above the prices being quoted. In the absence of any such stipulation it is to be assumed that the prices quoted include these elements and no claim for the same will be entertained after opening of tenders.

3.3 Where the tender mentions that the prices are exclusive of statutory duties & taxes which will be payable extra, it should be definitely stated in the Acceptance of the Tender that the duties & taxes are payable at specified rates, in addition to the cost of stores, instead of mentioning their payment in an indirect manner.

4. DUTIES / TAXES ON RAW-MATERIALS:

The purchaser is not liable to any claim on account of fresh imposition and/or increase of statutory duties or taxes on the raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract, unless otherwise specifically agreed to in terms of the contract. Moreover, no provisions to this effect exist in the Section 64A of the Sale of Goods Act, 1930.

5. STATUTORY DUTIES & TAXES ON REPLACEMENT SUPPLIES:

Where the replacement supplies is made under a contract, Section 64A of the Sale of Goods Act is attracted and increased duties & taxes are payable by the buyer. However, as delivery of the goods is delayed, the increase in duties & taxes would not have been payable, if the original supplies had not

proved defective and been rejected or lost or damaged in transit, therefore, required to be replaced, the additional expenditure on account of increased duties & taxes is a loss directly occasioned by the delay in supplies. However, the purchaser is entitled to recover the liquidated damages at the contract rate upto a sum equal to the amount of extra expenditure incurred on account of the increased duties & taxes. Therefore, the extra amount on account of increased duties & taxes need not be paid to the supplier, as the same is required to be adjusted against the liquidated damages for the delay in supplies.

6. OCTROI AND LOCAL TAXES:

Stores supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. Contractors should ensure that stores ordered against contracts placed by this office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other Local Taxes and duties. This should be specifically mentioned in the Tender Enquiry/ Contract.

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CHAPTER – 8

EVALUATION OF TENDERS AND FORMULATION OF PURCHASE PROPOSAL

The bids after their opening are required to be evaluated in accordance with the terms and conditions of the bidding documents. The methodology for bid evaluation and terms and conditions are to be incorporated in the tender documents in a transparent manner so that the bidders and also the purchaser are fully aware of the same. The evaluation of a tender is a crucial stage and should be undertaken carefully, correctly and fairly by the purchase officers with clear cut delegation of powers and responsibilities. Such a scrutiny and analysis will enable the purchaser to take a decision as to which of these bids are acceptable and which out of them can be utilised for placement of contract.

In procurement of highly technical and complex goods/ equipments, evaluation should be entrusted to a Tender Evaluation Committee of experts. Such a committee should be invariably constituted at the planning stage itself.

The bid evaluation is to be done step by step in a methodical way. It involves:

- Preliminary examination
- Evaluation of technical responsiveness and to eligibility/ performance criteria.
- Capacity and past performance
- Preparation of comparative/ ranking statements after taking into consideration all elements of cost such as taxes, duties, packing, forwarding, transportation insurance etc.
- Price preference to priority sectors
- Competition, reasonableness of prices including negotiations
- Availability of adequate funds
- Finalisation of purchase proposals
- Deciding the lowest evaluated bidder (s)
- Award of contract (s)

2. Responsive/ Non-responsive Bids

The bid, which does not conform to all the essential and mandatory requirements and / or contains reservations with regard to the critical and essential terms & conditions of the SBD, is termed as non-responsive bid and is not to be considered for placement of contract. The bid, which meets all such requirements, terms & conditions, is termed as responsive bid. There may be some bids, which are prima facie responsive but contain some minor omissions / missing

points. These are substantially responsive bids and should be processed further for rectifying the minor deficiencies.

In the very first step the bids, which are straight away unacceptable e.g. bids without EMD; are to be considered non-responsive and should not be taken up for further scrutiny. The reasons for considering such bids as unresponsive should, however, be duly recorded. The remaining bids should, thereafter, be scrutinised in greater details to find out which of them substantially satisfy the required terms and conditions of the bidding documents. There may be some bids which have some minor deficiencies without having any financial repercussion and/or impact on other bids, but at the same time, it is necessary to have proper clarifications from those bidders in connection with those minor deficiencies. The purchaser may obtain the required clarifications from those bidders in writing. The offers of the bidders, who furnish proper and straightforward clarifications, are then to be considered further along with the offers which are already straightaway acceptable. The bids, which remain unacceptable even after receiving the response are to be considered as unresponsive and may not be processed for further scrutiny after duly recording the deficiencies and reasons for the same.

The determination of a bid's responsiveness, or otherwise should be based on the contents of the bid itself without recourse to extrinsic evidence.

Some critical and essential requirements of the SBD are :-

- (i) Bid received on time (i.e. regular bid)
- (ii) Bid includes complete requirement as specified in a schedule.
- (iii) Bid signed by authorised representative.
- (iv) Provision of bid security
- (v) Terms of delivery
- (vi) Delivery schedule
- (vii) Registration status, wherever required, eligibility and qualification criteria.
- (viii) Completeness of price structure with reference to the terms of delivery.
- (ix) Payment term.
- (x) Applicable law.
- (xi) Any other mandatory directive incorporated in the SBD.

3. Preliminary Examination

The purpose of this examination is to exclude bids from further and more complicated consideration if they do not meet the minimum standards of acceptability as set out in the bidding documents and are, therefore, not substantially responsive. The bid should however, not be rejected on trivial procedural grounds.

It shall be ascertained whether the bids conform to critical and essential requirement of bidding documents such as:

- (i) has been properly signed by the authorised representative
- (ii) Are accompanied by required Earnest Money Deposit (EMD) or other securities.
- (iii) Has valid registration status, Eligibility criteria & Qualification criteria
- (iv) Are responsive to ITB requirements and other bidding documents

Incomplete bids should be straightaway ignored. References should not be made for seeking Clarifications or asking for document(s) that have an effect on the substance or essentials or price of the bids or their relative ranking.

4. Technical Responsiveness

In the procurement of simple commodities, semi-finished raw materials and goods, where the offers are for identical and comparable material, price ordinarily is an appropriate deciding factor. In such cases, a separate technical evaluation may not be necessary and a mere checking regarding supplier's confirmation to supply the goods to the required/ governing specifications should be sufficient.

However, in case of purchases of goods of technical and complex nature and/ or requiring furnishing of literature/ documents/ information regarding technical parameters and qualification/ eligibility criteria, clause by clause compliance of the specifications/ requirement should be checked. In important cases the details as to how the bidder would meet the requirement of the particular clause should be called for in the bidding document and checked. In complex cases, format of compliance statements should also be formulated and included in the bidding documents clearly stipulating that the firms should submit the details/ statement in the form and indicate the clause by clause compliance giving complete details as to how the requirements are met, failing which their offer would be treated as incomplete and unresponsive and would be liable to be ignored.

Based on technical evaluation of the offers, such of the technical bids as are incomplete or indicate major deviations should be ignored. The proposal should bring out clearly the deficiency in the bid with respect to specifications/drawing or other particulars governing the requirements. Deviations from the specifications should be clearly brought out in a separate Deviation Statement. Bids received without these statements should also be treated as unresponsive and ignored without any further reference to the bidder.

In case of procurement of plant and machinery or stores of specialized nature or scientific equipment, the tender evaluation committee should record in detail the reasons for acceptance/ rejection of technical proposals analysed and evaluated by it.

The offers having minor deficiencies, without having any financial repercussions can be further processed and clarifications sought, if such clarifications will not put the concerned bidder in an unduly favourable position at the cost of the bidders and/ or the purchaser. The clarifications may be obtained by giving a reasonable target date and if the response is not received by the stipulated date, the offer may be ignored.

In case of two bid system, however, a view may have to be taken based on responses received if it is inescapable to modify the technical requirements. In case it is decided to substantially alter the technical requirements, either the tender process should be repeated or the tendering firms given further opportunity after clearly indicating the final requirement and the deviations noticed in each case.

5. Eligibility/ Qualification Criteria

The eligibility criteria in respect of the following are normally required to be checked: -

- (i) Registration of the firm for the item (s) being procured & its validity
- (ii) Availability of valid ISI mark and its validity
- (iii) Statutory/ mandatory certifications such as drug licence, pollution/ emission certificates etc. specified in the bidding documents.
- (iv) Performance requirements with supporting documents
- (v) Complaints/ rejections in earlier supplies, if any
- (vi) Capacity and present load in hand

The contracts are to be placed on firms who have the technical and the financial capabilities to execute them and with proven performance.

In respect of registered firms, the technical and financial capacities checked at the time of registration, which is granted for specific items and specifications and incorporates the assessed capacities. Procurement of stores should normally be made from Registered manufacturers/suppliers. Each Department should maintain a list of approved suppliers and their vendor rating. This list should be updated regularly every calendar year.

A firm is considered registered for such items of stores for which the registration has been specifically granted and should be in the approved list maintained by the Registration Branch of the DGS&D/NSIC/DGQA/the concerned Department or any other agency specified for this purpose as specified in the Schedule to Tender.

A firm shall be considered to have registered status if the date of registration is prior to the date of opening of bids (as distinct from the date of opening of revised bids). The bidding firms securing registration subsequent to the original date of bid opening should be treated as unregistered.

In respect of an item allied to the items for which the bidding firm is registered, the potential of the bidding firm should be taken to decide its capacity to produce that particular item and registration status of the firm with respect to the item may be determined accordingly.

For the **procurement of stores with ISI marking**, the status of a firm as to whether they hold valid BIS licence to supply stores with ISI mark will be determined as prevailing on the date of date of bid opening.

6. Comparative Statement

A comparative statement of all the tenders opened should be prepared especially when large number of bids have been received. It is a statement containing the relevant details of all the tenders and would assist in ensuring that no tender is lost sight of. It should indicate the details concerning the offers, such as rates, taxes & duties, delivery, quantity offered, any other information relevant to the decision of the tender. The status of the firms regarding their

registration, SSI/ Large scale/ Public sector unit and the last purchase price etc should also be given therein.

7. Ranking Statement

After a comparative statement has been prepared, the ranking statement should be prepared in ascending order of the prices (i.e. lowest to highest) on equitable basis, taking the incidence of all elements of price upto destination for inter-se comparison. Wherever a comparative statement has been prepared, Ranking statement may be prepared upto three (3) eligible responsive bidders.

8. CAPACITY AND PAST PERFORMANCE:

The Purchase Officer should prepare a statement in the following proforma: -

1. Name of Firm
2. Capacity
3. Past Performance, indicating the proven performance
4. Load in hand
5. Complaints/ rejections in past supplies if any.

9. Vendor Rating:

Bids or modification of Bids received after the due time and date of receipt of bids (late bid) shall not be considered at all. Bidder should not be permitted to modify his bid after the expiry of deadline for receipt of the bid. If a bidder revises his bid after bid opening and which has an effect on the substance or essentials the bid shall be ignored as late bid.

Deviation in delivery schedule: Contracted stores are required to be delivered/ despatched within an acceptable range say 3 months and which should be specified in the Schedule of Requirements. No credit should be given to deliveries earlier than minimum indicated. Further, bids with delivery beyond specified range should be treated as unresponsive. Within this acceptable range, for evaluation, a price adjustment per month calculated at the rate of leviable L/D, or pre-estimated damages, say 2% per months or 0.5% per week as specified in the Bid document can be added to the quoted price of bids offering deliveries later than the earliest minimum delivery period mentioned in the Schedule of Requirements, if and only if such a loading is specified in the evaluation criteria in the bidding documents.

For urgent requirements (to be specified in the Schedule of Requirements), heavy pre-estimated damages be specified in the bidding documents and the resultant contract and no relaxation for late deliveries be allowed. For such requirements, the bids, which are not meeting the required delivery period, may be treated as unresponsive.

10. REASONABLENESS OF PRICES:

Evaluation of tenders is made on the basis of the ultimate cost to the user and is the major factor in the decision for placement of contract. The reasonability of prices may be judged based on the factors as follows:

- (i) Last Purchase price of same (or similar) article. The last purchase price is to be suitably updated due to price variation clause (if any) and examined with reference to rate (s) of inflation, price indices of finished products as well as raw materials etc. while making such comparison.
- (ii) The current market price of same (or similar) article.
- (iii) If raw material(s) covers the major portion of the cost of the item the movement of the prices of the raw material(s),
- (iv) Terms of delivery – if supply is to be made at a distance and/ or difficult place, the overall price of the article to be supplied will be comparatively more.
- (v) Quantity involved – generally higher the quantity, the unit cost of the article is lower, and vice-versa.
- (vi) The delivery period.

In case of emergency purchases, higher price might have been paid in the past. On the other hand, on some occasions suppliers clear their surplus stock by offering lower price. Such purchase/ sale prices are not the normal prices payable for the stores. The purchaser officer while comparing the prices in the tenders should factor in such peculiarities in last procurement price paid.

(vii) Keeness of competition amongst the responsive bidders against advertised tender enquiry should be the most appropriate criteria for judging the reasonableness of the prices. If the prices received from responsive bids indicate keen competition amongst the bidder and there are adequate higher priced bids, the price can be termed as reasonable, provided the same prices are not abnormally higher in comparison to last purchase prices, movement of prices of raw materials, estimated prices etc as per broad guidelines mentioned above. Thus, the reasonability of the price proposed to be accepted has to be established by taking into account the competition observed from the response of the trade to the enquiry, last purchase price, estimated value and market price wherever available.

Unless price variation formula is given in Bidding Documents, bidders should quote firm prices. Contract should either be entered on **firm price basis** or based on a price variation formula specified in the bidding documents. Where a bid on variable price is considered, the price variation formula should be clearly spelt out indicating the base price on which the variation is to be allowed.

Bids with variable prices, where ITB is seeking firm prices, should ordinarily be treated as unresponsive and ignored. If inescapable, contract on variable prices can be considered on the merit of the case. Offer involving any uncertain or indefinite liability or any condition of unusual character should not be considered.

Where the standard price variation clauses are not available and if the purchase decision is to place order on variable prices basis, a suitable price variation clause has to be drafted in consultation with Finance allowing price variation in the raw material with a suitable price variation factor preferably on net weight of raw material and a suitable time lag (say 30 days).

12. LACK OF COMPETITION:

Lack of competition exists in the following circumstances:

- a) Number of acceptable bids are less than three;
- b) Price(s) quoted by the bidders in pool or through ring/ cartel formation, even if the number of bidders may be large.
- c) Although there are other quality manufacturers of the required goods the product of only one manufacturer has been offered by all the bidders; irrespective of number of quotations;
- d) Store under purchase is chronically in short supply against which a number of acceptable bids never exceed two.

Depending on the merits of the case, the following course of action may be adopted to deal with the situations:

If the number of offers received are less than three (3), the purchaser shall examine whether all standard procedures like wide publicity of the demand, projection of clear cut specifications without any ambiguity, providing sufficient time for obtaining the bids, etc were followed and also whether the prices quoted by the bidders are reasonable. If all these aspects are satisfied the purchaser can proceed for placement of order even if the number of acceptable offers received is less than three (3).

In case of pool/cartel formation, the purchaser should consider taking appropriate administrative action such as against bidders forming pool/ ring/ cartel. In case it is seen that the ring prices quoted are reasonable but the cartel has been formed to divide the quantities amongst the members of the pool, and the requirement is urgent requiring early finalisation of case, cartel may be broken by selecting bidder (s) whose terms and conditions as well as credential and past experience are most favourable compared to other bidders in the pool/ cartel and award the contract to such bidder (s) so as to break the cartel/ pool.

13. LAST PURCHASE PRICE (LPP):

To ascertain the reasonability of the prices, these should be compared with the prices paid in the last contract, if any, for the same item, on the following lines:

- i) The LPP will be the price paid in the latest contract of a similar magnitude, which is not more than three years old.
- ii) Where the firm holding the LPP contract has defaulted, the fact should be highlighted in the purchase proposal and the price paid against the latest contract placed prior to the defaulting LPP contract where supplies have been completed, should be indicated.
- iii) Where the price indicated in the LPP is subject to variation, besides indicating the original price as of the LPP contract, the updated price as computed in terms of the price variation clause, may also be indicated.

iv) Where the supply against the LPP contract is yet to commence i.e. delivery is not yet due, it should be indicated in the purchase proposal, whether the LPP contract holder is a past supplier/registered supplier/ new supplier. In case of new supplier, the price paid against the previous contract as in the case of (ii) above should be indicated.

Indication of the percentage of increase over LPP should invariably be given in the purchase proposals.

14. Submission of Purchase Proposal for Coverage:

With the above initial analysis, a comprehensive proposal should be formulated by evaluating the responsive bids received, keeping in view the following parameters:

- a. The technical acceptability of the bids,
- b. The technical and financial capability of firms coming in the zone of consideration,
- c. The delivery period offered vis-à-vis delivery requirement as stipulated in the bidding documents.
- d. Reasonability of the prices quoted,
- e. Purchase and / or Price Preferences.

The proposal will also discuss the non-responsive bids coming in the zone of consideration, clearly indicating the reasons for ignoring them.

It shall be ensured that the contracts are placed on firms whose performance is satisfactory and who are offering delivery nearest to that stipulated in the Bidding Documents. Purchase officer should avoid the tendency to place orders on bidders offering low prices but with poor or no prospect of supply as per the delivery requirements;

The proposal should be formulated for coverage so as to ensure that;

- (i) Contracts are awarded to the tenderers who have the requisite financial, technical and production capabilities necessary to perform the contract;
- (ii) The quantities are covered in keeping with the quantitative capacity meeting the delivery requirement.

The ranking statements prepared vis-à-vis the bids received should be checked so as to avoid possibility of any mistake and examined carefully.

A comprehensive proposal for conclusion of contract should be formulated. The proposals should begin with relevant facts and information, which are necessary for arriving at a prudent decision as under:

BASIC DATA

1. ITEM

- (a) Description
- (b) Specification
- (c) Whether requirement urgent
- (d) Delivery period required:

2. BIDDING DETAILS

- (a) Type of Bidding
- (b) Date of Bid invitation
- (c) Date of Bid opening
- (d) No. of Bids received

3. Last Purchase Price

4. The terms and conditions offered by the bidder (s) within the zone of consideration should be clearly discussed by highlighting those which are at variance with Bidding Documents. Such bids as a rule should be ignored

5. The proposal should not only discuss the merits of all the offers lower than the one to be accepted but also the merits of the higher offers from SSI/PSUs which come within the range of price/purchase preference allowed under Government policies. The purchase proposals should also certify that no quotation from an SSI unit or PSU within the prescribed range of preference has been left out of consideration.

(a) bring out the reliability of the bidders in the zone of consideration for the supply of stores to required specification, whether they possess necessary technical capacity/ capability, financial status etc;

(b) gives due consideration to the price aspect - whether firm or subject to any variation and ensuring that the elements affecting the price have been reasonably asked for;

(c) analyse the reasonability of prices being considered for acceptance comparing with LPP, market price etc.,

(d) give due consideration to the delivery period offered vis-à-vis the Schedule of Requirement,

(e) analyses the past performance of the firm, if they have executed any order, the load they are carrying, if they are in the process of executing any contract(s),

NB: Placement of a second order on a firm who have not started supplies against their earlier order.

(f) leads to placement of order on firm(s) who have agreed to abide by the terms and conditions of ITB.

(g) consider the concept of “Value for Money”. This would include

- i) operational costs for a prescribed period of time,
- ii) cost of consumables, such as fuel, power, etc,
- iii) quantifiable benefits.

However, these requirements and methodology of evaluation should be clearly spelt out in the bidding documents.

Purchase decisions may also be taken by way of Tender Purchase Committee (TPC)/ Tender Advisory Committee (TAC). The competent authority must decide whether to hold TPC or TAC before the bid opening date.

15. POST TENDER NEGOTIATIONS:

Negotiations, after tenders have been opened, should be severely discouraged as this methodology vitiates the sanctity of the tender system and reduces the credibility of the purchase organisation. Further, quality becomes the causality. Unless some definite evidence is forthcoming to show that the prices received are unreasonably high or there is tendency to obtain unreasonably higher prices by ring formation or on account of the lack of capacity, negotiations should not be resorted to at all.

Post tender negotiations are banned in ad hoc procurement except in case of negotiations with L1 [(Lowest eligible and responsive bidder(s))].

Counter offer of a price by the Purchaser is also covered by the term “negotiations”. Counter-offers on the basis of unestablished prices for small gains should be discouraged.

16 EXTENSION OF VALIDITY OF OFFERS

All efforts should be made to see that the purchase decision is taken as early as possible and in any case within the original validity period of the bids. This is of considerable importance, for, apart from the delay which would invariably occur in covering the demand, and thereby cause delay in the receipt of stores by the consignee, there is also a risk of the firms refusing to accede to the request for extension or the firms withdrawing their bids, or extending the bid with revised rates, all of which might lead to avoidable expenditure.

In cases where seeking extension of the validity of bids becomes inescapable, it is advisable to take action well in advance of the expiry of validity of bids, so that the bids of firms who do not agree to the extension will still be available for consideration. Tenderers whose bids are substantially unresponsive should not be requested for extension of their bids.

Where only part quantity/items of the bids are accepted and for the remaining quantity/items the bidder(s) are required to keep their bid(s) open up to a subsequent date, such quantity/items should be specifically mentioned in the communication addressed to the tendering firm(s)

The first extension of validity of bids up to one month may be done by the competent Purchase Officer. The second extension of validity of bid will require the approval of the next higher level. For subsequent extensions, the approval of the Head of Department will be required. No extension of bid validity beyond twice the original period of validity of bids, as sought in the ITB, may be permitted.

17 SCRAPPING OF TENDERS AND ISSUE OF FRESH ENQUIRIES;

This contingency should be exception rather than a rule Re-invitation to Bid can be justified only where there has been a material change in the basic specification after receipt of bids or where the bids received do not conform to specifications in important respects or where prices quoted are unreasonably high or because of a sudden slump.

N.B. (1) In cases where inquiries against the same demand are sent in the second or subsequent round, the previous one having been scrapped for one reason or the other, it should be made clear to the bidders, who may have quoted against the previous ITB, that the fresh ITB is in super session of the previous one.

(3) ITB/Notices should also be sent to those firms who had participated in the ITB subsequently scrapped.

18 RETURN OF TENDERS RECEIVED AGAINST TENDER ENQUIRIES CANCELLED/SCRAPPED SUBSEQUENTLY: Such tenders may be returned on request with the approval of the competent authority.

19 INTIMATION OF ACCEPTANCE OF TENDER (A/T):

The contract is brought into existence upon communication of the acceptance, which must be within the time prescribed. Where the post is the medium of communication between the parties, the acceptance is complete as soon as it is posted. Proper care should be taken to address the letter or telegram of acceptance correctly. If the A/T is despatched through the electronic medium, it must be digitally signed by the authorised Officer.

When a specific stipulation has been made by a bidder that he should be informed of the acceptance by a particular date and in a particular manner, it must be ensured that the acceptance is issued in time and in the manner prescribed by the bidder to enable him to receive it by the date fixed. If dispatch of the intimation is delayed and bidder receives it after the expiry of the specified date, the contract will not be a valid one and it will be open to the bidder to refuse to accept the same. It should, therefore, be ensured that in all such cases, the decision is communicated sufficiently in advance so that the tenderer will definitely receive it before the due date.

After a purchase decision has been taken, formal A/T must be issued as quickly as possible. Where the time left in the expiry of the offer is short, an Advance A/T may be issued by telegram or letter, but this should be avoided as far as possible. The Advance A/T should incorporate the essential requirements, viz prices, specifications, terms of delivery, taxes and duties, delivery period, performance security, advance sample due date, etc. and the following: "The Contract is concluded by this acceptance. A formal Acceptance of Tender will follow."

N.B: There should be no material difference in the advance and formal A/T.

20 DESPATCH OF CONTRACT:

The A/T, Advance A/Ts by letters, and Supply Orders against the DGS&D Rate Contracts should be dispatched under Registered post with acknowledgement due or through the electronic medium duly signed digitally.

The postal A.D or the acknowledgement slip, on return from the contractor, will be pasted on the reverse of the office copy of the A.T/ Supply Order. If no acknowledgement is received from the contractor within 7 days from the date of issue of A/T/ Supply order, then the contractor should be reminded and the matter pursued till acknowledgement is received from him.

Copies of Acceptance of Tender/ Supply Order must be endorsed to various authorities specified in the contract as well to others concerned.

All A/Ts and Supply Orders must be posted on the DGS&D website (<http://dgsnd.gov.in>) with a view to bring transparency in procurement actions.

21 INTIMATION TO UNSUCCESSFUL TENDERERS:

The unsuccessful bidders should, as far as possible, be informed of the reasons for non-acceptance of their tenders. However, where any exceptions are to be made, decisions in this regard should be taken at an appropriate level. In such cases, the unsuccessful tenderers should be informed of the non-acceptance of their tender without assigning any reason.

22 PRESERVATION OF REJECTED QUOTATIONS: Rejected quotations should be preserved in a separate folder along with the relevant purchase file.DV manual revamp

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CHAPTER 9

RATE CONTRACTS

The Directorate General of Supplies & Disposals (DGS&D) which is the Central Purchase Organization is responsible for conclusion of rate contracts with registered suppliers for goods and items of standard type which are identified as common user items and are needed on recurring basis by various Central Government Ministries / Departments. The items on rate contracts with relevant details are published on DGS&D Website: <http://dgsnd.gov.in>.

What is a rate Contract:

A Rate Contract is an agreement between the Purchaser and the Supplier to supply the specified stores and services at the specified prices and terms and conditions for the quantities those may be ordered by the authorised Government entities [known as Direct Demand Officers (DDO)] during the currency of the rate contract.

The rate contract is in the nature of a standing offer. Minimum drawals are not guaranteed in the Rate Contract. A legally valid contract would come into existence with the placement of individual order in the prescribed format by an authorized Direct Demanding Officer in the Ministry/ Department. Such an order is called “Supply Order” and each “Supply Order” constitutes a separate legally enforceable contract.

2. Stores for which Rate Contracts are to be concluded:

- (a) Commonly used items needed on recurring basis by Govt. organizations (more than one).
- (b) Items for which prices are likely to be stable or where Rate contracts could be finalized with provision of price variations to account for fluctuation of market rates of raw-materials etc.
- (c) Items for which R/C is convenient to operate and annual drawals are economical, say above Rs 25 lakhs. In case of items of low value and which are required by indentors in small quantities, rate contracts may not be concluded.
- (d) Rate Contract may not be concluded for the scarce / critical/ perpetually short supply items.

Advantages to Users:

- (a) Competitive and economical price due to aggregation of demands.
- (b) Saves time, efforts, man-hours and related costs involved in tedious and repetitive tendering.
- (c) Availability of quality goods with full quality assurance back-up.
- (d) Enables procurement as and when required and thus reduction in inventory cost.
- (e) Advantages even to small users and those located in remote areas.
- (f) provides one single point of contact to procure such items.

Advantages to Suppliers:

- (a) Reduces marketing cost and efforts.
- (b) Elimination of repetitive tendering and follow up with multiple authorities.
- (c) Provides single point contact for Govt. supplies.
- (d) Aggregation of Govt. demand leads to economic production.
- (e) Leads to most competitive prices being offered.
- (f) Lends credibility.
- (g) Promotes quality discipline.
- (h) Facilitates sale to State Govt./ PSUs.

3. Bringing more and more common user items on the rate contract:-

It is enjoined upon the DGS&D to bring more and more common user items on rate contracts.

Regular interactions should be held by DGS&D with the trade and the user departments to bring more items on rate contracts. There shall be a Standing Review Committee (SRC) consisting of representatives of Major indenting departments, trade organizations, prospective bidders, etc. to consider bringing new items on the Rate Contract.

In respect of new items being brought on rate contract for the first time where there is not adequate competition despite public notice, the requirement of registration can be relaxed with the approval of competent authority. The award of rate contract will, however, be subject to the firm's satisfactory technical and financial capability.

4. Procurement outside Rate Contracts:

In all cases of urgent needs where there is likely to be delay in getting supplies through the operation of such rate contracts, the same items could be procured from the open market as long as the price to be paid for such items does not exceed those stipulated in the rate contract. Such purchases should not exceed Rs. 50,000 at a time and Rs. Two lakhs aggregated in the whole year and are exercised in accordance with the powers delegated under the Delegation of Financial Powers Rules, 1978. Ceiling/ Monetary limit in this regard shall be adhered to.

DGS&D concludes Rate Contracts to standard specifications after a wider consultation process and checking product availability in market. Ministries/ Departments shall not modify/ change the specification/ requirement of the items with the intention to procure such items outside Rate Contracts. They shall consult DGS&D in case a need for change in specifications/ requirement arises.

5. Conclusion of Rate Contracts/ agreements for most favoured prices/ for Automobiles, sophisticated hi-tech items.

DGS&D concludes rate contracts for Automobiles, Machine tools, Information technology products etc. OEM and ancillary spares and similar products where the design feature, performance parameters etc. of such products/ items differ between the product of different manufacturers and even between different models of manufacturer and where an equitable comparison of prices of different product/ model is not feasible. Such DGS&D R/Cs are concluded on discounts on net dealer prices etc.

DGS&D would also be concluding agreements for Most Favoured Prices for sophisticated/ non-standard items such as servers, net-working equipment, diagnostic instruments, ICU/CCU instruments, earth-moving machinery etc. with reputed manufacturers. These common user items are also required in large quantities by different departments/ organizations in Govt. sector. The design features and the performance parameters of such stores differ from product to product and from model to model. Each model introduced in the market goes through the grind of extensive design and R&D efforts, users trials etc. The users have to meet their specific needs from amongst the available products/ models and equitable price comparison of these models is not feasible. DGS&D would conclude agreements for most favoured prices with reputed manufacturers, as per procedure finalised by DGS&D in consultation with Deptt. of Expenditure.

6. Criteria for award of Rate Contracts:

(a) Rate Contract shall be awarded to only registered firms having laid down eligibility criteria such as availability of ISI mark, service centres across the country etc.

(b) The Rate contract holders should meet the performance criteria specified in the bidding documents against the past rate contracts.

7. Procedure for conclusion of Rate Contract:

The Rate Contracts are concluded based on competitive tenders through a transparent Advertised Tender Enquiry procedure published on DGS&D web-site.

The proposal should invariably discuss the price aspect, fully supported by market rates, unit price of rate contract, raw material cost analysis, relevant price increases, market intelligence report, reasons for variation in prices by giving due consideration to;

(a) The comparison of the quoted prices with the current R/C prices, indicating probable reasons for variations in price, e.g. material costs / labour index, market trend, technological changes etc.

(b) The R/C price behaviour over the last 3 R/Cs and price criteria for award of these R/Cs.

(c) The behaviour of the Economic Indices / Price index for that item over that period.

(d) In case the current R/C prices are subject to price variation, these are to be adjusted in relation to base rate and the price variation factors/ clause, vis-à-vis the tenders so that the comparison is equitable.

(e) Parameters which are relevant to determine the reasonableness of the prices such as the movement of prices or main raw materials demand- supply scenario, technological changes in products/ processes should be ascertained in advance so that at the time of opening of tenders, all necessary information is available to make an appropriate evaluation of offers and, thus, conclude rate contract in time at reasonable and justifiable prices.

(f) A reasoned explanation of what can be an acceptable increase in price (s) to be allowed.

In respect of items being brought on rate contract for the first time, a thorough and detailed scrutiny would be made in arriving at the reasonableness of the prices, estimated drawals etc. as it would set the basis for all future rate contracts.

The procedure to be followed by DGS&D to conclude R/Cs and method to be adopted in the procurement of R/C items by the indenting officer shall be laid down by DGS&D in detail in the DGS&D manual. DGS&D shall regularly streamline and upgrade their procedures so as to eliminate avoidable delays in the areas concerning projection of the requirement, placement of

order, confirmation of funds, inspection of goods, payments to the suppliers etc. DGS&D would also lay down clear guidelines for the benefit of the user departments regarding uses of the rate contracts and their rights and duties under the rate contract system.

8. Conclusion of Parallel Rate Contracts:

Proposals should be worked out for entering into parallel rate contracts with minimum number of firms, which in any case be not less than two by considering;

- a) the proven/ established capacities of the tendering firms against past rate contracts
- b) the quantity committed against the existing Rate Contracts.
- c) the estimated annual requirement and the actual draws of the rate contract though not routed through the DGS&D rate contracts, may be much more. On the assumption that draws by state government, PSUs & other organizations who also utilize DGS&D R/Cs is generally equal or more than the draws of the Central Govt. organizations and the firms may commit 50% of the assessed capacity for supply against rate contracts, the annual drawl of rate contract should be taken as four times the actual draws of the current rate contract by Central Govt organizations.
- d) reasonable price range so as to include products of established and reputed manufacturers as also items produced by different sectors so as to afford wider choice to the Government Departments while deciding the reasonableness of the price range.

The DGS&D on merits of each case shall decide the number of firms to be awarded Rate Contracts for an item, so that Government Departments will have wider choice.

- (e) Efforts shall be made to conclude rate contracts with the firms located in different parts of the country.

The parallel rate contracts with different firms may be concluded within a reasonable price range (say 5%) depending upon the merits of individual case. The price range should be based on the lowest price (L-1) of eligible established/ proven supplier with significant share of draws (say over 10%) against the past rate contracts.

Negotiation / Counter-offer:

- i) Post Tender Negotiations should be avoided and efforts should be made to conclude rate contracts with adequate number of firms at prices within reasonable range to meet the estimated draws without resorting to negotiations.

In the rate contract system, where a number of firms are brought on rate contract for the same item, negotiation as well as counter offering of rates are permitted with the bidders in view and for this purpose special permission has been given to the Directorate General of Supplies & Disposals (DGS&D).

ii) In cases where the prices of L1 firms for different item/ sizes etc are considered acceptable, but there are not enough firms within the reasonable price range, R/Cs should be concluded with L1 firm (s) and its price, counter offered to other higher quoting firms to be decided based on a price criteria to be specified in the procedures/ bidding documents L1 firms shall also be given an opportunity to reduce their price and the price bids of all firms to whom counter-offers have been made and L1 firm shall be opened like regular bid. Those who accept the counter offered prices or quote lower prices may be awarded parallel rate contracts to meet the estimated draws.

iii) Where, however, the price of L1 is not acceptable, the negotiation in the first instance may be carried out with L1 only for arriving at a reasonable / acceptable price. In situations where new comers or firms with unfavourable reports happen to quote an unreasonably low price, such offers may not be ignored. However, if such offers are made, it may not be desirable to treat such offers as L1 for negotiations and the technically acceptable and reasonable L1 firm may be decided based on the established past performance against earlier R/Cs with the approval of the competent authority for the purpose of above exercise. On successful conclusion of negotiations with L1, R/C may be awarded to the L1 at the agreed negotiated price and the same may be counter offered to the other higher quoting firms and the parallel R/Cs concluded in the same manner as above. It may not be desirable to negotiate/ make counter-offers to firms who have quoted abnormally high prices than L1(say over 30%).

iv) If the negotiations with L1 are not successful, the price considered as reasonable may be counter offered to the higher quoting firms including L1 The process may be repeated depending on the response received till adequate number of firms are on Rate Contracts.

9. Cartel formation / Pool rates:

Pool/Cartel formation is against the basic principle of competitive bidding and defeats the very purpose and objective of open and competitive tendering system. Such practices are unethical and firms who indulge in such practices should be dealt with severity. In case it is found that all the firms or a group of firms have quoted the prices in pool, the offers of such firms may be ignored and suitable administrative action initiated against them, such as removal of such firms from the list of registered suppliers the application from such firms for renewal of their registration may be considered only after a lapse of two years. If the proprietor/ Managing partner/ Managing Director etc. form new company and apply for registration, the same shall also be considered only after two years. Industry/ Trade should be duly warned in this regard.

10. Fall Clause:

The fall clause is a price safety mechanism in the Rate Contract. The Fall Clause provides in terms and conditions governing the rate contract that of the Contractor sells or even offers to sell the stores at a price lower than the rate contract price to any person or organization during the currency of the Rate Contract the rate contract price will be automatically reduced. Other rate contract holders would be given equal opportunity to reduce their price as well. However, the purchaser should satisfy himself that the fall clause or reduction in the price is genuine and it is

market driven/ oriented and not solely limited to under cut other R/C holders who had originally offered lower rates. Attempts to change their relative ranking should be dealt with firmly. A mechanism would also be prescribed to check unethical and manipulative price reductions.

11. Period of Rate Contract:

The period of the rate contract should normally be one year for stable technology products. However, for items where technologic changes are fast/ frequent, a shorter or longer period may be considered. The periods of different rate contracts should be fixed in such a manner that they are properly staggered throughout the year to avoid rush of work in any one month. The rate contracts should not expire towards the end of the financial year the user departments in procuring their requirement within the allocated funds.

BIS specifications, should as it would lead to better competition. If any special requirement of packing, marking, inspection etc., has been included in their specifications, the same should be mentioned so that these could be included in the tender enquiry by way of special requirements. It shall be ensured that the specifications are environment friendly and energy efficient.

12. Issue of Rate Contracts:

The rate contracts shall be issued in the prescribed format. It shall contain the following important details: -

- (a) Product specification
- (b) Price with details of taxes and duties
- (c) Slab discounts, if any
- (d) Validity period of rate contract
- (e) Terms of delivery
- (f) Delivery period
- (g) Minimum quantity/ value restriction, if any
- (h) Payment terms
- (i) Paying authority

13. Maintenance of Pre-inspected stocks:

The Supplier shall maintain pre-inspected stocks of the stores to meet the urgent requirements of the indentors.

14. Mandatory inspection of stores against DGS&D rate Contracts:

All the stores supplied against DGS&D rate contracts will be inspected by the Quality Assurance Officer of the area concerned prior to despatch/ delivery to the consignee. The rate contract will accordingly contain the following information: -

- (a) Scope of inspection

- (b) Inspection authority
- (c) Place of inspection

15. Renewal of Rate Contracts:

The rate contracts should not be extended as a matter of routine. The rate contract would be extended only in exceptional circumstances for the reasons to be recorded in writing, with the approval of competent authority in consultation with Integrated Finance for a maximum period of 3 months. While extending the rate contract, it shall be ensured that the price trend is not lower.

16. Buy back prices:

Wherever feasible, the rate contracts should provide for provision for buy back of the existing /obsolete/condemned items that may be available with the Government Departments. The buy back prices will be applicable for the items in the following categories: -

- (a) Less than 1 year
- (b) 1-2 years
- (c) 2-3 years
- (d) 3-4 years
- (e) 4-5 years
- (f) More than 5 years

The above buy- back prices shall be quoted by the Suppliers for working and non-working equipment.

17. Concurrent issue of Rate Contracts:

As soon as the decision to award rate contract to more than one firm is taken, contracts should be issued to all the firms simultaneously and not on different dates. Where, however, decision to conclude parallel rate contract is taken on different dates, parallel rate contracts can be issued on different dates as and when decision is taken.

18. Revocation of Rate Contract:

A Rate Contract being a standing offer, the same can be revoked at any time by the rate contract holder during its currency after serving notice of minimum 30 days to the purchaser. However, all Supply Orders placed prior to receipt of the notice will be binding and executed by the suppliers. Similarly, the Purchaser can withdraw the Rate Contract at any time during the currency of the contract after giving due notice of 30 days to the rate contract holder.

19. What is a Supply Order: -

A Supply Order is an order that can be placed on any of the rate contract holding firms either directly by the Direct Demanding Officers or by the DGS&D subject to such restrictions as are mentioned in the rate contract.

20. Who can Place the Supply Order:

Any officer of the Central Government/ Ministry/ Department called as “Direct demanding Officers” (DDOs) can place the Supply Order provided he certifies that he has been fully authorized by the Department to sign the Supply Order and incur the financial liability in respect of the stores ordered.

21. Placement of Supply Orders:

A Supply Order can be placed during the currency of the Rate Contract. The DDOs are advised to cover their requirements against the rate contract in a phased manner and not to place orders for bulk quantities, so that the firms are able to deliver the stores as per the agreed time schedule. The placement of supply orders at the fag end should also be avoided. The supply order placed as per the rate contract shall remain executable even after expiry of validity of rate contract till the supplies are completed.

The Supply Order shall be issued to the R/C holder in the prescribed format i.e. DGS&D Form No. 131. It shall contain the following important details:-

- (a) Rate Contract No. and date
- (b) Name and complete address of R/C holder
- (c) Quantity (in case of more than one consignee, the quantity to be dispatched to each consignee to be indicated)
- (d) Price
- (e) Date of Delivery by which supplies are required.
- (f) Designation and the full address of the DDO along with telephone. No., Fax No. and E. mail address.
- (g) Complete and correct designation and full postal address of Consignee(s) along with telephone No., Fax No. and E. mail address.
- (h) Complete designation and full postal address of stores receiving officer along with telephone number, Fax No. & E. mail address.
- (i) Nearest Railway siding (NRS).
- (j) Despatch instructions
- (k) Correct designation and complete postal address of Accounts Officers along with complete Head of Accounts, to whom the debits are to be raised.
- (l) Name and address of the Paying Authority to whom the bills are to be raised by the supplier.
- (m) Authorization Certificate
- (n) Financial certificate
- (o) Certificate that copy of supply order has been sent to:

- (i) DGS&D
- (ii) Paying authority
- (iii) Quality Assurance officer

22. Stipulation of Delivery period in Rate Contracts:

The DDOs should provide a definite date of delivery in the Supply order based on the delivery period stipulated in the rate contract. They should not indicate the delivery period as “immediately”, “urgently”, “as early as possible” etc.

23. Options available to DDOs in case of non-materialization of supplies within the delivery period indicated in supply order:

When the supplies do not materialize by the stipulated date of delivery, the DDO has the following options depending upon the condition and circumstances of the case:-

i) To extend the delivery date:

When the supplier fails to adhere to the date of delivery and apply for extension to DDO giving reasons for delay and also date up to which extension is required, the DDO may consider such request and may extend the date of delivery suitably in the prescribed format reserving the rights to levy liquidated damages and to deny any increase in the price, which takes place after the agreed date of delivery.

ii) To refix delivery period:

Normally in the following categories of cases the delivery period should be refixed:-

- a)** Cases where the manufacturer of stores is dependent upon the approval of advance sample and delay occurs in approving the samples those submitted in time.
- b)** Where the date of delivery is stipulated on account of omission on the part of the DDO.

iii) To withdraw the supply order and cover on other parallel R/C holder:

At times the supplies are not made by the rate contract holders within the delivery period stipulated in the supply order, the DDO shall have right to withdraw the supply order after the expiry of the date of delivery stipulated in the supply order and cover the demand against any other parallel rate contract concluded by DGS&D. In case of such withdrawal of the supply order by the DDO, the same will be reported to DGS&D. The failure to make supplies in such a case will be considered by DGS&D as the failure/non-performance on the part of the supplier and will be taken into consideration in performance assessment before award of next rate contract.

24. Monetary limit / Annual turn-over in Rate Contract:

Based on the conditions stipulated in the letter of registration, the rate contracts are issued stipulating the monetary limit/annual turn-over of the R/C holder. While deciding the quantity and value of the supply order to be issued, the monetary limit/annual turn-over indicated in the rate contract may be kept in view. The past performance of R/C holder indicating value of the orders received and executed by R/C holder against previous R/C will also be indicated in the Rate Contract for the guidance of the DDOs while placing Supply Orders.

25. Performance Security:

Under no circumstances the DDO will ask the R/C holder to deposit the performance security. DGS&D shall consider obtaining a reasonable sum of Performance Security against the R/C from each successful bidder (i.e. the bidder selected for issue of Rate Contracts). This will ensure the successful bidder alertness and sincerity towards fulfilling their obligation as per the Rate Contract. In the event of breach of contract the performance security may be forfeited and credited to the Government. The DGS&D will also in future indicate the performance of the R/C holder indicating the value of the orders received by R/C holder in past. DGS&D will also obtain the performance security from the R/C holder at the time of issue of the rate contract to them and in case of any default reported by the DDOs, the DGS&D will consider to forfeit the performance security submitted by the R/C holder.

26. Instructions to the DDOs and Consignees:

(a) Instructions to DDOs to be followed while placing Supply Order:

- i)** To ensure that expenditure involved in procuring stores has received the sanction of competent financial authority and that funds are available under proper Head of Account.
- ii)** Supply Order(s) against R/C should be prepared in the Standard Form i.e. DGS&D Form No. 131. All particulars mentioned in the standard Form including those indicated in **para 22.2** above should be carefully typed or filled so as to avoid any ambiguous interpretation.
- iii)** To ensure that all columns of DGS&D Form No. 131 have been filled in and are complete in all respects. Failing which the Paying Authority will not accept the supply order and return by the Paying Authority under intimation to DGS&D and the supplier.
- iv)** To place supply order for their requirement on phased delivery basis to enable the supplier to supply stores in time. DDO should provide a definite date of delivery by which supplies are required. The DDO should not stipulate the vague terms of delivery.
- v)** The DDOs who are authorized to operate R/C should sign the supply order placed by them and the communications relating thereto with their own designation. The name of the officer signing supply order should be indicated in block letters.

vi) The full and clear instructions regarding dispatch shall be given in supply order. Any changes in dispatch or delivery instructions should be notified to the supplier under intimation to Paying Authority and Inspection Authority.

vii) The DDO will ensure that all documents like 'D' form required for claiming concessional rate of Sales Tax, etc. are issued along with the supply order. The DDOs shall be responsible for obtaining the Road permits from the Sales tax authorities immediately on receipt of dispatch details from the Supplier.

(b) Instructions to be followed by the consignees:

i) Timely intimation of receipt of stores: The consignee within a period of 60 days from the date of receipt of the stores will inform the firm with copy to the Purchase Officer and Controller of Accounts concerned regarding receipt in full and in good condition or otherwise of the stores indicating shortages, damages and recoveries, if any, under registered post (A.D.). The period for transmission of aforesaid information is 90 days in the case of items of plant and machinery. The adherence to period mentioned above for different types of stores is mandatory because the consignee loses the right of rejection of stores on the expiry of the specified period due to the operation of the provisions clause 4(2) of the General Conditions of Contract DGS&D-68 (Revised).

(ii) Timely return of the Inspection Note: The consignee will ensure that receipt portion of copy No. 1 (Advance Payment Copy) of Inspection Note in case of provisional receipt of stores delivered locally or by road shall be completed and handed over to the carrier or authorized representative of the supplier within 24 hours of receipt of stores. In case this is not possible for the reasons to be recorded in writing, the provisional receipt will be dispatched as expeditiously as possible by speed post / courier / registered A.D. post but not later than seven days of receipt of the stores.

Similarly, the consignee should ensure to complete receipt portion of copy No. 1, copy No. 2 (Balance Payment Copy) and copy No. 5 (Accounts office copy) of Inspection Note in case of 100% payment or copy Nos. 2 & 5 in case of balance payment, as the case may be, and return the same to the contractor as expeditiously as possible after receipt of stores. Delay in issue of these Receipt Certificates delays the payment to the supplier and this may ultimately lead to increase cost of stores to the purchaser and also invite uncalled for criticism from the trade. The consignee should, therefore, avoid any delay in furnishing the Receipt Certificate to the supplier.

c) Drill to be followed by the consignee regarding receipt of stores:

a) The consignee should be watchful regarding the arrival of consignment immediately on receipt of Railway Receipt and despatch details from the contractor.

b) In case entire consignment is not received within 30 days of its despatch, the consignee should immediately take up with Railways and lodge claim with them. Simultaneously, the

consignee should advise the contractor asking them to take up the matter with the Railways for follow up action.

c) The consignee is responsible for taking prompt delivery of the goods immediately on arrival at destination and any delay in this respect results in payment of demurrage charges. Should any demurrage, wharf age or other charges whatsoever be claimed by the Railway on account of delay or default on the part of the consignee in taking delivery as aforesaid, he shall be responsible for such payment to the Railway”.

d) Any amount paid by the consignee, due to demurrage charges, under charges etc. on behalf of the contractor should be immediately reported to them, under intimation to the Paying Authority to enable him to retrench the amount from any of the bills due to the contractor.

a) The consignee is responsible for verifying at the time of taking delivery from the Railway Authorities that the stores have been received intact without loss or damages pos. When the stores are dispatched in full wagon loads, consignee should verify that the seals on the wagons are intact.

b) The consignee should invariably incorporate a certificate on the Receipt certificates on the following lines:-

“Consignment/s was/were dispatched under
+.....

+ Indicate any one of the following:-

- (i) Clear R/R
- (ii) Said to Contain R/R
- (iii) Railway/Owner’s risk.

c) In case the consignee observes some shortage/damage they should ensure to take Open Delivery invariably and lodge the claim with the Carriers immediately under intimation to contractor, DGS&D and the Paying Authority. Failure to act properly may result in losing their claim of shortage /damage, if any observed at a later date.

d) If there is evidence of loss or damage, the consignee should arrange to secure necessary certificates from the appropriate railway officials before taking delivery. The loss or damage should in every case, be promptly reported to the contractor, Purchase Officer who placed order, as well as the concerned Controller of Accounts responsible for payment for the stores as otherwise the consignee will be deemed to have accepted the stores. In any event, the consignee should not give Receipt Certificate to the contractor before checking and verifying the stores.

e) The consignee should ensure that any loss or damage to the stores that have occurred during Transit should be notified to the Contractor within 45 days of the date of arrival of the stores at destination. Failure to do so would render Purchaser’s claim for such loss/damage being rejected by the contractor.

f) If there are any discrepancies such as stores having been damaged, found deficient or below standard, the consignee, after taking into account special terms and condition, if any, that might have been stipulated in the contract regarding responsibility for breakage etc., in transit, should make the endorsement in the space provided in the Receipt Form against “Details of recoveries proposed by the consignees’ together with amounts to be recovered from the contractor. Brief reasons as to why the amount is to be recovered from the contractor such as ‘bad packing’ etc. should be stated as guide to the Paying Authority regarding the action to be taken.

g) The consignee will then ascertain from the contractor whether he is going to :-

- (i) make good any deficiency in store;
- (ii) carry out rectifications; or
- (iii) agree to the rectification being carried out by the consignee.

Regarding (i) - in the event of replacement after rejection of stores, the consignee should address a letter to the supplier for replacement giving details of stores rejected and endorse copies to the Controller of Accounts, Department of Commerce and the Quality Assurance Officer concerned. On receipt of the copy of the letter, the Quality Assurance Officer will carry out inspection of stores tendered by the firm and issue inspection Notes. The Quality Assurance Officer must mention in the Inspection Note that the stores are supplied in replacement of rejection made against his Inspection Note NO. _____ dated _____ as per letter No. _____ dated _____ from _____. The consignee will also as usual, return to the ‘firm’ the Inspection Notes after making necessary endorsement and completing the Receipt Certificates there in and the normal procedure for final 100 per cent payments will be followed in such cases.

Regarding (ii) - The same procedure as in the case (i) will apply except where rectifications are carried out at the consignee’s premises. In the latter event if it is not possible for the contractor to have the stores reinspected by the Quality Assurance Officer named in the Acceptance of Tender, the consignee may inspect the stores and issue the Inspection Note endorsing it with the Retrenchment Slip number and date for cross references. He will complete the Inspection Certificate and Receipt Certificate and distribute copies of the Inspection Note in the normal manner.

Regarding (iii) - The contractor will be debited with the actual cost of such rectification. No issue of any further Inspection Note is necessary.

l) The rejection of stores based on general remarks like “Inferior quality or Poor quality” creates complications in case of disputes. When the stores are rejected by the consignee, it should be done in attached format giving full details of supply order, R/R No., date of receipt, etc. While reporting the deviations, the consignee should give such deviations for each parameter/clause, clearly giving values/requirements as per contract specification and those found in goods supplied. All communications by the consignee pertaining to such rejection matters should therefore be sent in the proforma attached through Fax/Speed Post/Registered letter endorsing copy to DDO, DGS&D, Paying Authority and the Quality Assurance Officer.

m) Where stores are rejected on arrival on destination, these will be re-booked to, the contractor, if he so desires, "Freight to Pay" at Public Tariff rates.

n) Where the rejected stores are returned as above, and goods are not required to be replaced, the freight paid by the consignees, if any, on the original consignment will be recovered from the contractor either in cash or from their bills. In case original consignment was booked at concessional rate, the charges actually incurred by the consignee only will be recovered. If the contractor does not want the consignment to be re-booked, and the original consignment was booked at concessional tariff, the contractor shall be liable to pay the difference between the public tariff and the concessional tariff.

ANNEXURE

To

----- (The Supplier) -----.

-----.

-----.

Sub: S.O .No. _____ dated _____ placed
Under DGS&D Rate Contract No. _____ for
Supply of _____; Rejection of Stores.

Ref: Supplies made by you under RR/LR No. _____
Dated _____ covered by I/Note Nos. _____ dated
_____ - Rejection thereof.

Sir,

The stores supplied by you as per details under reference and received by this office on
_____ are rejected to the extent and for the reasons as detailed hereunder:-

- 1) Name of Stores:
2. Quantity ordered:
3. Quantity dispatched as per RR/LR:
4. Quantity received:
5. Date of receipt:
6. Quantity received short:
7. Quantity where inspection mark is not available or where it does not match with the
mark indicated on the I/Notes:
8. Details of deviations from contract specifications:
9. Details of test/examination conducted to check conformity to contract
specifications :
10. Quantity rejected due to:
11. Total quantity rejected/short supplied (6+7+10):

2. You are requested to refund the payment for _____ [quantity as per (11) above] and
remove the rejected goods within 30 days of the receipt of this letter after showing proof of
refund payment equivalent of advance payment received on account of the stores rejected or
withholding of equivalent amount by Controller of Accounts.

3. In case, however, the purchaser through the Inspection Authority decides to conduct joint
investigations, the rejected stores shall be removed within 30 days of decision of joint
investigation.

4. The rejected stores would be kept at consignee's premises at supplier's risk and ground rent shall be charged from the suppliers at specified rates if the rejected stores are not removed within the specified period.

5. This is, however, without prejudice to the terms & conditions of the contract.

Yours faithfully

[Consignee]

Copy to:

1. Indentor / D.D.O
2. D.G.S.& D. - He is requested to advise Controller of Accounts to Withhold an amount equal to the advance payment made on account of stores rejected/shortfall in quantity received.
3. Controller of Accounts.
4. Quality Assurance Officer - He is requested to advise if joint investigation is required to be carried out and if so, to fix a suitable date under intimation to all concerned.

DRAFT
CHAPTER -10

POST CONTRACT MANAGEMENT

1 ACKNOWLEDGMENT OF CONTRACT:

Contractor shall acknowledge the contract within 14 days from the date of issue of the contract/supply order by either of the following way of actions:

- i. Signing of the agreement
- ii. Acknowledging the contract in writing
- iii. Submission of the Performance security

It is the responsibility of the purchase officer to ensure that the contracts placed are duly acknowledged by the contractor and if no acknowledgment is received from the contractor then matter be pursued till acknowledgment is received.

2 PERFORMANCE SECURITY

The purchase officer should also watch whether the contractor has complied with the requirement of furnishing the Performance Security as per the terms and conditions of the contract. If not, timely action should be taken as per the guidelines given in Chapter-6.

3 DATE OF DELIVERY

- a) Time and the date of delivery of stores/services stipulated in the contract shall deemed to be the essence of the contract and it is required that delivery shall be completed by the agreed date.
- b) The contract comes to an end, by way of a breach, on the failure of the contractor to deliver the goods or service by the agreed date; and the purchaser may refuse to take delivery of goods or accept services, if offered after the agreed delivery date.
- c) The delivery completion date in the contract shall be stipulated in accordance with the provisions thereof in the accepted tender. Definite date for supply of stores shall be stipulated and expressions, such as “Immediate”, “ex-stock”, “as early as possible” etc. should not be used.
- d) Exact interpretation of “Delivery date” in respect of contracts shall be in variance depending upon the terms of delivery specified in the contract. This is explained in annexure 12.1
- e) **Terms Of Delivery In An Instalment Contracts:**
In the case of a instalment/severable contract, each instalment constitutes a separate contract and extension in delivery period etc. shall be dealt separately as in would be necessary for each instalment.

4 MONITORING OF SUPPLIES/CONTRACT:

Post tender management of contract is by no means less important than the process of award of contract. For proper execution of the contract and to ensure that supplies/works are completed in stipulated time purchaser shall ensure that follow up of the contract is done and all requisite steps are taken in time

HOD (Head of the Dept.) shall devise and implement a well documented system for **monitoring and review of performance** of the contracts for their department, incorporating special watch for critical contracts and in cases where delivery has been delayed.

The purchase officer should ensure effective and reliable monitoring mechanism to assess the actual ground position of the contracts and he shall be responsible for any lapses in taking timely remedial action.

Inspecting Officer should also be prompt/vigilant and there shall not be any avoidable delay in inspection of stores in such cases. All stores should be inspected within 15 days from date of offer. Corresponding benefit of delay should be given to the vender in delivery/completion period if delay is on purchaser's account.

5 REVIEW OF PERFORMANCE AND VENDER ASSESSMENT:

All departments shall formulate a well drafted and publicized vender rating and appraisal mechanism to grade the venders according to their performance. The firms shall be graded / classified accordingly and a record kept, so that in future-contracts, past performance of the firms can be linked. Bad/inadequate performance of the registered firms should be reported to the concerned registering authorities.

6 RE-FIXATION OF DELIVERY DATE: Normally, when delay is on the purchaser account the delivery period should be refixed.

7. EXTENSION OF DELIVERY PERIOD

Extension of delivery period can be done by the Competent Authority (CA) only on the expressed request of the supplier by reserving the right of the purchaser to levy liquidated damages for delay and with denial of increase in price, taxes, duties etc. taken place during the extended period. While granting extension of time on application from the contractor, the letter and spirit of the application should be kept in view in fixing the extended time for delivery.

The purchase officer empowered for Acceptance of Tender of that value will be competent to grant extension/re-fixation of delivery period.

Whether the extension of delivery date is to be granted or the contract is to be cancelled, shall be decided on the merits of each case. The factors influencing this decision shall be:

1. Time required to re-process the procurement/contract.
2. Urgency of the requirement of the user
3. Trends of the rates /New supplies/services may be available at cheaper or higher rates.

Extension should be granted only where the competent purchase officer is convinced that supplies/services would come forward during the extended period. Where purchase officer is convinced that there are no prospects of supplies forthcoming, particularly after granting one extension, it would be advisable to cancel the contract with a view to making repurchase as per the provisions of the Conditions of Contract.

8. ACCEPTANCE OF DELIVERY EXTENSION BY FIRM:

An extension issued shall be legal only if there is an acceptance by the firm, absolute and unqualified to all the terms and conditions of extension. Such an extension can be evidenced either by correspondence or by conduct i.e. by making supplies without raising any objection. Mere acknowledgement of the letter of extension is not adequate.

9. Non Acceptance of Extension by firm:

In case of non-acceptance of the extension of delivery date subject to the conditions stipulated in the extension letter (i.e. R/R and denial clauses) by the contractor, purchaser may cancel the contract or review the of extension/ terms and conditions depending upon the case by approval of CA.

10. PERFORMANCE NOTICE- NOTICE-CUM-EXTENSION LETTER:

In a bona-fide effort, to give last chance to the defaulting firm, CA depending upon merits of the case may issue NOTICE-CUM-EXTENSION LETTER (PERFORMANCE NOTICE) to the firm in the prescribed form. If there is still lack of satisfactory response or performance from the contractor, **notice for termination of contract** may be issued to the firm after expiry of 15 days of issuing performance notice.

CORRESPONDENCE AFTER EXPIRY/BREACH OF CONTRACT: The purchaser, Inspecting Officer or the consignee should not enter into any such correspondence that would have the effect of keeping the contract alive after the date of expiry of the contract.

COMPLETION OF CONTRACT/SUPPLIES: Delivery shall deemed to be completed when the consignee certifies that the stores have been

supplied/delivered/commissioned in all respects in conformity with the terms and conditions of the Contract. Thereafter any request for effecting replacement of stores or supplies will be made under guarantee/warranty clause where extension of delivery period is not necessary.

11. **TERMINATION OF CONTRACT:** The purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part :

- (1) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted by the Purchaser; or
- (2) If the supplier fails to perform any other obligation under the contract.

In the event of termination of the contract in whole or in part:

- (a) The Performance Security furnished shall be forfeited;
- (b) The purchaser may procure, upon such terms and in such manner as it deems appropriate, stores similar to those undelivered, and the supplier shall be liable to administrative action in terms of the contract.
- (c) The supplier shall continue performance of the contract to the extent not terminated.

12. **Monitoring of progress of departmental works/site preparation**

Purchaser shall also monitor the progress of other prerequisite works/supplies related to the installation and commissioning of the supply under the contract. Works s.a. site, foundations should be ready before the supply of the material are received so that supplies are utilized in proper manner. Any delay in installation/commissioning of the plant & machinery on this reason will be on purchaser's account.

Annexure 12.1

	TERMS OF DELIVERY	DATE OF DELIVERY
(a)	Local Delivery	The date on which the delivery is actually effected to the consignee.
(b)	Where Inspecting Officer is also the consignee	Where the Inspecting officer and the authority nominated for the purpose of taking delivery of the goods/services is the same, the date of delivery/services will be the date on which the goods are tendered for inspection provided always that they are found acceptable to the Inspecting officer – cum-consignee. {Note: This definition will hold good only in cases where inspection is carried out at the consignees' premises and will not apply to cases where the inspection is carried out at firms premises}
(c)	F.O.R station of despatch	The date on which the goods are placed on rail i.e. R.R. date, after inspection and acceptance by the Inspecting Officer, if relevant
(d)	By post parcel	The date of postal receipt
(e)	Despatch by air	The date of Air-way Bill
(f)	F.O.R. Destination,	The date on which the goods reach the destination, unless otherwise stated.
(g)	F.O.B. / F.A.S. contracts	The date on which the goods are put on board and ship/aircraft is the date of delivery, i.e. Bill of Lading date.
(h)	C.I.F. Contracts,	The date on which the stores actually arrived at the Indian Port unless otherwise stated.

DRAFT

CHAPTER - 11

INSPECTION OF STORES

PREAMBLE:

1. The General Financial rules of Govt. of India , under Rules 3 and 5 (Appendix 8, Part I), emphasize the importance of ensuring that stores purchased for the public services, conform to the prescribed specifications, and the necessity of careful inspection of all stores before acceptance. This applies to stores obtained or manufactured both in India / abroad and to inspection during manufacture at the supplier's premises as well as after erection / commissioning at site where necessary or desirable. That requirement for such inspections shall be made a part of the contract and inspection arranged by the department.

With a view to satisfying that the stores supplied by a contractor against the contract, are of the required quality and conform to the contract specifications, shall be subjected to ~~physical~~ inspection by an authority known as Inspection Authority . The stores thus accepted by the Inspection Authority named in the contract or his authorized representative can only be dispatched by the contractor for delivery to the indenter/ consignee(s) named in the contract-

Inspection of stores shall comprise of various steps as are necessary to ensure that the item produced conforms to contract specification and that while manufacturing the stores , the use of correct raw materials and correct manufacturing process has been followed by the manufacturer.

The functions and the organizational set up of Quality Assurance Wing of the Department and its Directorates shall be laid down. While Inspection Authority functions may be performed by the HQ set up of QA Wing, the field Directorates shall carry out their functions in their respective jurisdictions. However, by a general or special order by the head of the QA wing, a Directorate may be allocated the field work not covered in its jurisdiction

The head of the Inspection wing of the Department shall have the overall responsibility and shall act as appellate authority on all aspects of policies and procedures, functions and technical issues. The delegation to various levels of functionaries shall be worked out and given in Schedule separately

In this Chapter are stated the General administrative instructions on inspection of stores. Departmental Technical instructions on inspection of various classes of stores shall be issued departmentally, from time to time as and when necessary, for the guidance of the Inspecting officers.

2. INSPECTION AUTHORITY / INSPECTING OFFICER

All contracts shall indicate therein, the Inspection authority for the contract as well as the Inspecting officer who will actually carry out inspection of stores in question

3. DEFINITIONS

i) INSPECTION AUTHORITY is also the authority holding sealed particulars (AHSP), samples, drawings, specifications governing the stores being procured.

(ii) INSPECTION OFFICER is the officer responsible for carrying out the actual inspection of stores to be nominated by the concerned Inspection authority

4. INSPECTION AUTHORITIES

The Department, in their direct purchases shall nominate their own Inspection Authority. For all stores procured by the Central Purchase Organization directly or by the Departments through the operation of contracts concluded by Central Purchase Organization for Civil requirements, whether on Rate contracts or otherwise, the Additional Director General (QA) of the Central Purchase Organization shall be the Inspection Authority, unless stated otherwise.

5. FUNCTIONS OF INSPECTION AUTHORITY :

The functions of inspection authority are to manage the contracts from technical angle. At the pre contract stage, to ensure that the technical particulars of the tender are broad based, detailed, correct and complete in all respects and unambiguous in respect of scope of supply, quality parameters etc. for contracting purposes and the scope of inspection, the criteria of conformity, test methods etc. are well defined to form part of the tender and contract, advising indentors on Standard specs. and other requirements with reference to Tender Advance Samples and the scopes of references etc. At the post contract stage these shall include administrative arrangements for inspection of stores rendering advices on technical issues that may crop up during execution of the contract, ~~advice on waiver of physical inspection~~, Recommendations for amendments to contract in respect of technical specifications, Price reduction etc.

6. INSPECTING OFFICERS

In their purchases, the Department shall get the stores inspected through their technically qualified officers to ensure quality of stores. Wherever, the Department is unable to arrange inspection through its work force, it may approach the Central Purchase Organization or any other specialized authorized inspection agencies.

In respect of procurements against all contracts concluded by the Central Purchase Organization for Civil requirements, whether on Rate contract basis or otherwise, Inspecting officer shall be of the Central Purchase Organization. For stores required by Defence, against DGS&D R/Cs, as an exception, DG(QA), Ministry of Defence will be the agency for inspection except for the items for which, DG(QA) authorizes DGS&D to carry out bulk inspection.

7. INSPECTION OF STORES WHERE INDENTOR DESIRES TO ASSOCIATE
:

Where the Indentor desire to be associated with the inspection at the pre-despatch stage, they shall specifically give a clear indication in the indents itself. Such requirement, if agreed to shall be incorporated in the Contract . The Inspecting officer shall be final authority for acceptance of the stores and issue of the Inspection Notes in such cases. The procedure / drill in this regard shall also form a part of the contract to enable firm to co-ordinate.

The Contractor shall be notified / informed through provisions in the contract that inspection shall be undertaken by the nominated inspection agency, during manufacture, and / or before/ after shipment as the case may be and should be asked to communicate directly with that officer.

8. INSPECTION PROCEDURE : The inspection will be guided by the provisions contained in the governing specifications and contract as regards to the scope of inspection and tests , sampling criteria to be followed, etc. and the Departmental regulations, at the pre-despatch stage and/or during final inspection, as the case may be. The material actually inspected and accepted shall be double stamped/sealed and balance single stamped and the Inspection Note will be endorsed to this effect. However, the Quality Assurance Officer shall be responsible for the inspection of the whole consignment as per the contract.

9. PREPARATION FOR INSPECTION ON RECEIPT OF THE CONTRACT/SUPPLY ORDER :

The copy of contract or Supply Order placed by the Department shall be endorsed to the Inspecting Officer, so that inspection is carried out by him and Inspection Note issued . On receipt of the copy of the contract, the Inspecting Officer concerned shall satisfy himself that he is in a position to undertake inspection w.r.t. arrangements. He will also satisfy himself that the particulars governing the stores are complete , otherwise the same shall be got clarified from the concerned Purchase Officer before undertaking inspection. Inspection visits to the extent possible shall be arranged by combining tours , to achieve economy

The Inspecting officer shall be entitled to inspect work during the course of manufacture and during the currency of the contract and should take advantage of such visits to offer advice and explain any points on which the contractor may be in doubt.

10. ACCEPTANCE / REJECTION OF STORES BY INSPECTION AUTHORITY :

After satisfactory inspection and tests, the acceptable materials shall be stamped, labelled, marked, or sealed, according to the circumstances in such a way as to make subsequent identification of accepted lots easy by the consignee. Detailed departmental instructions shall be followed in this regard. For stores, not meeting the contract requirements the rejection Inspection Notes will be issued immediately. A time limit shall be fixed for issue of Inspection documents.

11. INSPECTION PROCEDURE FOR PLANT AND MACHINERY : In all cases of inspection of plant and machinery at manufacturers' works, and at site after erection and commissioning, the procedure to be followed shall be laid down by the department.

12. APPELLATE AUTHORITY AGAINST REJECTION MADE BY THE INSPECTING OFFICER : The appellate authority for any grievance of the contractor against such rejections made by the inspecting officer shall be one level above that of the officer who approved the rejection. The outcome of the appeal shall be reported to the Purchase officer for his final contractual action.

13. STAMPING/ SEALING OF ACCEPTED STORES : All accepted articles should be sealed, labelled or stamped according to their nature in a conspicuous manner in such a way that the material cannot be interfered with after sealing. Facsimile of the Inspection stamps and their position should be put on the Inspection Notes to help identifying the stores at the consignee's end. Departmental instructions shall be followed in this regard.

14. INSPECTION DOCUMENTS : Inspection Notes in the form prescribed by the Department, shall be issued in significance of the acceptance of the stores against which payments are made by the Paying Authority of the contract. Consignee's receipt certificate portion of the Inspection Notes shall require to be filled by the consignee after receipt of the stores, verification of quantity and inspection marks on the accepted stores and taking the supplies in their stocks, signifying their acceptance. Inspection Note shall have markings on it, regarding period of validity for dispatch of the accepted stores by the contractor, special payment copy endorsements etc, on them. The number of copies of the inspection notes and their distribution / issue, in different types of inspections, when supplies are accepted or rejected, shall be as prescribed by the Department. Each Inspection Note copy issued shall invariably bear the name, stamp with Designation and Code No. of the officer authorised to sign and issue Inspection Documents.

No 'Certified true copy' of the lost original payment copies shall be issued until a ' Non Payment Certificate' is obtained from the Accounts Officer concerned that "payment has not been made and will not be made against the original Inspection Notes even if received subsequently".

Procedure for extensions of validity dates of inspection notes and of issue of inspection notes against replacement supplies or where only a part quantity under a

particular Inspection Note could be dispatched within the validity period ,shall be shall be as laid down by the department

15. SANCTION TO MODIFICATIONS BY INSPECTING OFFICERS : The Inspecting officers shall not sanction any modification to the governing specifications, approved drawings or samples against any contract. Deviations from the contract specifications/requirements not affecting price, quality, performance and other terms of contract may be allowed at the level of DQA with or without consultation with the Indentor/Consignee on merits/ nature of deviations. In all other cases, the stores shall be rejected giving full reasons by issuing a rejection Inspection Note.

16. UTILISATION OF SERVICES OF OUTSIDE TESTING LABORATORIES

As part of the inspection of stores, at times , it becomes necessary for the Inspecting officer to conduct type / acceptance or special tests , at outside laboratories , when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the stores. Department shall draw up a list of approved laboratories comprising of reputed and adequately equipped independent Government laboratories / Institutions / research organisations or other NABL approved laboratories , to whom samples drawn from the lots offered can be sent for tests. The list of approved laboratories shall also prescribe those laboratories, which can be used as referral / appellate laboratories for retest , when stores tested at one laboratory are decided to be retested.

The Department shall lay down a Liability Statement for cost of samples expended in tests, Dispatch of samples, transportation costs, test charges etc. in respect of samples tested at outside laboratories as applicable in various situations .

In cases where the samples are to be tested at firm's cost on account of non-availability of their own testing arrangements, the responsibility of depositing the testing fee would rest with the contractor. The Inspecting Officer shall accordingly ensure the same.

17. PROCEDURE PERTAINING TO SAMPLES.

When a contract is concluded on the basis of an approved sample the same shall bear seals / signatures of the approval of the different agencies as appropriate, for guidance related to its contractual scope. Samples of other types , like Standard Sample, Tender Sample, Advance Sample, Bulk Supply Sample, Complaint Sample, Quality, Audit Sample, Reference Sample etc. may be encountered during the procurement processes. These shall be drawn , retained , classified and disposed in accordance with the instructions issued by the Department. A Register of Samples shall be maintained. A gazetted officer shall be made the in charge of the Sample Room and will be responsible for all activities in the Sample Room.

Unless otherwise directed, samples sealed and issued for departmental use shall be returned after the order is completed. There shall be a system of Physical verification of samples , which shall be done annually and a certificate regarding the physical check will be recorded in the Sample Register. Samples which have completed the retention period and no longer required shall be set aside for public auction periodically

18. HANDLING OF INSPECTION STAMPS/INSPECTION DOCUMENTS :

Each Inspecting Officer shall be supplied with Acceptance stamps, Lead Seals, Pliers, rubber Stamps, Stencils, Labels, Stickers , Holograms etc. according to the requirements, to signify that the articles marked or sealed, have been accepted by him . He will be responsible for the use of these , being in his charge and shall ensure that they are not used by unauthorized persons or in any other irregular manner. Unserviceable Seals, Pliers, Stamps, stickers , Holograms etc. shall be returned to the Officer In charge. A Gazetted Officer shall be responsible for the correctness of all Receipts and Issue of such Appliances which should be noted down in a Register. Department shall lay down detailed guidelines for purchase , issue , re-issue of surrendered equipments on transfers/ retirements, safe custody , periodic physical verifications and disposal of these inspection equipments , when these become unserviceable / worn out etc..

19. CUSTODY OF INSPECTION NOTES

These should be machine numbered, for reasons of security and traceability to avoid irregular or incorrect issue/ use of any of these and will be signed for by individual responsible for their safe custody at the time of their receipt . An account of the Inspection Notes issued with serial number wise details shall be given in an appropriate format, on it's cover page .

20. JOINT INVESTIGATION AGAINST COMPLAINTS RELATING TO QUALITY OF STORES :

When a complaint pertaining to quality is received from the consignee requesting for investigation in respect of the stores accepted by the departmental inspecting officer , the same shall be jointly investigated by a team consisting of a senior representatives of inspecting officer ,who is well conversant with the stores and the consignee. The supplier firm shall also be informed about the intention to conduct the investigation and opportunity shall be given to them to be present during the joint investigation. Detailed regarding the procedure to be followed , Format of JIR shall be as prescribed by the Department.

21. QUALITY AUDIT PROGRAMME :

Departments may also consider establishing suitable auditing systems / set ups in their Inspection wings for Audit of the inspection work done in determining the effectiveness of the measures taken for conformance of the quality of goods inspected

and verification of correctness of the sampling methods and procedures adopted by the Quality Assurance Officers for their effect on the ultimate quality. These may be under the charge of their zonal HODs, under whose directions test checks /audit checks can be initiated . Complaint prone areas could be identified and subjected to such audits to begin with. If , during audit ,it is found that the stores supplied were substandard, the inspection officers can inform the consignee, purchase officer and the supplier of the defects noticed in the supply made, to enable the consignees to decide whether or not to consume the stores or not to release the balance copies of the Inspection Notes. Detailed instructions in this regard shall be issued departmentally.

22. AVAILING OF INSPECTION BY QUALITY ASSURANCE WING OF DGS&D.

The Quality Assurance Wing of DGS&D, a professional and premier inspection agency of the Govt of India is authorized to undertake inspection against orders placed by all Departments of the Central Government, State Governments and Public Undertakings etc.. Their independent third party QA services may be availed for important and high value contracts . In such cases, the contracts shall incorporate inspection clause in it's favour and DGS&D Standard terms and conditions may be made a part of the bids / contracts suitably.

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CHAPTER – 12

PAYMENT OF COST OF STORES SUPPLIED
AGAINST CONTRACTS

In order to be a complete contract, it must be accompanied by a consideration. In the case of supply contracts, the consideration is the payment of the stores by the buyer.

The paying authorities should devise appropriate Forms for Payment. The standard Forms available with the Chief Controller of Accounts, Supply Division, Department of Commerce can be adopted for making the payments to the suppliers. The contracts must indicate the Paying Authority and the address of the office from where the payment is to be obtained on submission of required documents.

1.0 Methods of Processing of Payment of Bills: The paying authorities in respect of contracts placed by the Department and the sub-ordinate offices will be the designated Pay & Accounts Officers.

- 1.1 Before making payments, it is necessary for the paying authority to ascertain that funds are available in the budget approved for the department/office.
- 1.2 The Paying authority will ensure that all payments are cleared within 21 days from the receipt of bills in the office. If on account of any lacunae the payments are inadmissible, they can be returned to the seller. No piece-meal objection should be resorted to while processing the bills.
- 1.3 The bills for payment will be processed by the “first-in-first-out” method with regard to receipt in the office of the Paying Authority. Only in exceptional circumstances can the Head of Department ask for an out of turn payment by a signed written memorandum addressed to the Paying Authority due to extenuating circumstances, e.g. contractual obligations, urgency of the material, etc.
- 1.4 Time is of essence in the discharge of contracts by the suppliers. Similarly, it is also of utmost importance that the organisations supplying goods to the Government are paid in time. With this in view, all delayed payments after the bills are received in complete documented form will attract an interest of PLR+2% on the delayed portion, to be paid by the Government department.

2.0 CHANGE IN THE PAYING AUTHORITY:

- 2.1 Where a change becomes unavoidable this will be allowed only with the prior approval of the Head of the Department in consultation with the Financial Adviser.

3.0 TERMS OF PAYMENT AGAINST VARIOUS TYPES OF CONTRACTS PLACED BY THE DEPARTMENT:

3.1 FIXED QUANTITY (AD-HOC CONTRACTS): In the case of fixed quantity (ad-hoc contracts), the following steps are to be taken to ensure payment:

- (a) For bills lesser than a value of Rs. 10 lakhs, the payment terms will be 100% payment after acceptance at site.
- (b) For bills of a value of Rs. 10 lakhs or more, the payment terms will be 100% payment after receipt at site in good condition against the supplier executing a bank guarantee of 10% of the amount of the contract.

3.2 TERMS FOR CONTRACTS FOR PLANT AND MACHINERY: The payment terms for contracts for Plant & Machinery items will depend on the conditions in the contract for supply:

- (a) When the contract is for the supply of P&M of lower value or of less complicated nature and no performance is required to be shown, the terms of payment will be 90% on proof of despatch and the remaining 10% on receipt and acceptance at site.
- (b) When the contract is for the supply of P&M where erection and commissioning is involved, the payment terms will be 80% of material cost on proof of despatch and submission of 10% Bank Guarantee by the firm valid till warranty period. The remaining 20% material cost and erection & commissioning charges in full will be paid after complete commissioning. If the contract includes a period of trouble free running (normally for a period of 15-30 days), the payment will be processed only after the completion and certification of the same by the concerned authority.
- (c) In case there is a warranty period of the machine supplied as per (b) above, the contract should provide for a Warranty Bank Guarantee clause of 10% that will be valid for the period of warranty. The endeavour should be to have a composite Bank Guarantee where the 10% Bank Guarantee received for payment of 80% material cost should automatically be converted to a Warranty Bank Guarantee.
- (d) In case of turnkey contracts or for contracts where due to their longer gestation period, stage payments are involved, such payments should be negotiated care being taken that the payment terms safeguard the interests of the Government. However, in no case should a payment of more than 80% of material cost be agreed upon before the erection and commissioning is completed. Only the Head of Department, if required, can agree upon any higher terms of payment.

- (e) In case of P&M where there are a large number of items to be supplied and stage payments are involved, the contract should include a clause indicating the sequence of supply. No payment will be made at any given stage unless all previous items in the sequence are supplied.
- (f) Liquidated Damages should be imposed on all delayed supplies. For the despatches made beyond the original/refixed date of delivery, the supplier will receive full payment reduced by 2 % (of the price being paid) for every month or part thereof of delay beyond the due date of delivery subject to a maximum of 10%.

3.3 PAYMENT TERMS FOR CONTRACTS FOR SUPPLY OF TIMBER: The payment terms in respect of contracts concluded with State Forest Departments will be negotiated and settled by the respective departments while entering into Memorandum of Understanding keeping in view the guidelines issued by Ministry of Environment and Forest from time to time.

3.4 PAYMENT TERMS FOR CONTRACTS FOR JUTE: The payment terms will be decided by the departments concerned after negotiation, taking due care that the interests of the Government are safeguarded.

3.5 PAYMENT TERMS FOR RATE CONTRACTS:

- (i) **RATE CONTRACTS FOR STORES OTHER THAN POL, CEMENT, PAPER AND PAPER BOARD:** The payment terms will be 98% on proof of despatch and the remaining 2% on receipt of Inspection Notes from the consignee. In case the Inspection Notes are not received and the consignee has not complained about non-receipt, shortage or defects in the supplies made, the balance amount of 2 % may be paid by the Paying Authority without consignee's receipt certificate after 30 days from the receipt of material at the location indicated subject to the following conditions.
 - (a) The contractor will make good any defect or deficiency that the consignee may report within six months from the date of despatch of stores.
 - (b) Delay in supplies, if any, has been regularised.
 - (c) The contract price where it is subject to variation has been finalised.

- (d) The contractor furnishes an undertaking regarding the above.
- (ii) **PAYMENT TERMS FOR COMPLAINT PRONE ITEMS:** In respect of complaint prone items, to be identified by the purchase section of the Department, where quantity of rejection by the consignee is between 5 % to 10 % and replacement of the rejected quantity is difficult, the payment terms should be 90 % on proof of despatch and balance 10 % on receipt of consignee's receipt certificate. In case the complaint continue to persist, the question of making payment only after receipt of consignee's certificate may be considered with the approval of Head of the Department.
- (iii) **RATE CONTRACTS FOR POL PRODUCTS:** The payment terms are 100 % payments on proof of despatch along with relevant copies of Inspection Note for despatches by rail etc. and receipt certificate in a special form prescribed for the purpose in the case of local deliveries.
- (iv) **RATE CONTRACTS FOR CEMENT:** Payment terms are:-
- (a) 98 % on proof of despatch and balance 2 % after receipt in good condition by the consignee.
- (b) 100 % payment against consignee's receipt certificate for local deliveries.
- (c) In respect of item No. (a), payment without consignee's receipt certificate may be made if the same is not received within 2 months from the date of despatch.
- (v) **RATE CONTRACTS FOR PAPER AND PAPER BOARD:** Payment terms are: -
- a) 95 % on proof of despatch and balance 5 % after receipt in good condition by the consignee.
- b) 100% against consignee's receipt certificate for local deliveries.
- c) Payment of balance 5 % in respect of item No. (i) may be made without consignee's receipt certificate if the same is not received within 120 days from the date of supply in the case of reeled paper and 75 days in the case of sheet paper.
- 3.6 In all the above items of rate contract, the Head of the Department in consultation with the Financial Adviser may decide on more stringent payment terms if the circumstances of the case warrant such a decision.

3.7 The Head of the Department in consultation with the Financial Adviser may also decide on payment against Bank Guarantee for depending upon the specific nature of the goods being supplied or the past history of the firm. The period of the Bank Guarantee will be decided on the circumstances of the case.

4.0 CONTRACTS PLACED ON OVERSEAS SUPPLIERS ON F.O.B./F.A.S. BASIS ON BEHALF OF AUTHORITIES IN INDIA. Payment will be made as prescribed in following paras to the principals/foreign manufacturers of the net F.O.B./F.A.S. price excluding the Indian Agent's Commission on presentation of the required documents.

4.1 CASES WHERE INSTALLATION ERECTION AND COMMISSIONING IS NOT THE RESPONSIBILITY OF THE SUPPLIERS. : 100 per cent net F.O.B./F.A.S. price will be paid against inspection certificate (where applicable), manufacturers' test certificate, shipping documents and a bank guarantee for 10 per cent of the value of the contract indemnifying the purchaser against all losses incurred by the purchaser during the guarantee period stipulated in the warranty clause.

4.2 CASES WHERE INSTALLATION ERECTION AND COMMISSIONING IS THE RESPONSIBILITY OF THE SUPPLIERS: 90 % net F.O.B./F.A.S. price will be paid against inspection certificate (where applicable) and shipping documents and balance 10 % within 30 days of the successful completion of proving test in which the machine's performance would have been demonstrated by the supplier or his agent, after the commissioning at the consignee's premises and submission of bank guarantee for 10% of the value of the contract indemnifying the purchaser against all losses incurred by the purchaser during the guarantee period stipulated in the warranty clause.

4.3 Provided that where the installation and commissioning of the machine is delayed or put off beyond 90 days of the receipt of goods at the ultimate destination due to express written instructions of the purchaser or the consignee, the balance 10 % payment shall be released to the supplier on his furnishing the bank guarantee afore mentioned.

4.4 Where the bank guarantee is obtained from a foreign bank, it shall be got confirmed by a scheduled Indian Bank and shall be governed by Indian Laws and be subject to the jurisdiction of courts of the place of issue of the Acceptance of Tender.

4.5 For items of imported nature, where payment is in foreign currency, the evaluation of the tender will be as per the TT Selling Rate of the foreign currency involved on the day of tender opening. The payment will, however, be based on the TT Selling Rate of the date of advance contract. This should be clearly indicated in the tender notice.

5.0 AGENCY COMMISSION PAYMENT TERMS AGAINST F.O.B./F.A.S. CONTRACTS: In case of imported items, sometimes an Indian Agent's

commission is also involved. Payments of such commission should be made only after releasing full payment to the supplier. Payment to the Indian Agent will be made in Indian Rupees only.

6.0 PAYMENT OF AIR FREIGHT CHARGES: Stores that are required to be air lifted due to urgency of receipt should be despatched through Air India/Indian Airlines only on a 'Charge forward basis'. All air freight charges, which are shown on the relative consignment note as chargeable to the consignees are paid to Air India/Indian Airlines in Rupees and adjusted against the consignees/indenter in the same manner as other clearance charges etc.

7.0 SYSTEM OF PAYMENT IN CASES WHERE STORES ARE ACCEPTED UNDER FIRMS' WARRANTY/GUARANTEE. : In cases where physical inspection of stores has been waived of and stores are accepted under firm's warranty/guarantee, the Paying Authority will pay 95 % of the cost of stores (98 % in case of rate contracts) on proof of despatch i.e. R/R No. and date etc. and the balance 5 % (2 % in the case of rate contracts) on the authority of the special consignee's receipt certificate devised for the purpose.

8.0 MODE OF PAYMENT TO SUPPLIERS IN INDIA:

8.1 Payments to Indian Contractors are made by cheque/demand draft drawn on a Government treasury or Branch of the Reserve Bank of India or the State Bank of India transacting government business.

8.2 The payment to contractors against their bills for supplies against contracts can also be paid to their bank if the bills are endorsed in favour of the Bank with a pre-receipt embossed on the bills with the words, "Received payment" and both the endorsement and pre-receipt are authenticated by the signatures of the contractor. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the Bank.

8.3 E-PAYMENT: E-banking and e-payments are now routinely used by banks by through facilities like electronic clearing system (ECS) and electronic fund transfer (EFT). CVC has directed that payments to all suppliers/vendors, refunds of various nature, and other payments which organisations routinely make shall be made through electronic payment mechanism at all centres where such facilities are available in banks. (Auth: CVC Order no. 98/ORD/1 dt. 06.04.2004). Accordingly, Paying Authorities will stop paying through cheques and start e-payment mechanism at all metro cities and other urban centres where banks provide ECS/EFT and similar other facilities latest by 31.12.2004.

9.0 MODE OF PAYMENT TO OVERSEAS SUPPLIERS:

9.1 Payments to overseas suppliers will ordinarily be made by Letters of Credit (LC) opened by the State Bank of India.

9.2 Where opening of letter of credit is not possible due to certain constraints (such as material having been shipped prior to opening of letter of credit), payment may be made through cheque. The Paying Authority will authorise Reserve Bank of India for remitting the said amount endorsing a copy to the Foreign Exchange Division of the State Bank of India on receipt of a request from the firm, duly countersigned by the procuring authority. Reserve Bank of India will authorise the State Bank of India, who will in turn advise their Branch in the foreign country concerned for further payment to the overseas suppliers and payment will be made by the Embassy of India in the foreign country through a cheque in favour of the overseas suppliers. In such cases the function of the Embassy of India is just to deliver the cheque to the correct person.

10.0 DOCUMENTS FOR PAYMENT: The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is to verify such documents received from the supplier with the corresponding stipulations made in the contract.

11.0 PAYMENT AGAINST TIME BAR CLAIMS:

11.1 Ordinarily all claims against Government are time barred after a period of 3 years calculated from the date when the payment falls due. However, limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. Hence, if liability is admitted and payment is delayed, the claim would be time barred only after 3 years from the date of the admission of liability and not from the date of concurrence of the cause of action for payment. Claims for the recovery of which the remedy of Action in a civil court is barred under the Law of Limitation are not ordinarily to be rejected on the ground of limitation alone.

11.2 The drill to be followed while dealing with time barred claims will be decided by the individual Departments concerned in consultation with the Payment Authority. However, the Paying Authority is to ensure that payments against the Supply Order has not been made and will issue a non-payment certificate to that effect.

11.3 In cases where original inspection note or receipt certificate is lost or misplaced and a non-payment certificate is issued by the Payment Authority, the period of limitation would be counted from the date of the receipt certificate mentioned in the duplicate copy of the Inspection Note.

11.4 If the bills are presented after the expiry of the limitation of 3 years, from the date when the payment becomes due as stated in sub para 1 above, the Paying Authority will refer the matter to the Purchasing Authority to ascertain whether the limitation has been saved by acknowledgement and if not for obtaining sanction of the Government for admitting and payment of the time barred claim. While referring the bills to the Purchasing Authority, the Paying Authority will conduct a preliminary investigation and certify that the payments claimed in the bills referred by him are due to the firms

concerned and that they have not been paid previously. The power to authorise such payment upto 7 years will be with the Head of the Department, but in all such cases the concurrence of the Financial Adviser will be required.

11.5 Claims bills which are submitted after an abnormal delay i.e. more than 7 years beyond the normal limitation period of three years, should not be considered ordinarily, unless there are some compelling circumstances that should be clearly stated, while obtaining Government's sanction for admission of such claims.

11.6 Petty value time-barred claims which are to be rejected straightaway and which are not defined in the GFRs in terms of money, will be taken as bills for an amount of Rs. 500/- or less.

12.0 DEDUCTION OF INCOME TAX, SERVICE TAX, ETC. AT SOURCE FROM PAYMENTS TO CONTRACTORS AND SUB-CONTRACTORS: This will be done as per the existing law in force during the currency of the contract.

13.0 RECOVERY OF PUBLIC MONEY FROM CONTRACTOR'S BILL: Sometimes, requests are received from a different department/wing of the Government for withholding of payments from a contractor. In all such cases, it will be responsibility of the department/wing of the Government asking for withholding of payment to defend the Government against any legal procedures arising out of such request as also for payment of any interest. The power to issue such recovery certificate will be with the Secretary of the concerned department.

14.0 GENERAL:

14.1 Terms of payment will depend on the delivery period, nature of the item, incidental services to be undertaken by the supplier in addition to supplying the item etc. However, while evolving the terms of payment, the most important consideration is that no payment should be made to the supplier without safeguarding the interest of the supplier.

14.2 The terms of payment are to be clearly defined in the tender enquiry / bidding documents to enable the prospective tenderers to quote accordingly.

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CHAPTER -13 PURCHASE OF STORES MANUFACTURED IN FOREIGN COUNTRIES

A government buyer should endeavour to make purchases from within the country in order to encourage indigenous industry. However, where it is inescapable and absolutely necessary to meet with the requirements of the users, imports will have to be resorted to.

Due to liberalisation of imports, most of the items are now covered under Open General License. The Imports and Exports (Control) Act, 1947 empowers the Central Government to prohibit, restrict or otherwise control imports and exports. In exercise of the powers conferred by this Act, the Imports (Control) Order, 1955 was issued. Schedule 1 to the said Order contains the list of articles of which import is controlled. The import of such items is prohibited except (i) under and in accordance with the license or (ii) if they are covered by an Open General Licence. The Purchase Officer should ensure to obtain OGL Certificate from the actual user so that the onus of correctness of the OGL item vis-à-vis notification in the Import Policy remains with the indenter. In the case of items covered under OGL, no Import License is necessary. Buyers can place orders without obtaining actual foreign exchange, letters of credit can be opened through any nationalised bank.

2. Methods of Purchase:- On most of the occasions, the requirement of imported stores will be of considerable high value goods. It should be decided by the competent authority whether single bid or two-bid system should be followed as generally stores to be imported will be highly technical and sophisticated in nature. The procedure for two-bid system is available in Chapter, Methods of Purchase.

(i) Organisation having its own Web Site should publish all its tender enquiries on their Web Site. Other organisations may publish their tender notices and tender enquiries on the DGS&D Web Site. Hyper links should be established between the different procurement/ purchase of individual government departments with the DGS&D Web Site (www.dgsnd.gov.in).

(ii) In almost all cases involving import, advertised tender enquiry (ATI) or global tender enquiry (GTI) should be floated. However, there is no bar to resort to limited tender enquiry (LTI) in case of urgency. In case LTI mode of purchase is resorted to, the purchase officer should ensure that tender enquiry is issued to fairly sufficient number of likely and known suppliers by consulting the list available with the purchase section and Registration Branch of DGS&D.

(iii) Publicity in foreign countries:- In case of imported stores tender notice requiring global participation for heavy equipment etc., a circular letter may be sent to all the Indian Embassies by Diplomatic Bag indicating the stores demanded, specifications, quantity, delivery period along with a copy of the tender set. These circulars should be

sent to the Indian Embassies of only those countries from where offers can be expected. Simultaneously, the embassies of foreign countries located in India can also be requested through the same circular to inform the manufacturers in their countries for participating against these tenders.

3. Evaluation of tenders and submission of proposals :-

Generally, the goods of imported nature are such where the specifications are complicated and exhaustive requiring numerous items to different specifications. It is essential to go through the specifications and assimilate in all its details. As such, the study and proper understanding of the various drawings/specifications becomes an essential prerequisite.

4. The offers which are not conforming to the specifications of the tender enquiry should be ignored straightaway. The technical deficiencies in the offers should be clearly brought out for proper appreciation by the competent authority. In the procurement of plant and machinery the tenderer should be asked to furnish a deviation statement clearly bringing out therein the positive and negative deviations for appropriate consideration by the buyer.

5. References of tenders to indenter:- Consultation with the indenter may become necessary in case of stores of specialised nature (and not in case of common user items). The following are the broad categories of cases where tenders may have to be referred to indenter.

- a) Stores of specialised nature and scientific equipment;
- b) Where none of the offers received or those proposed to be accepted are strictly in conformity with the specifications;
- c) Where suitable alternatives are offered to save foreign exchange.

In cases where tenders are referred to the indenter, they should be accompanied as far as possible, by a self-contained note giving the specific recommendations of the purchase office, as also comments or technical assessment of the offers. The note should also indicate clearly the points on which the comments of the indentors are sought. A target date should be given for reply and the following clause should be incorporated in all such communications:-

“Please note that tenders are valid for acceptance up to (date). You are requested to ensure that your reply to this letter is sent by (date) positively. You will appreciate that the entire responsibility due to delay in reply beyond the target date which may result in payment of higher rates will rest on you. Please therefore ensure that your reply reaches us by the stipulated date indicated above.”

Care should be taken to see that a reasonable period is given in fixing the target date for reply from the indentors taking into account the date of expiry of validity of offers.

Consideration of offers from Agents of Foreign Manufacturers/Firms:-

The agents of foreign firms have an important role to play, particularly when after-sales service of sophisticated equipment or training in operation and maintenance is required.

Following instructions should be noted while dealing with such cases;

- i) The agency arrangements and the amount of commission payable should be brought on record and made explicit so as to ensure compliance of Tax Laws and to prevent leakage of foreign exchange. An authenticated photocopy of the agency agreement shall mandatorily be filed by the agent.
- ii) Purchase of varied range of products has made it impossible for laying down a uniform rate of agency commission. The amount of agency commission agreed to between the principals and his agent will, therefore, be accepted on merits of each case. What is to be ensured is that the amount of agency commission agreed to between the foreign principal and the Indian Agent is specifically disclosed and the agency commission is paid in Indian rupees only.
- iii) All particulars relating to agency commission shall be reported to the Enforcement Directorate who in turn, will further communicate the information to the Central Board of Direct Taxes, Central Board of Excise and Customs and Reserve Bank of India to prevent leakage of foreign exchange and tax evasion on agency commission.

The payment terms of the agency commission to the Indian Agents are given in the Chapter titled 'Payment of Cost of Stores Supplied against Contracts'.

The quotations from the foreign principals and or from their Indian Agents are required, inter alia, to state besides the F.O.B./F.A.S. price of the stores offered, the amount of Agency Commission payable to the Indian Agent in terms of the agreement between the foreign principals and their Indian Agents, both in foreign currency as well as in Indian rupees to be converted by applying TT buying rate of exchange ruling on the date of offer. It is further to be provided that the agency commission finally payable under the contract will be converted in Indian rupees at the TT buying rate of exchange ruling on the date of placement of the order and which shall not be subject to any further exchange variation. Accordingly, in the resultant contract either of the appropriate clauses should be inserted under the Special Conditions of F.O.B./F.A.S. contracts, as the case may be.

In such cases the purchase officer will ensure to get the break up of the price viz. net F.O.B./F.A.S. value, insurance, freight, clearing, handling charges, profit margin and charges up to destination. Standard exchange rate variation clause given in the Chapter, "Drafting of Contracts", should be incorporated in the resultant contract.

Agents quoting on behalf of their principals should:-

- i) Produce their foreign principals' pro-forma invoice indicating commission, payable to the Indian Agent, nature of after-sales service to be rendered by the Indian Agent.

- ii) Clearly indicate, if their offer is on F.O.R. basis, the break up of the prices viz. net F.O.B./F.A.S. value, insurance, freight and clearing/handling charges at the Indian Port, profit margin and charges for despatch up to destination.
- iii) Produce copy of the Agency Commission with their foreign principals.
- iv) Give particulars regarding precise relationship with their foreign principals and their mutual interest in the business.

Offers which do not disclose any information with regard to the price, terms of agency agreement, Agency Commission payable as per the agreement are liable to be ignored. For both ignoring the lower offers on this account and for accepting the same, the approval of Finance will be taken by the competent purchase officer.

Capacity Report for Imported Stores:- In case of offers from unregistered firms(both Indian Agent/Stockists/Foreign manufacturers being unregistered), a reference may be made to the Indian Embassy located in the country of manufacture to obtain report on the technical and financial competence of the firm. The order should be placed only on receipt of a satisfactory reply. It is also helpful to check the standing of the firm in Thomas Register, Dun and Brand Street Register. These are reliable books giving various details in respect of companies located in Europe and USA.

Payment of Customs Duty:- Generally, educational institutes, research institutes, hospitals, serving the public at large are exempt from payment of customs duty. Customs Duty Exemption Certificate has to be furnished at the time of clearance of the stores at the port of entry. It is the responsibility of the actual user to obtain or issue such a certificate for production to the customs authorities. It should be explicitly made clear to the indenter that the responsibility for obtaining the Customs Duty Exemption Certificate will be that of the actual user.

At a time of clearance of the goods from the port of entry Customs Duty may have to be paid. Care should be taken to ensure that all necessary documentation is completed well before the arrival of the stores at the port of entry.

Elements of Price relating to imported stores:- The elements of price and their variations relating to imported stores are discussed below:-

- i) Net F.O.B. price in foreign currency i.e. the price ex-port of shipment in country of origin.
- ii) Agency Commission, if any.
- iii) Ocean/Air freight and insurance.
- iv) Customs Duty in India in case the indenter/consignee is not exempted from payment of the same.
- v) Landing and clearing charges; and

vi) Inland freight/ insurance/ Octroi Duty/ Terminal Tax.

Exchange Rate for decision making:- In respect of purchase of imported stores where the purchase decision is to be taken in DGS&D, the exchange rate prevailing on the date on which the competent authority approves the proposal will apply. The purchase officer concerned would indicate in the margin that on the basis of the exchange rate i.e. BC Selling Rate of Exchange of State Bank of India prevailing on that day, the proposal holds good.

In other cases requiring the approval of the Government the exchange rate prevailing on the date when Head of Department approves the proposal would apply.

Once decision has been taken for placement of order, the purchase officer should check whether the funds provided are adequate and should inform the indenting department for any additional requirement of funds to meet the deficit.

An appropriate exchange variation clause be stipulated in the resultant contract if the same is necessary and asked for by the tenderer.

Customs Duty:- In respect of imported stores offered against forward delivery the tenderer shall quote the prices exclusive of customs duty. The tenderer shall specify separately the C.I.F. prices and the total amount of customs duty payable. The tenderer will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number.

The Government have allowed exemption from payment of customs duty in respect of following items subject to fulfilment of conditions and production of certificates.

1. Scientific and technical instruments imported by Research Institutes.
2. Hospital equipments imported by Government Hospitals.
3. Consumable goods imported by a public funded Research Institution or a University.

In respect of these exempted categories of stores the Ministry of Finance (Department of Revenue) have issued instructions to the Customs Authorities that the consignments which constitute replacement made by the foreign suppliers on "no-charge" basis should be passed provisionally duty free and get a suitable guarantee from the indentors; ;and

- a) Fresh Customs Duty Exemption Certificate as well as
- b) Not manufactured in India Certificate.

Should be obtained from them subsequently within a reasonable time. It may be noted that even in the case of free replacement the production of these two certificates is absolutely necessary.

Where customs duty is payable the contract should clearly stipulate the quantum of duty payable in unambiguous terms so that the Controller of Accounts has not to make any

reference. The standard clause to be incorporated in the contract regarding customs duty has been given in “Drafting of Contract”.

Customs Duty On Replacement Supplies :-

Drawback on Re-export of Imported Goods:- Under the existing law, no exemption from duty on “No charge shipment” can be given, as duty has to be paid on each importation whether original or replacement. However, in terms of Section 74 read with Section 76 of the Customs Act, 1962 drawback is allowable on re-export of duty paid goods to the extent and subject to the fulfilment of the conditions stated therein.

Goods re-exported without use within a period of two years are eligible for drawback up to 98% and goods re-exported after use are eligible to drawback of import duty on slab rates according to drawback of import duty on slab rates according to the length of period between the date of clearance for whom consumption and the date when the goods are placed under Customs Control for export. Extract of Section 74 and Section 76 of the Customs Duty Act, 1962 and the Notification No.19-Cus. Dated 6^h February, 1965 as amended are given in Appendix 24 for reference.

Entitlement of the Purchaser to Recover Damages on Excess Customs Duty Paid on account of Replacement:-

Where the replacement supply is made under the contract, according to legal opinion, Section 64-A of Sale of Goods Act is attracted and the increased customs duty is payable by the buyer. However, as the delivery of the goods is delayed and the increased customs duty would not have been payable if the original supplies had not proved defective and been rejected or lost or damaged in transit and therefore, required to be replaced, the additional expenditure on account of the customs duty is a loss directly occasioned by the delay in supply. Consequently the purchaser is entitled to recover liquidated damages at the contract rate up to a sum equal to the amount of the extra expenditure on account of increased customs duty. Proper notice be given in accordance with the terms and conditions of the contract.

Sales Tax On Transactions Relating to Imported Goods :-

Sales Tax is not leviable on transactions of sale in course of import. Categories of cases constituting sale in course of import.

- (i) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale.
- (ii) Where there is a privity of contract between the foreign supplier and the buyer.

(iii) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

Categories of cases not constituting sale in the course of import:

(i) Sales of imported goods which are supplied from the already existing stock.

(ii) Import of raw materials and components which have been utilized by the suppliers in assembling or manufacturing the goods ordered for sale where price of such raw materials, components and accessories have not been shown separately.

(iii) Sales of imported goods which have been further processed in India before supply to the consignee.

(iv) Sales of goods which are to be imported against firm's own 'Stock and Sale' licence for supply to various customers.

(v) The goods have moved from foreign country to India as a result of the Indian supplier purchasing the goods from the foreign supplier i.e.

(a) the movement of goods has been occasioned by the contract for purchase which the Indian Supplier entered with the foreign seller.

(b) there was no privity of contract between the buyer and the foreign seller.

(c) The foreign seller has not entered into the contract by himself or through the agencies of the Indian supplier.

The Sales Tax Clause in the Acceptance of Tender for imported stores:- In all cases where it is finally decided to admit Sales Tax, the rate of Sales Tax and the amount payable as Sales Tax should be shown as a separate item in the Acceptance of Tender to enable Controller of Accounts to pay firm's bill for Sales Tax. The relevant clauses to be incorporated in the contract are given in the Chapter, "Drafting of Contract."

Payment of Imported Stores:- The most common method of payment to the foreign supplier is through a letter of credit. It is a letter issued by the Purchaser's bank to the supplier's bank authorising the bank to release payment to the supplier for the supplies made by them, on receipt of specified documents from the seller and the purchaser's bank reimburses the required amount as it receives an intimation about the payment for the supplies having been made to the supplier by the supplier's bank. The foreign suppliers generally insist for opening of irrevocable letter of credit confirmed by an international bank. The foreign suppliers also insist on part shipment and part payment for supplies made. While opening the letter of credit the banks levy two types of charges viz. L/C opening charges, foreign bank charges and confirmation charges. The banks generally charge on quarterly basis (3 months). It would be prudent to open the letter of credit in such a way that validity of L/C is kept bare minimum. L/C should be opened only for net FOB/CIF value i.e. excluding agency commission which will be paid in Indian rupees in India. At the same time ensure that entire transaction for the L/C is done within its validity. On many occasions, the suppliers put a condition that delivery date will

commence from the date of opening of letter of credit. This would require L/C to be opened at the earliest to obtain the supplies within the stipulated delivery period.

Letter of Credit is usually kept valid for 21 days beyond the contractual delivery date to facilitate the banks to retire the documents.

If the suppliers specifically request that the L/C be confirmed then efforts should be made to ensure that cost of confirmation is borne by the supplier. Further, if it becomes necessary to extend/reinstate or amend L/C for reasons not attributable to the purchaser, the charges for the same should be borne by the supplier. In order to open letter of credit a letter is written to the paying authority named in the contract along with copies of the contract. The L/C pro-forma devised by the bank has also to be filled up. The purchase officers are also required to give a standard letter to the State Bank of India, London undertaking thereby that the documents will be retired by the buyer and that L/C amount would be sufficient for payment of stores ordered. A specimen copy of each of above 3 documents is enclosed as Annexure to this Chapter.

The documents to be submitted by the supplier have to be clearly brought out in the body of the letter of credit so that the supplier meets with the contractual commitments. Regardless of this, a clause should always be stipulated requiring the supplier to confirm that he has abided by all the terms and conditions stipulated in the contract.

No.
Government of India

Dated:

To

The Chief Controller of Accounts,

New Delhi – 110 011.

(Through Authentication Cell)

Sub: Opening of Letter of Credit against Contract No. _____
Dated _____ placed on M/s. _____

Sir,

You are requested to arrange for opening of letter of credit for the next amount _____ subject to ceiling of _____ payable to the beneficiary (i.e. foreign principals – M/s. _____) through their advising bank _____ (Address _____) as per clause 18 and 20 of the schedule to subject contract. Following documents are enclosed:-

- (i) Two signed copies of kthe A/T
- (ii) Letter addressed to the State Bank of India, London (in duplicate)
- (iii) Letter of credit will remain valid up to _____ months and 21 days from the date of opening.
- (iv) Last date of shipment _____ months from the date of letter of credit.
- (v) Beneficiary to present documents: within 21 days from the date of shipment.
- (vi) List of documents against which payment is to be released to foreign suppliers will comprise of:-
 - (a) Complete set of clear bill of lading consigned to the port consignee as per clause ___ of A/T evidencing despatch of goods on freight and insurance paid basis also showing the letter of credit and contract number with date.
 - (b) Certified copy of FAX / CABLE sent by the beneficiary to the Indian port/ ultimate consignee giving full particulars of despatch of goods with name of carrier, date of despatch, date and number of bill of lading, place of loading and unloading, quantity and description of goods.

- (c) Beneficiary's Invoice in Duplicate also showing Name(s) of Consignee(s) and value.
- (d) Packing list in triplicate
- (e) Certificate of Origin stating that goods of _____ origin.
- (f) Manufacturer's guarantee/ warranty certificate.
- (g) Manufacturer's works test certificate.
- (h) Certificate from the beneficiary that one set of documents has been sent to the port consignee direct.
- (i) Pre-despatch inspection certificate for ordered stores will be issued by the following nominated officers as Inspecting Officers as per clause 17(a), 17(b) and 17(c) – Inspection:

The above mentioned officers are from the office of _____ and they shall discharge the role of inspecting officers/ inspection authority for pre-despatch inspection.

- (j) Copy of Insurance Policy covering 110% of CIP value.

4. Special instructions applicable to letter of credit will be:

- a. Part shipment : Not allowed / allowed
 - b. Transshipment :- Not allowed / allowed
 - c. In terms of clause 9 of A/T – Performance Security has been received and accepted.
 - d. Goods are to be shipped by sea/ air from _____ and delivered in satisfactory condition to port / ultimate consignee as per clause 13 of contract.
5. A confirmation from the beneficiary that they have complied with all the terms and conditions of the contract.
6. It is confirmed that sanction of funds are sufficient for stores ordered. This issues with the approval of _____.

Purchase Officer
 Copy to:

By Airmail 1. (Name and Address of the foreign supplier)

- 2. Indentor
- 3. Consignee
- 4. Port consignee at regional office
- 5. The Inspection Authority
- 6. Inspection Officer

Purchase Officer

No.
Government of India

Dated:

To

The State Bank of India
1, Milk Street,
London, UK.

Sub: Opening of letter of credit against contract vide
A/T No. _____

Sir,

With reference to opening of letter of credit details for which will be sent to you by the Chief Controller of Accounts, Supply Division, Department of Commerce, New Delhi.

- a) We hereby unequivocally /undertake to retire the document drawn under this credit notwithstanding total partial loss of goods during voyage and or pay general average, if declared.
- b) It is further certified that the amount of L/C would be sufficient for payment of stores ordered.
- c) Complete details of letters of credit may be intimated to this office immediately after the L/C is established by you.
- d) This issues with the approval of _____.

Yours faithfully,

Purchase Officer

PS: Please invariably quote above stated A/T number and date while making reference(s) of this office on the subject.

PURCHASE OF STORES MANUFACTURED IN FOREIGN COUNTRIES

As government buyer should endeavour to make purchases from within the country in order to encourage indigenous industry. However, where it is inescapable and absolutely necessary to meet with the requirements of the users, imports will have to be resorted to.

Due to liberalisation of imports, most of the items are now covered under Open General License. The Imports and Exports (Control) Act, 1947 empowers the Central Government to prohibit, restrict or otherwise control imports and exports. In exercise of the powers conferred by this Act, the Imports (Control) Order, 1955 was issued. Schedule 1 to the said Order contains the list of articles of which import is controlled. The import of such items is prohibited except (i) under and in accordance with the license or (ii) if they are covered by an Open General Licence. The Purchase Officer should ensure to obtain OGL Certificate from the actual user so that the onus of correctness of the OGL item vis-à-vis notification in the Import Policy remains with the indenter. In the case of items covered under OGL, no Import License is necessary. DGS&D on behalf of the indentors can place orders without obtaining actual foreign exchange, letters of credit can be opened through any nationalised bank.

2. Methods of Purchase:- On most of the occasions, the requirement of imported stores will be of considerable high value goods. It should be decided by the competent authority whether single bid or two-bid system should be followed as generally stores to be imported will be highly technical and sophisticated in nature. The procedure for two-bid system is available in para_____.

- (iv) As a rule DGS&D does not make purchases of proprietary stores. Therefore, indents with proprietary article certificate should not be considered;
- (v) In almost all cases involving import, advertised tender enquiry(ATI) or global tender enquiry (GTI) should be floated. However, there is no bar to resort to limited tender enquiry (LTI) in case of urgency. In case LTI mode of purchase is resorted to, the purchase officer should ensure that tender enquiry is issued to fairly sufficient number of likely and known suppliers by consulting the list available with the purchase section and Registration Branch.
- (vi) Publicity in foreign countries:- In case of imported stores tender notice requiring global participation for heavy equipment etc., a circular letter may be sent to all the Indian Embassies by Diplomatic Bag indicating the stores demanded, specifications, quantity, delivery period along with a copy of the tender set. These circulars should be sent to the Indian Embassies of only those countries from where offers can be expected. Simultaneously, the embassies of foreign countries located in India can also be requested through the same circular to inform the manufacturers in their countries for participating against these tenders.

3. Evaluation of tenders and submission of proposals:-

Generally, the goods of imported nature are such where the specifications are complicated and exhaustive requiring numerous items to different specifications. It is

essential to go through the specifications and assimilate in all its details. As such, the study and proper understanding of the various drawings/specifications becomes an essential prerequisite.

4. The offers which are not conforming to the specifications of the tender enquiry should be ignored straightaway. The technical deficiencies in the offers should be clearly brought out for proper appreciation by the competent authority. In the procurement of plant and machinery the tenderer should be asked to furnish a deviation statement clearly bringing out therein the positive and negative deviations for appropriate consideration by the buyer.

5. References of tenders to indenter:- Tenders should not ordinarily be referred to the indenter even if the indenter has asked these should be shown to him before placement of order. Consultation with the indenter may, however, become necessary in case of stores of specialised nature (and not in case of common user items). The following are the broad categories of cases where tenders may have to be referred to indenter.

- d) Stores of specialised nature and scientific equipment;
- e) Where none of the offers received or those proposed to be accepted are strictly in conformity with the specifications;
- f) Stores of which technical scrutiny rests with DG (Shipping) and other indentors;
- g) Where suitable alternatives are offered to save foreign exchange.

Where it is considered necessary to refer duplicate tenders to indenter for technical scrutiny and comments, prior approval of DDG concerned should be obtained. In the case of Regional Offices, prior approval of the Head of the Regional Office may be obtained.

When the responsibility for checking technical particulars and for inspection is that of the indenter, prior consultation with Quality Assurance Wing for referring duplicate copies of tenders to indentors is not necessary.

Where the inspection authority is ADG(QA) and it is proposed to refer tenders in such cases to the indenter for technical scrutiny and comments, the reasons why technical evaluation cannot be done by DGS&D or Quality Assurance Wing should be recorded.

Where the responsibility for technical particulars checking is that of the indenter but the Inspection Authority is ADG(QA), the observations of the indenter on the technical aspects of the tenders should invariably be referred to Quality Assurance Wing for comments, particularly where a lower offer is proposed to be ignored on technical grounds.

The recommendation of the indenter should be examined in an objective manner because the ultimate responsibility for accepting or ignoring any offer lies with DGS&D. In cases where there is honest and genuine difference of opinion between the indenter and the DGS&D over accepting or rejecting any lower offer on technical or other grounds, a dialogue with the indenter should be arranged at the earliest to iron out the differences

and reach mutual accord. Where the differences persist, the case may be shown to the next senior officer for decision in consultation with Finance.

In cases where tenders are referred to the indenter, they should be accompanied as far as possible, by a self-contained note giving the specific recommendations of this office, as also comments or technical assessment of the offers. The note should also indicate clearly the points on which the comments of the indentors are sought. A target date should be given for reply and the following clause should be incorporated in all such communications:-

“Please note that tenders are valid for acceptance up to (date). You are requested to ensure that your reply to this letter is sent by (date) positively. You will appreciate that the entire responsibility due to delay in reply beyond the target date which may result in payment of higher rates will rest on you. Please therefore ensure that your reply reaches us by the stipulated date indicated above.”

Care should be taken to see that a reasonable period is given in fixing the target date for reply from the indentors taking into account the date of expiry of validity of offers.

Consideration of offers from Agents of Foreign Manufacturers/Firms:-

The agents of foreign firms have an important role to play, particularly when after-sales service of sophisticated equipment or training in operation and maintenance is required.

The Special Conditions for imported stores given in form DGS&D 237 contains provisions governing the Indian Agents, the documents to be obtained and the payment of agency commission to them. Following further instructions should be noted while dealing with such cases;

- iv) The agency arrangements and the amount of commission payable should be brought on record and made explicit so as to ensure compliance of Tax Laws and to prevent leakage of foreign exchange. An authenticated photocopy of the agency agreement shall mandatorily be filed by the registered agent while bringing on record the agency agreement. If this has not been done at the time of registration, a copy of the agency agreement shall be obtained by the purchase officer before considering the tender.
- v) Purchase of varied range of products has made it impossible for laying down a uniform rate of agency commission. The amount of agency commission agreed to between the principals and his agent will, therefore, be accepted on merits of each case. What is to be ensured is that the amount of agency commission agreed to between the foreign principal and the Indian Agent is specifically disclosed and the agency commission is paid in Indian rupees only.
- vi) All particulars relating to agency commission shall be reported to the Enforcement Directorate who in turn, will further communicate the information to the Central Board of Direct Taxes, Central Board of Excise and Customs and Reserve Bank of India to prevent leakage of foreign exchange and tax evasion on agency commission.

The payment terms of the agency commission to the Indian Agents are given in Form DGS&D-237 and same will apply.

As per the provisions of the Special Conditions of Tender Enquiry given in Form DGS&D-237 the quotations from the foreign principals and or from their Indian Agents are required, inter alia, to state besides the F.O.B./F.A.S. price of the stores offered, the amount of Agency Commission payable to the Indian Agent in terms of the agreement between the foreign principals and their Indian Agents, both in foreign currency as well as in Indian rupees to be converted by applying TT buying rate of exchange ruling on the date of offer. It is further provided that the agency commission finally payable under the contract will be converted in Indian rupees at the TT buying rate of exchange ruling on the date of placement of the order and which shall not be subject to any further exchange variation. Accordingly, in the resultant contract either of the appropriate clauses should be inserted under the Special Conditions of F.O.B./F.A.S. contracts, as the case may be.

Para 1 of the Special Conditions contained in Form DGS&D-237 provides that offers should be submitted by the tenderers on the basis of F.O.B./F.A.S. Port of shipment of their principals/C.I.F. Indian Port/F.O.R. and that the purchaser reserves the right to place order on any such basis. The said clause also requires the tenderers to disclose the agency commission payable to the Indian Agent.

In such cases the purchase officer will ensure to get the break up of the price viz. net F.O.B./F.A.S. value, insurance, freight, clearing, handling charges, profit margin and charges up to destination. Standard exchange rate variation clause given in the Chapter, "Drafting of Contracts", should be incorporated in the resultant contract.

Agents quoting on behalf of their principals should:-

- v) Produce their foreign principals' pro-forma invoice indicating commission, payable to the Indian Agent, nature of after-sales service to be rendered by the Indian Agent.
- vi) Clearly indicate, if their offer is on F.O.R. basis, the break up of the prices viz. net F.O.B./F.A.S. value, insurance, freight and clearing/handling charges at the Indian Port, profit margin and charges for despatch up to destination.
- vii) Produce copy of the Agency Commission with their foreign principals.
- viii) Give particulars regarding precise relationship with their foreign principals and their mutual interest in the business.

Officers which do not disclose any information with regard to the price, terms of agency agreement, Agency Commission payable as per the agreement are liable to be ignored. For both ignoring the lower offers on this account and for accepting the same, the approval of Finance will be taken by the competent purchase officer.

The purchase officers should satisfy that in the case of offers from Indian Agents a proper Agency Agreement for a certain period and not for that particular tender only is to be produced at the time of tender or the Indian Agent should be registered with the DGS&D as an authorised regular Indian Agent of the principals.

Capacity Report for Imported Stores:- In case of offers from unregistered firms(both Indian Agent/Stockists/Foreign manufacturers being unregistered), a reference may be made to the Indian Embassy located in the country of manufacture to obtain report on the technical and financial competence of the firm. The order should be placed only on receipt of a satisfactory reply. It is also helpful to check the standing of the firm in Thomas Register, Don and Brand Street Register. These are reliable books giving various details in respect of companies located in Europe and USA.

Payment of Customs Duty:- Generally, educational institutes, research institutes, hospitals, serving the public at large are exempt from payment of customs duty. Customs Duty Exemption Certificate has to be furnished at the time of clearance of the stores at the port of entry. It is the responsibility of the actual user to obtain or issue such a certificate for production to the customs authorities. It should be explicitly made clear to the indenter that the responsibility for obtaining the Customs Duty Exemption Certificate will be that of the actual user.

At a time of clearance of the goods from the Customs, AD(Shipping) located at Kolkata, Mumbai and Chennai do the customs clearance and pay the Customs Duty which is later on reimbursed by the indenter. Care should be taken to ensure that all necessary documentation is completed well before the arrival of the stores at the port of entry.

Elements of Price relating to imported stores:- The elements of price and their variations relating to imported stores are discussed below:-

- vii) Net F.O.B. price in foreign currency i.e. the price ex-
port of shipment in country of origin.
- viii) Agency Commission, if any.
- ix) Ocean/Air freight and insurance.
- x) Customs Duty in India in case the indenter/consignee is
not exempted from payment of the same.
- xi) Landing and clearing charges; and
- xii) Inland freight/ insurance/ Octroi Duty/ Terminal Tax.

Exchange Rate for decision making:- In respect of purchase of imported stores where the purchase decision is to be taken in DGS&D, the exchange rate prevailing on the date on which the competent authority approves the proposal will apply. The purchase officer concerned would indicate in the margin that on the basis of the exchange rate i.e.BC Selling Rate of Exchange of State Bank of India prevailing on that day, the proposal holds good.

In other cases requiring the approval of the Government the exchange rate prevailing on the date when DG approves the proposal would apply.

Once decision has been taken for placement of order, the purchase officer should check whether the funds provided by the indenter would be adequate and should inform the indenting department for any additional requirement of funds to meet the deficit.

Exchange Rate Variation Clause in the contract:- The Special Conditions of Tender contained in Form DGS&D-237 provide that in respect of C.I.F./F.O.R. contracts in the event of variation by more than 1% (up or down) between the base rate and the rate

of remittance to foreign principals the contract prices (limited only to that portion of C.I.F./F.O.R. prices that are required to be remitted according to the contractual terms to the firm's foreign principals in foreign currency) will be subject to the adjustment (up or down) in accordance with the TT Selling rate of exchange as quoted by any Nationalised Bank ruling on the date the payment is made by the firm to their principals abroad which should not be beyond two weeks from the date on which initial payment is made by the purchaser to the contractor. No variation in price will, however, be allowed, if the variation in the rate of exchange remains within the limit of 1% plus or minus.

The exchange variation clause to be stipulated in the resultant contract is given in the Chapter, "Drafting of Contract".

Customs Duty:- In respect of imported stores offered against forward delivery the tenderer shall quote the prices exclusive of customs duty. The tenderer shall specify separately the C.I.F. prices and the total amount of customs duty payable. The tenderer will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number.

The Government have allowed exemption from payment of customs duty in respect of following items subject to fulfilment of conditions and production of certificates.

7. Scientific and technical instruments imported by Research Institutes.
8. Hospital equipments imported by Government Hospitals.
9. Consumable goods imported by a public funded Research Institution or a University.

In respect of these exempted categories of stores the Ministry of Finance (Department of Revenue) have issued instructions to the Customs Authorities that the consignments which constitute replacement made by the foreign suppliers on "no-charge" basis should be passed provisionally duty free and get a suitable guarantee from the indentors; ;and

- a) Fresh Customs Duty Exemption Certificate as well as
- b) Not manufactured in India Certificate.

Should be obtained from them subsequently within a reasonable time. It may be noted that even in the case of free replacement the production of these two certificates is absolutely necessary.

Where customs duty is payable the contract should clearly stipulate the quantum of duty payable in unambiguous terms so that the Controller of Accounts has not to make any reference. The standard clause to be incorporated in the contract regarding customs duty has been given in "Drafting of Contract".

Authority for making payment of Customs Duty:-

In respect of Defence contracts the payment of customs duty is to be arranged by the indenter himself and it will be paid by the Controller of Defence Accounts.

In respect of cases where DGS&D is responsible for arranging clearance from major ports on behalf of other Ministries/Departments, CCA, Supply Division, Department of Commerce, will initially pay the customs duty and seek reimbursement from the Accounts Officer of the concerned Department.

Since, clearance of imports by the DGS&D and payment of Customs Duty by the Accounts Officers of the Supply Division, Department of Commerce are agency functions on behalf of the Ministries/Departments, the provision of funds by the latter will be assumed. The Accounts Officer of Ministries/Departments should reimburse the Customs Duty immediately on receipt of the claims from the Accounts Officers of the Supply Division, Department of Commerce without raising any question regarding the correctness of the levy and claims should not be rejected on grounds of excess levy of duty or incorrect rates or any similar grounds. Appeals against the duty levied should be directly preferred to the concerned Customs Authorities and refunds, if found due, should also be claimed directly from them. Necessary instructions in the DGS&D Manual for Shipping and Clearance may be followed.

Customs Duty On Replacement Supplies :-

Drawback on Re-export of Imported Goods:- Under the existing law, no exemption from duty on "No charge shipment" can be given, as duty has to be paid on each importation whether original or replacement. However, in terms of Section 74 read with Section 76 of the Customs Act, 1962 drawback is allowable on re-export of duty paid goods to the extent and subject to the fulfilment of the conditions stated therein.

Goods re-exported without use within a period of two years are eligible for drawback up to 98% and goods re-exported after use are eligible to drawback of import duty on slab rates according to drawback of import duty on slab rates according to the length of period between the date of clearance for whom consumption and the date when the goods are placed under Customs Control for export. Extract of Section 74 and Section 76 of the Customs Duty Act, 1962 and the Notification No.19-Cus. Dated 6th February, 1965 as amended are given in Appendix 24 for reference.

Entitlement of the Purchaser to Recover Damages on Excess Customs Duty Paid on account of Replacement:-

Where the replacement supply is made under the contract, according to legal opinion, Section 64-A of Sale of Goods Act is attracted and the increased customs duty is payable by the buyer. However, as the delivery of the goods is delayed and the increased customs duty would not have been payable if the original supplies had not proved defective and been rejected or lost or damaged in transit and therefore, required to be replaced, the additional expenditure on account of the customs duty is a loss directly occasioned by the delay in supply. Consequently the purchaser is entitled to recover liquidated damages at the contract rate up to a sum equal to the amount of the extra expenditure on account of

increased customs duty. Proper notice be given in accordance with the terms and conditions of the contract.

Sales Tax On Transactions Relating to Imported Goods :-

Sales Tax not leviable on transactions of sale in course of import. Categories of cases constituting sale in course of import.

- (iv) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale.
 - (v) Where there is a privity of contract between the foreign supplier and the buyer.
 - (vi) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.
- Categories of cases not constituting sale in the course of import.
- (vi) Sales of imported goods which are supplied from the already existing stock.
 - (vii) Import of raw materials and components which have been utilized by the suppliers in assembling or manufacturing the goods ordered for sale where price of such raw materials, components and accessories have not been shown separately.
 - (viii) Sales of imported goods which have been further processed in India before supply to the consignee.
 - (ix) Sales of goods which are to be imported against firm's own 'Stock and Sale' licence for supply to various customers.
 - (x) The goods have moved from foreign country to India as a result of the Indian supplier purchasing the goods from the foreign supplier i.e.
 - (a) the movement of goods has been occasioned by the contract for purchase which the Indian Supplier entered with the foreign seller.
 - (b) there was no privity of contract between the DGS&D and the foreign seller.
 - (c) The foreign seller has not entered into the contract by himself or through the agencies of the Indian supplier.

The Sales Tax Clause in the Acceptance of Tender for imported stores:- In all cases where it is finally decided to admit Sales Tax, the rate of Sales Tax and the amount payable as Sales Tax should be shown as a separate item in the Acceptance of Tender to enable Controller of Accounts to pay firm's bill for Sales Tax. The relevant clauses to be incorporated in the contract are given in the Chapter, "Drafting of Contract."

Payment of Imported Stores:- The most common method of payment to the foreign supplier is through a letter of credit. It is a letter issued by the Purchaser's bank to the supplier's bank authorising the letter to release payment to the supplier for the supplies made by them, on receipt of specified documents from the seller and the purchaser's bank reimburses the required amount as it receives an intimation about the payment for the supplies having been made to the supplier by the supplier's bank. The foreign suppliers generally insist for opening of irrevocable letter of credit confirmed by an international bank. The foreign suppliers also insist on part shipment and part payment for supplies

made. While opening the letter of credit the banks levy two types of charges viz. L/C opening charges, foreign bank charges and confirmation charges. The banks generally charge on quarterly basis (3 months). It would be prudent to open the letter of credit in such a way that validity of L/C is kept bare minimum. L/C should be opened only for net FOB/CIF value i.e. excluding agency commission which will be paid in Indian rupees in India. At the same time ensure that entire transaction for the L/C is done within its validity. On many occasions, the suppliers put a condition that delivery date will commence from the date of opening of letter of credit. This would require L/C to be opened at the earliest to obtain the supplies within the stipulated delivery period.

Letter of Credit is usually kept valid for 21 days beyond the contractual delivery date to facilitate the banks to retire the documents.

If the suppliers specifically request that the L/C be confirmed then efforts should be made to ensure that cost of confirmation is borne by the supplier. Further, if it becomes necessary to extend/reinstate or amend L/C for reasons not attributable to the purchaser, the charges for the same should be borne by the supplier. In order to open letter of credit a letter is written to the paying authority named in the contract along with copies of the contract. The L/C pro-forma devised by the bank has also to be filled up. The purchase officers are also required to give a standard letter to the State Bank of India, London undertaking thereby that the documents will be retired by the buyer and that L/C amount would be sufficient for payment of stores ordered. A specimen copy of each of above 3 documents is enclosed as Annexure to this Chapter.

The documents to be submitted by the supplier have to be clearly brought out in the body of the letter of credit so that the supplier meets with the contractual commitments. Regardless of this, a clause should always be stipulated requiring the supplier to confirm that he has abided by all the terms and conditions stipulated in the contract.

No.
Government of India
Directorate General of Supplies & Disposals
Parliament Street: New Delhi-110 001

Dated:

To

The Chief Controller of Accounts,
Supply Division,
Department of Commerce,
Akbar Road Hutments,
New Delhi – 110 011.

(Through Authentication Cell)

Sub: Opening of Letter of Credit against Contract No. _____
Dated _____ placed on M/s. _____

Sir,

You are requested to arrange for opening of letter of credit for the next amount _____ subject to ceiling of _____ payable to the beneficiary (i.e. foreign principals – M/s. _____) through their advising bank _____ (Address _____) as per clause 18 and 20 of the schedule to subject contract. Following documents are enclosed:-

- (vii) Two signed copies of kthe A/T
- (viii) Letter addressed to the State Bank of India, London (in duplicate)
- (ix) Letter of credit will remain valid up to _____ months and 21 days from the date of opening.
- (x) Last date of shipment _____ months from the date of letter of credit.
- (xi) Beneficiary to present documents: within 21 days from the date of shipment.
- (xii) List of documents against which payment is to be released to foreign suppliers will comprise of:-
 - (a) Complete set of clear bill of lading consigned to the port consignee as per clause ____ of A/T evidencing despatch of goods on freight and insurance paid basis also showing the letter of credit and contract number with date.
 - (b) Certified copy of FAX / CABLE sent by the beneficiary to the Indian port/ ultimate consignee giving full particulars of despatch of goods with name of carrier, date of despatch, date and number of bill of lading, place of loading and unloading, quantity and description of goods.
 - (c) Beneficiary's Invoice in Duplicate also showing Name(s) of Consignee(s) and value.
 - (d) Packing list in triplicate

- (e) Certificate of Origin stating that goods of _____ origin.
- (f) Manufacturer's guarantee/ warranty certificate.
- (g) Manufacturer's works test certificate.
- (h) Certificate from the beneficiary that one set of documents has been sent to the port consignee direct.
- (i) Pre-despatch inspection certificate for ordered stores will be issued by the following nominated officers as Inspecting Officers as per clause 17(a), 17(b) and 17(c) – Inspection:

The above mentioned officers are from the office of _____ and they shall discharge the role of inspecting officers/ inspection authority for pre-despatch inspection.

- (j) Copy of Insurance Policy covering 110% of CIP value.
10. Special instructions applicable to letter of credit will be:
- a. Part shipment : Not allowed / allowed
 - b. Transshipment :- Not allowed / allowed
 - c. In terms of clause 9 of A/T – Performance Security has been received and accepted.
 - d. Goods are to be shipped by sea/ air from _____ and delivered in satisfactory condition to port / ultimate consignee as per clause 13 of contract.
11. A confirmation from the beneficiary that they have complied with all the terms and conditions of the contract.
12. It is confirmed that sanction of funds are sufficient for stores ordered. This issues with the approval of _____.

Asstt./Dy. Director (Supplies)
For Director General of Supplies and Disposals

Copy to:

By Airmail 1. (Name and Address of the foreign supplier)

- 2. Indentor
- 3. Consignee
- 4. Port consignee at regional office
- 5. The Inspection Authority
- 6. Inspection Officer

Asstt./Dy. Director (Supplies)
For Director General of Supplies and Disposals

No.
Government of India
Directorate General of Supplies & Disposals
Parliament Street: New Delhi-110 001

Dated:

To

The State Bank of India
1, Milk Street,
London, UK.

Sub: Opening of letter of credit against contract vide
A/T No. _____

Sir,

With reference to opening of letter of credit details for which will be sent to you by the Chief Controller of Accounts, Supply Division, Department of Commerce, New Delhi.

- a) We hereby unequivocally /undertake to retire the document drawn under this credit notwithstanding total partial loss of goods during voyage and or pay general average, if declared.
- b) It is further certified that the amount of L/C would be sufficient for payment of stores ordered.
- c) Complete details of letters of credit may be intimated to this office immediately after the L/C is established by you.
- d) This issues with the approval of_____.

Yours faithfully,

Asstt. Director (Supplies)
For Director General of Supplies & Disposals

PS: Please invariably quote above stated A/T number and date while making reference(s) of this office on the subject.

DRAFT
CHAPTER 14
DELEGATION OF PURCHASE POWERS

PREAMBLE

This chapter contains the general rules for delegation of powers for purchase/procurement applicable to all ministry and departments and guiding principles thereof. All the rules and powers are derived from General Financial Rule (GFR) and Delegation of Financial Power (DFPR).

1. Powers delegated to Ministries and Department

Delegation of powers of purchase has been defined in para 21 of DFPR as under:

"Subject to the provisions of these rules and the provisions of the General Financial Rules, 1963, governing the purchase of stores for the public service and subject to the purchasing powers delegated from time to time to the Central Government Indenting Departments for making purchases directly and not through the Central Purchase Organization), a Department of the Central Government shall have full powers to sanction expenditure for purchases and for execution of contracts:

Provided that the previous consent of the Finance Ministry shall be obtained in the following cases, namely:-

any purchase or contract the value of which exceeds rupees [twenty crores]; if a contract extends over a period of time, the total value over the entire period of its currency shall be taken as the value for the purpose of applying the limit;

any negotiated or single tender contract exceeding rupees [five crores] in value; a limited or open tender which results in only one effective offer shall be treated as a single tender contract for this purpose;

any indent for stores of a proprietary nature, the value of which exceeds rupees [five crores];

any purchase which has normally to be effected through the Central Purchasing Organization, but which is proposed to be made direct on grounds of emergency, if the value exceeds rupees [fifty lakhs]

2. SCHEDULES OF POWERS WITHIN THE DEPARTMENTS:

Whereas above mentioned powers are for the ministries, **delegation of powers** (DOP) within the ministries has been clearly defined by MOF in GI, MF, OM No. F 10(4)-E/62 dated 1st June 1962. According to which all departments shall issue detailed **Schedules of Power** (SOP) within the limits prescribed for Ministries, for their ranks in consultation with Integral Finance as per the provision of GFR and other instructions of Government.

3. Fundamental Principle for Delegation of Powers (DOP): All departments will work out SOP depending upon their nature of work and requirement. These SOP take into account the nature of purchase, organizational structure and priorities. To promote efficient and responsive organizations, over centralization of powers should be discouraged and following fundamental principles should form the backbone of all financial delegation:

- a) Authority with responsibility
- b) Delegation of financial powers to the functional level
- c) Decentralization of purchases &
- d) Total budget under disposal

4. DOP should cover all gamut of procurement: There should be well defined SOP for various stages of procurement process. For the purpose of delegation of powers, process of procurement can be divided in following stages:

- (i) **Pre sanction stage :** which can be further sub divided as:
 - a) Preparation the indent/requirement
 - b) Signing of indent/requirement & finalization of mode of procurement
 - c) Finalization of technical specifications
 - d) Sanction of Purchase
 - i. **Post sanction & pre contract stage :** which can be further sub divided as:
 - a) Approval/issue of Tender
 - b) Tender finalization & Approval of Order
 - c) Signing of Contract/Purchase order
 - ii. **Post contract stage :** which can be further sub divided as:
 - a) Execution of Contract
 - b) Inspection of Stores/Acceptance/rejection of stores
 - c) Extension/Re-fixation of delivery period
 - d) Cancellation of contract
 - e) Variations/Amendments/review of contract term and conditions
 - f) Release of Payment
 - g) Settlement of dispute

b. DOP AT PRE SANCTION STAGE:

These delegations shall be decided by the department concerned. For ease of the departments guiding principles are given below:

	Activity	Delegation of Power	Process
1	Preparation the indent/requirement	User/Store in-charge/Consignee	Shall be empowered to identify, prepare and forward indent/requirement on the prescribed format to the indent signing authority.

2	Signing of indent/requirement & finalization of mode of procurement	Functional Head of the ranks of Dy. HOD and above & Budget controlling officer	Would consolidate and record justification of purchase and ensure that purchase is unavoidable and in the interest of the department. He shall also ensure that budget provision for the intended purchase exists.
3	Finalization of technical specifications	Technical Head of the ranks of Sr. Scale and above	He shall assess the technical requirement of the indenting official
4	Sanction of Purchase	An authority empowered to incur contingent expenditure or as authorized by SOP issued by the department, subject to overall limitations stipulated in DOFP	Powers delegated through SOP issued by the department shall take into account the mode of purchase while fixing DOP at different levels. The guiding principles for these delegation are in para 19.4.1. & 19.4.2

i. DOP to sanction Purchases when purchases are being done Through Tenders

	Mode of Tender	Rank of Officer	SOP
1	Open/Advertised /Global Tender	Dy. HOD/DS and above	Full delegated powers as per SOP
2	Limited tenders	-do-	1/4th of Full delegated powers as per SOP
3	Single tender	-Dy. HOD/DS and above -HOD/JS and above -AS and above	-Upto 1 Lakhs -Upto 25 lakhs -More than 25 lakhs
4	Procurement on R/C	Dy. HOD/DS and above	Double of the full delegated powers as in Open/Advertised/ Global Tender

ii. DOP to sanction Purchases when purchases are not being done Through Tenders

	Mode of Purchase	Rank of Officer	SOP
1	Direct Purchases/ purchase with out calling quotations	-Dy. HOD/DS & above -HOD/JS & above	As delegated in SOP subject to following limits: Upto 5000/- in each case Upto 15000/- in each case
2	Purchase by calling 3		As delegated in SOP with following limits:

	quotations or more	-Dy. HOD/DS & above -HOD/JS and above	Upto 1 Lakhs Upto 2 lakhs
2	Spot Purchase by a nominated committee of at least 3 members	Committee of officers in the rank of: -Dy. HOD/DS & above -HOD/JS & above	As delegated in SOP subject to following limits: Upto 1,00,000/- in each case Upto 5,00,000/- in each case

iii. Annual Ceiling for the Direct Purchases/ purchase without tender:

All SOP mentioned in para 19.4.2 above shall be subject to an annual ceiling limit which will be worked out based on operational exigencies. Certain percentage of overall annual budget can be fixed as annual ceiling. In any case it should not be more than 10% of the total budget allotted

iv. **Constitution of Spot Purchase Committee:** HOD in consultation with Integrated finance may decide upon constitution of Spot Purchase committee empowered to make on the spot purchases based on the market survey to deal with procurement of emergent/ urgent or store of peculiar nature in exceptional circumstances. The committee will constitute of at least three members, one of which will be representing finance.

v. Emergent Purchases

Extraordinary powers can be delegated to officials to deal with the emergencies/ security/event of national or international importance. Nature and extent of the delegation will be highly department specific and shall be worked out by ministries.

c. DOP AT POST SANCTION & PRE CONTRACT STAGE

These delegations shall be decided by the department concerned. For ease of the departments guiding principles are given below:

	Activity	Delegation of Power	Process
1	Approval of Tender	Purchaser/Dy. HOD or above	
2	Tender finalization & Approval of Order	Approving authority should not be less than that of sanctioning authority as per para 19.4.	These powers will depend upon the mode of tender and have been indicated in para 19.4.1 & 19.4.2.
3	Signing of Contract/Purchase order	Officers in the ranks of US/ STS or above	As per article 299 of constitution of India, person empowered to enter into contract on behalf of President of India are notified by special notification through gazette of India

i. Delegation of power in finalization of tenders

Finalization of tenders can be done in one of the following methods:

- i. Direct Approval by CA of not less than the rank of US
- ii. Approval by CA on recommendation of Tender Recommendatory Committee (TRC)
- iii. Approval through proceeding of Tender Purchase Committee (TPC)

ii. Constitution of tender Committee: Departments through in consultation with their HOD and IF should finalize SOP and constitution of the above committees/sanctioning authority for various tendering process/values vide para 19.2.1. Following guiding principles can be adopted for the above SOP:

1. Committee system of tender finalization shall be adopted for all purchases beyond 10 lacs.
2. Committee so constituted should preferably have 3 members (not less than the ranks of US) or more and one of them should represent IF.
3. For L/T and single tenders constitution of committee should be at least one step higher.
4. For purchase on proprietary basis need for committee system of purchases may not be necessary, however vetting of IF should be necessary for financial proprietary.
5. TPC should be adopted as a matter of exception in cases where the competent purchase officer feels that more than one view is possible and discussion in the Tender Purchase Committee would be useful or in cases where there is possibility of delay through TRC or if requisite number of officers are not present to constitute a TRC.

iii. Purchases at rates higher than LPR (Last Purchase Rates):

No guidelines or % are prescribed in cases of accepting higher rates than LPR. The competent purchase officer has to decide the case on its merit and circumstances. However if it is recommended to make purchase at rates higher than the last purchase rates where the increase is beyond 10% vetting by Integrated Finance will be essential.

iv. Cases where Integrated Finance will be consulted:

- a) Purchase by Single Tender,
- b) Purchase where competition is lacking
- c) Deviation(s) from standard terms and conditions of contract
- d) Allow deviation in respect of force majeure clause and transit insurance clauses.

d. DELEGATION OF POWERS AT POST-CONTRACT STAGE

These delegations shall be decided by the department concerned. For ease of the departments guiding principles are given below:

	Activity	DOP	Remarks
1	Execution of Contract	CA empowered to enter into contract on behalf of President of India as delegated by the Ministry are fully empowered to execute and operate the contract.	
2	Inspection of Stores/Acceptance/rejection of stores	Nominated officer/agency by the contract executing authority (CEA)	Any dispute arising out of inspection of store may be referred to CEA who's decision will be final
3	Extension/Re-fixation of delivery period	CA empowered to enter into contract on behalf of President of India as delegated by the Ministry.	However in case of abnormal delay (to be defined as beyond 50% of the original delivery period) higher authority not below the ranks of JS/Sr. A.G. should be informed.
4	Cancellation of contract	CEA empowered to enter into contract on behalf of President of India as delegated by the Ministry	All cancellation of contract shall be notified to the next higher officer
5	Release of payment	The contract executing officials shall be delegated full powers to release the payment to the supplier/contractor as per the contract conditions, without the financial concurrence	All payment shall be within the available budget of the CEA
6	Sanctioning Of Variation	Once a contract has been concluded between the Government and a contractor, the competent purchase officers shall have authority to revise the rates only in situations where a revision is required due to increase/decrease in charges/levies like duties, tax, etc, as a result of an act of Legislature or other Government actions over which the contractor has no control.	
7	Settlement of dispute	All dispute not resolved by the contracting parties will be first put up to the next higher authority of not less than the ranks of JS	In case dispute is still not resolved parties can take action as per the contract conditions.

e. DELEGATION OF MISCELLANEOUS POWERS RELATED TO PURCHASE CONTRACT:

Ministries /departments may also issue SOP with respect to other miscellaneous powers required to operate purchase contract in general:

i. Payment of Freight Charges:

If provided in the contract purchaser should be empowered to allow freight charges payable in contract as per the following rates:

- | | |
|--|--|
| a) Rail Fare (General parcel) | Full powers |
| b) Road Fare limited to double of Rail Fare (General Parcel) | Full powers with justification of delivery by road |
| c) Road Fare on Actual by a reputed carrier | In exceptional cases justifying need with prior financial concurrence and approval of authority 1 step higher. |

Note: These provisions will not be applicable to bulky items when road transport will be highly uneconomical.

ii. Payment of Demurrage Charges:

Demurrage charge shall be paid without any delay to avoid further liability. Hence full power to release demurrage charge is to be given to the competent purchase officer.

In retrospect, for all payment of demurrage it has to be certified by CA whether the demurrage paid was unavoidable or not. Post-facto sanction of demurrage charge needs to be taken depending upon the amount of demurrage. For all demurrage charges beyond Rs. 1 lakh post-facto sanction of HOD shall be taken.

iii. Payment of Testing charges related to Inspection

Inspecting/purchase officer needs to be given full powers upto 25,000/- in each case subject to an annual ceiling, for conducting tests by the nominated test laboratories s.a. NABL, NTL etc for the tests required as per the contract conditions.

iv. Payment of Handling/ loading/leading Charges related to receipt/ inspection of supplies

Full powers upto 1% of the value of the supplies upto a maximum of Rs 5000/- in each case, provided no departmental facility is available. Pre sanction of CA and vetting of IF will be essential if higher handling charges are to be paid.

f. PERIODICAL REVISION OF DOP:

Periodical review of provision of DOP should be automatically affected in line with inflation with a minimum slab of 25% and 6 months. For this, MOF should issue instructions from time to time and concerned ministry shall further revise their DOP.

g. RE-DELEGATION OF POWER

DOP once delegated by ministries shall not be re-delegated down below.

h. **CALCULATION OF GROSS VALUE:** The monetary limits of purchase powers will be for the gross value (i.e. inclusive of taxes, duties and other incidentals). Cases in which a revision in taxes/ duties is made after the contract is placed thereby increasing the gross value of the quantity of stores to be purchased and exceeding the monetary limits of purchase powers delegated, will have to be got regularized with the approval of the competent purchase officers in consultation with Finance, wherever necessary.

DRAFT**CHAPTER – 15****REGISTRATION OF FIRMS****PREAMBLE:**

The General Financial rules of Govt. of India , under Rules 4 (Appendix 8, Part D), emphasize the importance of ensuring that important plant, machinery and Iron & steel work as defined in Schedule “A” shall be obtained only from firms registered as approved suppliers by the Director General, Supplies & Disposals. Over the years, in the changed scenario with decentralisation of procurement activity of different user specific items to various administrative ministries, redefining the role of DGS&D as an agency to mainly concentrate on handling common user items on Rate contracts, emergence and recognition of Service sector industry as an equally important segment of requirements in Public services and with a trend for their outsourcing , it has become important that , there should be a readily available database of reliable and established suppliers / operators for supply of specific goods and services respectively , who could be relied upon by the Government organisations. The Central Purchase Organisation i.e. DGS&D already operates a system of Registration of suppliers for primary items mainly of engineering nature , on behalf and for the use of Govt. organisations. System of Registration of User specific items of individual departments shall be operated by the departments themselves for their exclusive use.

Department may prescribe specific requirements relating to manufacturing / operational aspects, after sales service, financial soundness and performance aspects in their schemes of Registrations, both for initial registrations or for its continuance, as appropriate. Firms shall be registered for fixed periods. The registration shall be subject to be review / renewal periodically.

2. ELIGIBILITY FOR REGISTRATION:

Any firm, situated in India or abroad, who are in the business of manufacturing, stocking or marketing of stores and operating operator of services of specified categories , shall be eligible for registration.

Where registration is granted based on partly outsourced arrangements / agreements, it shall be the responsibility of the registered unit, to keep such arrangements / agreements renewed / alive at all times , to keep their registration valid for the period for which , it has been granted. Any failure in this regard may make the registration null and void / ineffective retrospectively, from any such dates, which the registering authority considers appropriate.

Firm, against whom punitive action has been taken, shall not be eligible for re-registration for a period of two years or as prescribed.

Registration requests may not be entertained from such firms , stake holders of whom have any interest in deregistered / banned firms.

3. CATEGORIES FOR REGISTRATION

The different categories of registration and grades thereof, shall be as prescribed / notified by the Department concerned . The Central Purchase Organisation , ie, DGS&D, have been authorised by the Govt. to register firms as suppliers of stores in the following broad categories :

- (a) MANUFACTURERS, WHO SUPPLY INDIGENOUS ITEMS :
- (b) Agents/ Distributors of such manufacturers, who desire to market their production only through their agents
- (c) Foreign manufacturer with/ without their accredited agents agent in India.
- (d) Stockiest of imported spares or other specified items
- (e) Supplier of imported stores as are having regular arrangement with foreign manufacturers.

AUTHORITIES COMPETENT TO DEAL WITH THE APPLICATIONS FOR REGISTRATION AND GRANT REGISTRATION:

The Department shall notify the authorities competent to deal with the applications and grant registrations , along with their jurisdictions .

The Appellate Authority shall be at least one level above the Registering authority or as designated by the Department .

4. PROVISIONS RELATING TO APPLICATION FORMS AND PROCESSING :

The application forms for registration , shall be issued with unambiguous and clear cut requirements for registration and of the supporting documents / processing fee, in the form of "Guidelines", which shall also include the code of conduct expected out of the firms Registered as Approved Contractors .

The application form , complete in all respects and accompanied with the requisite processing fee and required documents, shall be entertained by the registering authority in whose jurisdiction the registered office of the firm falls.

Registration shall be granted after obtaining an inspection report from a technically qualified officer of the Department. Wherever, the Department is unable to obtain such assessments through its work force, it may approach the Quality Assurance Wing of Central

Purchase Organization or any other specialized authorized agencies and after fulfilling the other requirements, as prescribed.

Registration Certificates shall be issued with the approval of competent authority as per delegation of powers.

5. COMMUNICATION OF DEFICIENCIES TO FIRMS:

In cases where the firm is not considered capable and registration cannot be granted, concerned authority shall communicate the deficiencies or shortcomings direct to the firms under intimation to the Appellate authority. Where request for re-verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as fresh application and processing fee charged accordingly.

6. REMOVAL OF FIRMS FROM THE LIST OF APPROVED CONTRACTORS:

In case of violation of terms and condition of the registration, the registration of firm will be cancelled by giving prior notice. The registration granted for a term period may be cancelled, if necessary, with the approval of the designated authority.

The registered firms are liable to be removed from the list of approved contractors, when,

- (a) they fail to abide by the terms and conditions under which the registration has been given.
- (b) makes any false declaration to Government Department/ agency
- (c) supplied stores of inferior quality or uninspected stores
- (c) rendered services of inferior quality than the contracted ones.
- (d) Failed to execute a contract or failed to execute it satisfactorily.
- (e) When the required technical / Operational staff or equipment are no longer available or there is change in the production/ Service line.
- (f) Is declared bankrupt or insolvent?
- (g) failed to submit the required documents/information for review of registration, where required,
- (h) or any ground which, in the opinion of the registering authority, the retention of the firm's name in the list of registered contractors is not in Public Interest.

7. BANNING AND SUSPENSION OF BUSINESS DEALINGS WITH THE CONTRACTORS:

Business dealings with a firm, whether it is registered or not registered, may be ordered to be suspended or banned, in public interest by the competent authority.

The Competent authority to order banning of business dealings of a firm with the Department in the non statutory sphere, shall be the Chief Vigilance Officer of the Department. References in the form of self-contained notes, indicating therein the specific items of allegations along with relevant documents to be relied upon in respect of each such allegation shall therefore be made to the CVO for the conduct of the proceedings against the firms.

Where CVO of the Department feels that the allegations of malpractice etc. against the firm are very serious enough, so as to warrant banning of Business Dealings of the firm, with all the Government Departments, he shall refer such proposals to the CVO of the Deptt of Commerce, in charge of Supply Division.

8. GROUND FOR SUSPENSION OF BUSINESS DEALINGS WITH FIRMS:

Suspension of business dealings may be ordered where pending full enquiry into the allegation, it is considered not desirable that business with the firm should continue. Such an order may be passed:-

- (i) If the firm is suspected to be of doubtful loyalty to India.
- (ii) If the Central Bureau of Investigation or any other investigating agency recommends such a course in respect of a case under investigation and
- (iii) If a prima-facie case is made out that the firm is guilty of an offence involving moral turpitude in relation to business dealings which, if established, would result in business dealings with it being banned.

9. GROUND FOR BANNING OF BUSINESS DEALINGS:

The grounds on which banning may be ordered are:-

- (i) If security considerations including question of loyalty to the State so warrant.
- (ii) If the proprietor of the firm, is employee partner or representative is convicted by a court of law following prosecution for offences involving moral turpitude in relation to the business dealings.
- (iii) If there is strong justification for believing that the proprietor or employee or representative of the firm has been guilty of malpractices such as bribery,

- (iv) Corruption, fraud, substitution of tenders, interpolation, mis-representation, evasion or habitual default in payment of any tax levied by law; etc.
- (v) If the firm continuously refuse to return government dues without showing adequate cause and government are satisfied that this is not due to reasonable dispute which would attract proceeding in arbitration or court of law, and
- (vi) If the firm employs a government servant, dismissed, removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants.

DRAFT
CHAPTER 16
SETTLEMENT OF DISPUTES

1. Normally, there should not be any scope of disputes between the Purchaser and the Supplier after concluding the valid contract. However, practically due to many unforeseen problems dispute arises and contract may get frustrated which lead to litigation. Therefore, the conditions governing the contract shall contain very clearly a suitable provision for settlement of such disputes/differences as per applicable law of the land, which shall be binding on both the parties. When a dispute or difference arise both the purchaser and the supplier should first try to sort out amicably. However, if the dispute remains unresolved, there is no alternative but to resolve through the mechanism provided in the contract.

MODE OF SETTLEMENT

2. In case of disputes/differences arising out of contract between the purchaser and the supplier, the matter shall be referred to the designated officer. The highest level of the designated officer will be HOD of the Department who shall be one level above the purchase officer. The such designated officer shall call from Purchaser and Supplier all relevant documents for scrutiny and examination. He shall, in a joint sitting, proceed to freeze the facts of the case in a document titled "Summary of Facts as per records". The summary shall be signed by all the three functionaries, i.e., Purchaser, Supplier and Designated officer in token of it being the accurate full and final narration of facts of the case. After examining all the facts, he shall also propose a settlement. Normally, the decision/proposal should be acceptable to the office/Deptt. However, in case the proposal is not acceptable to both or any of the party, they shall go for settlement of dispute through arbitration.

The summary before the Officer shall form part of the arbitration proceedings and no additional documents shall be considered by the arbitrator. The decision of the officer shall not be subject to any scrutiny of Vigilance and Audit.

APPOINTMENT OF ARBITRATOR

3. The arbitrator shall be appointed by HOD/Secretary on receipt of reference/nomination by the purchaser and/or the supplier. In case of sole arbitration, the arbitrator shall be appointed by HOD/Secretary from the panel being maintained by DGS&D. In case of dual arbitration, the purchaser shall nominate the arbitrator(s) from the panel being maintained by DGS&D and supplier may nominate either from the panel maintained by DGS&D or by Indian Council of Arbitrators(ICA). The two nominated/appointed arbitrators shall appoint the third arbitrator either from the panel of DGS&D or from the ICA.

PANEL OF ARBITRATORS

4. DGS&D shall maintain a panel of arbitrators from the officers of various departments (retired at the level of DDG in DGS&D in the scale of SAG and above) having handled procurement functions at any level, for minimum five years. The panel shall be reviewed every year by DGS&D and posted on DGS&D website.

INTRA GOVT. DISPUTE

5. Intra Government disputes shall be dealt as prescribed by the Govt. from time to time.

VENUE OF ARBITRATION

6. The venue of arbitration shall be the place from which the contract has been issued.

SETTLEMENT OF DISPUTE THROUGH COURT OF LAW OF COMPETENT JURISDICTION

7. Where a contractor has not agreed to arbitration, the dispute/claims arising out of the contract entered with him shall be subject to the jurisdiction of the competent Court at the place from where contract has been issued. Accordingly, a stipulation shall be made in the contract as under:

“This contract is subject to jurisdiction of Court atonly”. (The name of the place from which contract is issued shall be inserted in the blank space.)

Feedback

Comments may please be sent to eiibranch@finance.nic.in