

**MATERIAL MANAGEMENT
AND
PROCUREMENT MANUAL**
For Ordnance Factories

**ORDNANCE FACTORY BOARD
KOLKATA**
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CHAPTER 1

INTRODUCTION

1.0. PREAMBLE :

1.1 As the existing **Material Management Manual** was made long back and as there is urgent need for updating the same, Chairman/OFB vide his I.S. Note No.0601/2K/C dated 8th Feb., 2000 constituted a Committee for updating the Guide Lines for Procurement of Stores in Ordnance Factories.

The Committee after referring to the instructions issued by M of D, OFB, and the latest DGS&D Manual, has made efforts to update the Material Management Manual by covering all related matters as far as possible .

The report submitted by the Committee along with the recommendation of Ordnance Factory Board was referred to MOD for approval. MOD constituted a separate committee for drafting a common manual which can be used by all the wings of defence. The manual submitted by this committee has been approved and is available at MOD website www.mod.nic.in. However, it has been decided by MOD that the common manual (Defence Procurement Manual-2005) shall be guide for revenue procurement in OFB till such time the existing Materials Management Hand book OFB is amended.

This Materials Management Hand book has been prepared after taking into consideration the draft manual submitted by the OFB committee and the various guidelines incorporated in Defence Procurement Manual-2005. The handbook contains the detailed procurement procedure and practices. The purpose of the handbook is not to replace the guidelines of Defence Procurement Manual-2005 but to supplement it. However, if any portion of this handbook is at variance with Defence Procurement Manual-2005, the content of this handbook shall prevail as these have been included with specific requirements of Ordnance Factories in view.

1.2 IMPORTANCE OF PROPER PROVISIONING AND PROCUREMENT:

More than 60% of the cost of production in the Ordnance Factories is accounted for by the cost of material. The Material inputs, for which the Ordnance Factories go for out-sourcing, is of the order of over Rs.2500 Crores per annum including imports.

In procuring the input materials required for production in Ordnance Factories involving a huge amount of Public money as mentioned above, while all cannons of financial propriety applicable for any Govt. Organization have to be observed on one hand, at the same time on the other hand, the primary objective of the Organization for which it exists viz., to deliver reliable goods on time to the Armed Forces, to keep up the Defence preparedness of the Nation at all times, should not be lost sight of, and rather should always be kept in mind, in all its activities in general, and specifically in positioning the all important input materials required for production in time.

1.2 UNIQUE FEATURES INVOLVED IN PROCUREMENT BY ORD. FACTORIES :

Apart from the importance of timely supplies to Armed Forces involving Defence preparedness, the other unique features that make the material procurement in Ordnance Factories unique over that of the other Govt. Departments are :

- (a) Highest Reliability required of its products in performance under various adverse war environments, instilling the required confidence and morale boost in the Forces.
- (b) Stringent Defence Specifications on Quality para-meters laid down in order to achieve the objective at (a) above, for each and every component that goes into Defence Production, right from its raw material stage to the final product, apart from elaborate Tests and Proof Tests involved before supplies are made to the Armed Forces.
- (c) Elaborate procedures for Inspection of Defence Stores, including dynamic destruction proof.
- (d) Non-availability of material to Defence Specifications readily (unlike the other commonly used and generally readily available civil material) due to stringent specifications called for which may have to be specifically made to order.
- (e) Even a small component can cause the failure of the entire End Store resulting in complete loss or even losing battles, as the items like ammunition are for use only once (either it functions or fails).

- (f) The necessity, in view of the above compulsions, to develop each and every item with proper care from the very beginning undergoing the rigours of various Tests involved until it is established finally without showing any incidence of failure.

1.4 SALIENT POINTS RELATING TO UPDATION :

- (a) The major change that has taken place after the preparation of the existing Material Management Manual, is decentralization of DGS&D and delegation of direct purchase powers to OFB/OFs. Similarly, OFB also, which used to procure 'A' category items, has decentralized and delegated the powers to General Managers for initiating Tenders for all requirements irrespective of the value and to place orders for those items which fall under the powers of General Managers and to forward cases beyond their powers to OF Board for issuing necessary sanction.
- (b) The earlier Manual was common for procurement of Stores as well as Plant & Machinery. As directed by Chairman/OBoard, updation of guide lines for Procurement of Plant & Machinery has been separately done and, therefore, purview of this Manual is limited to Stores only.
- (c) Further, since guidelines on disposal of scraps and surpluses already exist this compilation does not include the same. However, OFB Letter No. 109/Disposal Procedure/MM/D dated 27th September, 2000 giving clarifications regarding disposal of Copper Based Non-Ferrous Scraps involving SSI Quota and Export Units Quota, is included for ready reference at Annexure 46.
- (d) While updating, the latest directives/guide lines issued by M of D and OF Board have been taken into account, and as OF Board has adopted the same terms and conditions as followed by DGS&D for procurement of Stores, the latest paras on the relevant topics from the latest DGS&D Manual which came into force with effect from 01.10.1999 have been adopted.
- (e) It may be noted that a major change in the DGS&D Manual is inclusion of Performance Security Clause in all Contracts irrespective of the Registration Status of the Firms, and deletion of Risk Purchase Clause.
- (f) The revised Material Management Hand Book takes into account the general guidelines on contracting as given in Defence Procurement manual-2005.

1.5 REDUCTION OF TOTAL PROVISIONING PERIOD :

In the past, Indents used to be raised on Central Purchasing Agencies like DGS&D, DGSW, London and DGSW, Washington, 3 years in advance covering 12 Months requirements i.e., a total Provisioning of maximum 48 Months requirements less Stock & Dues. In view of the changed scenario and the urgent need to approach JIT Philosophy, if not in one go, at least by steps, OFB has forwarded a Draft Revised Provisioning Procedure curtailing the total Provisioning Period to 50%, to M of D for approval and issue as Govt. Letter which is still awaited. However, since the proposed limits are well within the original limits shown in the Govt. letter, it has been decided to incorporate the proposed limits in the Material Management Manual, in anticipation of Govt. approval so as to bring down the Inventory Level.

1.6 INVENTORY CONTROL:

As a result of various measures taken by O.F.Board, and efforts put in by the Factories over the years, the Inventory level in Ordnance Factories (Store in hand) has come down during the last Decade from nearly 11 months holding to 5 months holding as on 31.03.2000, as against 6 months limits generally expected by the Ministry of Defence.

1.7 CONSULTANCY ON INVENTORY MANAGEMENT :

In the present scenario of liberalization, globalization and the utmost need for any Organisation to compete in the World Market, the area of Material Management becomes one of the major thrust areas for improvement. Ordnance Factories cannot afford to lag behind. Even though, marked improvement has been achieved as compared to the yester years, still it is not enough in the present context.

Keeping this in view, Secretary/DP&S has directed that OFB should enter into a Consultancy Service on Inventory Management so as to further improve the Inventory position. Accordingly, OFB has entered into a Consultancy Service on Inventory Management with Indian Institute of Management (IIM),Calcutta. The Draft Final Report on the same has since been received from IIM,Calcutta which is under scrutiny at OFB. Final outcome will be communicated to all the Factories in due course for necessary actions.

1.8 ANNEXURES :

The following Annexures have been added for general information:-

Additional Financial Powers to OFB and GMs issued by M of D.

Important directives issued by M of D, CVC and OFB.

Disposal of Copper Based Non-Ferrous Scraps involving SSI Quota and Export Units Quota.

1.9 SCOPE OF THE MANUAL :

The Material Management and procurement Manual covers entire range of material management except the following:

- (i) Stores Accounting.
- (ii) Storage and Preservation.
- (iii) Disposal of Surplus.

The above areas will be covered in separate compilations. *Portion typed in italics at para 9.13.2, 6.19 and 6.21 are under consideration of M of D. Status quo to be maintained in respect of these paras till a final decision is taken by M of D.*

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CHAPTER 2

DEFINITIONS

2.1. **Procurement** The term procurement means acquiring all types of equipment, stores, spares, goods and services including packing, unpacking, preservation, transportation, insurance, delivery, special services, leasing, technical assessment, consultancy, system study, software, literature, maintenance, updates, conservancy, etc. Procurement is undertaken through various types of contract, including Rate Contract, Price Agreement and Memorandum of Understanding (MOU) between the purchaser and supplier as per existing laws and procedures.

2.2. **Purchaser** In all cases of procurement on behalf of the Central Govt., purchaser is the President of India acting through the authority issuing purchase orders. In cases of procurement by the departments of the state Govt., the purchaser is the Governor of the state while for PSU, the chief executive of the unit is the purchaser. So far as Defence procurement is concerned, the President of India is the purchaser.

2.3. **Supplier.** Supplier is the party, which contracts to supply goods and services. The term includes his employees, agents, successors, authorised dealers, stockists and distributors.

2.4. **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.

(Section-2,10,11,13 & 14 of contract Act 1872)

2.5. **Stores** The term 'stores' applies generally to all articles and materials purchased or otherwise acquired for the use of Govt. including not only expendable, consumable, and issuable articles in use or accumulated for specific purposes, but also articles of dead stock of the nature of plant, machinery, tools and machinery spares, instruments, furniture, equipment, fixtures, armaments, victualling, messtraps, live stock and clothing etc., but excluding books publications, periodicals etc., in a library.

(Note 66 to Rule 99 GAR)

2.6. **Financial Powers** Financial power is the powers vested in an authority by the GOI or delegated to an authority to approve expenditure from the funds placed at the disposal of that authority. While the powers vested by the President of India is known as intrinsic powers and can be delegated to subordinate authorities, delegated financial powers can not be further sub-delegated. However, the CFA may authorize staff officers to sign the financial document on his behalf with the clear understanding that the accountability for the correctness of such documents remains with the CFA. No CFA can approve an expenditure involving amounts beyond his financial powers.

2.7. **Competent Financial Authority.** The Competent Financial Authority (CFA) is an authority duly empowered by the Govt. of India to sanction and approve expenditure from public accounts to a specified limit in terms of amount of such expenditure and availability of funds. All financial powers are to be exercised by the appropriate CFA.

2.7.1 **Next Higher CFA** Where more than one authority has been delegated financial powers under the same Serial/Head, authority with higher delegated financial power will constitute next higher CFA.

2.8. **Indent.** An indent is a requisition placed by the provisioning authority on the procurement agency to procure an item. Indent is the authority for initiating procurement action and may contain one or more items, each with distinct item code / part No. All necessary details of the item including quantity, denomination, estimated price, specification, scope of supply, date required by and inspection authority are to be indicated in the indent to enable prompt procurement of the item. In case of OFB, indent is an authority to undertake manufacturing of the end store and purchase of all raw materials, components on the basis of Bill of Material.

2.9. **Rate Contract.** A Rate Contract (RC) is an agreement between the Purchaser and the supplier to supply stores at specified prices during the period covered by the contract. A RC is in the nature of a standing offer from the supplier and no minimum drawal need be guaranteed. A contract comes in to being only when a formal order is placed by the CFA or the Direct Demanding Officers (DDOs) on the vendor.

2.10. **AHSP.** Authority Holding Sealed Particulars (AHSP) is the authority Empowered to draw up the specification of the item, and hold the detailed particulars of the item. AHSP may be the DGQA or an authority in the Service Headquarters for service specific items. Ordnance factories are AHSP for items issued to indentors other than defence and 'B' vehicles. The AHSP is authorised to modify, update and promulgate the specifications for the range of items under his purview only after consulting

manufacturer, user Directorate. The procurement officers, the suppliers and the inspection agencies will comply with the specifications drawn up by the AHSP.

2.11. **Inspection Authority.** The inspection authority is to promulgate inspection methodology and nominate suitable inspection agency for specific contracts. In respect of Ordnance factories, GM's are the inspecting authority for items required by indentors other than defence.

2.12. **Inspection Officer.** The Inspection authority based on the type of items and geographical location of the purchaser and supplier nominates the Inspection agency and the Inspection officer. The Inspection Officer is nominated by GM (normally QC Officer) shall be Inspection Officer.

2.13. **Acceptance of Tender.** This is a term for accepting the Tender of concluding the contract. The term, "Purchase Order", "Contract", "Demand" or "Order", will not be used.

2.14. **Accounting Unit:** This is the unit of payment of stores as stated in the Acceptance of Tender or Supply Order viz. number, Litre, Pair, Tonne, Meter, Kilogram, Square Meter, Cubic Metre etc.

2.15. **Accepted:** This term will be used in connection with the stores examined/tested by the Inspecting Officer and found to be in accordance with the contract. The term "Passed" will not be used.

2.16. **Advance Sample:** Advance sample is the sample which is to be submitted by the contractor for approval by the competent authority when so stipulated in the contract, before the bulk supply is manufactured and offered for inspection.

2.17. **Stage Inspection:** This is an inspection carried out in the stages of manufacture of the product as may be required to assure the manufacture of the produce to the contract specification. This is carried out in respect of such parameters, which may not be possible for examination after the completion of the manufacture of the product.

The terms and expressions not defined herein shall have the meaning assigned to them if any in the India Sale of Goods Act 1930, or the Indian Contract act 1872, or the General Clauses Act 1897, or the other Govt. Instructions as amended from time to time.

Applicability of Provisions

2.18. The provisions contained in this manual are in conformity with Govt. Manuals like GFR, FR and other Govt. Instructions, duly updated and modified, featuring the CVC instructions and should be applicable to the Procurement activity by all Ordnance Factories under Ordnance Factory Board, Ministry of Defence. However, wherever in doubt about the import and interpretations of any specific provision in the manual vis-à-vis the manuals and statutory provisions, the latter shall prevail. However, orders and instructions, if any in respect of various Ordnance Factories, wherein different procedures and practices had crept in, would stand modified by those contained in the "Material Management & Procurement Manual-2005" in order to achieve uniformity amongst the purchase practices followed by various ordnance Factories under Ordnance Factory Board, Ministry of Defence.

CHAPTER 3

PROCUREMENT POLICY

3.0 PROVISION PROCEDURE:

The Provisioning Procedure to be followed in the Ordnance Factories was prescribed vide Ministry of Defence letter No.01/5/SP/C/Part/4897/P(Ord.) dated 11.06.73 as amended/extended from time to time. This provisioning procedure was envisaged on firm Indents from the services four years in advance. For various reasons the placement of firm Indents on four yearly roll-on basis has since been replaced by firm annual Issue Programme finalised before the beginning of each financial year.

In view of the changed circumstances, OFB vide U.O. No.10/6/MM dated 23.04.1999, has forwarded a draft revised Provision Procedure to M of D for approval and issue as Government letter, which is still awaited. However, since the proposed limits are well within the original limits shown in the Government Letter, it has been decided to incorporate the proposed limits in the Material Management Manual. These have been given in the following relevant Paras.

3.1 WORKING STOCK OF STORES:

Working Stock of Stores in Ordnance Factories is broadly categorised into two groups viz., (I) Direct material i.e., Materials/Components/Packages etc. used in the Products manufactured in Ordnance Factories, and (ii) Indirect material i.e., General Purpose Stores & Maintenance Stores.

3.1.1 Direct Material

- a. For the purpose of initiating provisioning action for the items of service requirement with firm indents, the quantity agreed/ as settled with Services in the target fixation meeting before the beginning of the financial year will be the basis. Further, provision of 25% quantity for the first quarter of next year may also be kept.
- b. When the target so given is not backed up by covering indents, Ordnance Factories are authorised to procure 25% of the requirements of input materials for the annual target with an option clause restricted to 25% of the contracted quantity/ value subject to the following:
 - (i) Receipt of a communication from the indentors that indent will follow to cover the target set.
 - (ii) The supply of the end product is within the issue budget firmed up in budget estimate; and
 - (iii) The end product is not likely to be phased out.

In respect of other than Service Indentors Annual requirement as projected by them shall be considered as the basis for provisioning.

3.1.1.1 Imported Items

For Direct Materials of imported origin, provisioning action will be initiated well in advance of the period of utilisation. Provisioning action will be taken for requirement upto a maximum period of 24 months i.e., 12 months in advance of the period of utilisation, which is 12 months, less stocks and dues.

3.1.1.2 Indigenous items

For Direct Materials indigenously available, provisioning action shall be initiated at least six months in advance of the period of utilisation which will be 12 months i.e., provisioning action will be taken for a maximum period of 18 months, less stocks and dues.

3.1.1 Indirect Material

Provision of stock of indirect materials i.e., General Purpose Stores & Maintenance Stores which are not required directly in the production will be made on the basis of monthly average consumption during the preceding 24 months.

3.1.2.1 Imported items

For indirect imported items, provisioning action must be initiated minimum six months in advance of the period of utilisation which will be 12 months i.e. provisioning action will be taken for a maximum period of 18 months less stock and dues.

3.1.2.2 Indigenous items

For indirect indigenous items, procurement action may be taken minimum six months in advance of the period of utilisation which is twelve months i.e. for requirement upto a maximum period of 18 months less stock and dues.

N.B:

- (i) Exception may be allowed in the case of certain Stores where provision is required to be made on the basis of technical knowledge/uses after taking into account the life of the stores required ,or economic batch quantity or for the minimum quantity acceptable to the supplier.
- (ii) Where assessment of requirement based on past consumption is not considered adequate, due to high consumption of the item in the recent past or due to commissioning of new Plant etc. requirement may be assessed based on the available data. In such cases full justification should be recorded. Similarly, where any reduction is foreseeable, for reasons such as declining production trends or the residual life of the plant concerned, the assessed requirement will also be reduced and reasons recorded.

3.2 SUPPLEMENTARY REQUIREMENTS :

The procedure prescribed above will also be adopted for Ad-hoc demands; and supplementary orders, if necessary, will be placed to position the materials.

3.3 STOCKPILE AUTHORIZATION :

- a. Stockpiles of non-perishable imported materials shall be built upto 6 months requirements, and of indigenous materials difficult to obtain upto 3 months requirements except where higher limits have been specially authorised. Maximum monthly production envisaged on the basis of two shift normal working, where it could be worked, may be taken as the basis for calculation of the authorised stockpile holdings.
- b. Factory will ensure that the stockpiles are adequately turned over from time to time.
- b. The stockpiles referred to above will be entirely distinct from the regular or any other stocks that are referred to above.
- d. Each item of stockpile shall be reviewed every year or as soon as it comes to notice that the indigenous production of the imported items has developed satisfactorily or the supply position of the indigenous items has improved or the production of the relevant store has been discontinued.

3.4 STOCK HOLDING :

The levels of Store-In-Hand Inventory held by a Factory at any time in respect of imported stores as well as indigenous items, will depend upon the criticality of the items in maintaining the continuity of production, lead time required to procure the item, availability of alternate capacity verified and established sources, availability of storage space etc. The optimum level of SIH inventory for any item may be fixed by the General Managers in such a way that the overall assessed inventory holding for the factory should not normally exceed the maximum level as indicated below: -

Group of Factories	Over-all SIH Inventory Level (Maximum)
AV	6 Months
OEF	3 Months
Others	4 Months

3.5 TIMELY ACTION :

The factory should take prompt and timely action for both indigenous as well as imported items, through OF Board wherever necessary, in such a way that stock-out situations are avoided to maintain continuity in production and at the same time the over all SIH inventory is contained within the limits shown in the Table above.

3.6 STAGGERED DELIVERIES :

Deliveries against the Supply Orders/IFDs shall be staggered so that as far as possible the actual stock at the factory is restricted within the maximum levels in consonance with the Production/Issue Plan of the factory. For this purpose the staggered delivery schedule desired shall be included in the tender notice/IFDs itself.

3.7 PRINCIPAL ASPECTS OF PROVISIONING PROCEDURE :

The Principal aspects of the provisioning procedure are:

1. Frequency of Provisioning review
2. Provisioning period.
3. Determination of requirement.
4. Determination of Stock and Dues.
5. Stock level to be maintained.
6. Stock pile.
7. Net Requirement
8. Preparation of Material Planning Sheet

3.7.1 Frequency of Provisioning Reviews:

Since the demands from services are firm up on annual basis, the production targets for Fys. are also firm up by OFB on annual basis, without much lead time left. Frequency of Provisioning Review has become an annual exercise in consonance of which the period of utilisation has also been fixed as 12 months in provisioning procedure. Apart from this annual review, any change in production programme of any end product due to increase or decrease in demand or any other reason will necessitate mid-course review.

3.7.2 Provisioning period : The total provisioning period varies from 18 to 24 months depending on

- i) Whether the item is a direct material used in production or indirect material for maintenance/general purpose use and
- i) Whether imported or indigenous.

The provisioning period consists of two parts viz. (i) lead-time and (ii) the period of utilisation.

- a). The lead time is intended to cover all actions upto materialisation of supplies i.e. assessment of net requirement, procurement consisting of tender action, tender decision, placement of orders and delivery period required by the supplier.
- b). Period of utilisation is the production period during which the entire ordered quantity will be utilised for meeting the production target after full drawal of stock and supplies received against dues at the time of provisioning action. The period of utilisation covers a period of 12 months.

Within the above design, i.e., lead-time + period of utilisation = Total provisioning period, different provisioning periods in months have been laid down for different categories of stores as under: -

Source	Lead Time		Period of Utilisation		Total	
	Direct Material	Indirect Material	Direct Material	Indirect Material	Direct Material	Indirect Material
Imported	12	6	12	12	24	18
Indigenous	6	6	12	12	18	18

3.7.3 Determination of Requirement

For direct materials, requirements have to be related to the firm demands for the end products. To ensure this, production programmes are formulated with reference to Service demands, available capacity in the Factories and other facilities and constraints related to production in the factories. Production programmes are drawn on annual basis in tune with the Services provisioning cycle. Here it may be said that the liabilities should not only ignore anticipated or suspended demands, but also should take into account only that portion of the service demands which can be realistically accommodated within the production programme of the concerned factory/factories.

A comprehensive Material Estimate will be prepared for direct materials by Estimate Section of the factories and kept upto date in accordance with the experiences of the actual manufacturing requirements including wastage at all stages. In case of Ad-hoc demands where no standard estimates exist factories will prepare provisional estimates and assess immediate requirements on that basis, till later converted to actual standard estimates.

In respect of indirect materials e.g. maintenance and general-purpose items, the requirement may be determined on the basis of average consumption during past 24 months. However, monthly rates worked out on the basis of past consumption may be moderated, where necessary, upwards due to reasons such as increasing rate, downwards due to reasons such as declining production trends, decadence/weeding out of plant/machinery etc. There may be items in respect of which assessment of requirement may not be amenable to any of the above methods. In such cases assessment may be made on the basis of technical knowledge, the life span of the stores etc. or for the minimum acceptable quantity. For example, provision of spare parts for machinery is made with reference to the following information: -

- (a) Quantity used per machine at a time
- (a) Numbers of such machines in commission
- (b) Expected life of each part/component
- (c) Time since the existing parts were put in use and their residual life

After a proper and reliable Monthly requirement (MR) is arrived at, total requirement may be determined by multiplying MR with the number of months, which constitute the total provisioning period. For items for which stockpile is authorised, the deficiency in the stockpile holding, if any, is to be added to arrive at the total requirement. For such items, as and when stock out situation is likely to arise, the required quantity may be withdrawn from the stockpile stock to meet the emergency situation and as soon as the first consignment of the item against regular procurement action is received, the deficiency in stockpile will be recouped first. However, for first time procurement against stockpile sanction, the procurement action should be taken separately against Capital Expenditure Head. Where products are marketed through dealers and where there is regular recurring market demand for the same, a realistic production programme may be formulated on the basis of market trend, having due regard to the spare capacity available for production of the item. For items for which Ex-shelf stocks have been authorised, deficiency in actual holding, if any, will also have to be made up.

3.7.4 Determination of Stock and Dues :

Stock to be taken into account is the balance shown in the stock-cum-provisioning ledger on the date from which provisioning period commences. This balance should be reconciled with the ground balance, taking into account the latest draws as well as receipts.

While calculating the stock balance, the material lying on the shop floor must also be taken into account. Dues will include:

- a) Unsupplied quantities against all direct purchase orders placed by Factory itself.
- b) Unsupplied quantities Against A/Ts, S/Os, placed by DDS or against any Rate/Running contracts of DGS&D/OFB.
- c) Unsupplied qty. against Inter Factory Demands.
- d) Supplies, if any, expected from surpluses circulated by other Fy / Services.

In addition, if the concerned Fy itself has capacity for production of the item to any extent, the total planned/anticipated production during the entire provisioning periods should be taken into account.

Care should be taken to see that dues expected to materialise during the Provisioning Period are only counted to arrive at the net deficiency for the Provisioning Period.

3.7.5 Stock level to be maintained :

In the provisioning procedure it has been emphasised that delivery period in A/T's/S/0s should be staggered such that inventory level is kept within the optimum level/to be set by GMs for each item so as to keep the overall SIH Inventory level within the maximum level prescribed for the concerned group of Fys. This is a crucial stipulation for regulating inventories. This aspect, therefore, deserves critical attention and can be taken care of only by advance planning adhering to the realistic timetable for each component of the lead-time.

- (a) Completing formalities regarding provisioning review and material requirement planning
- (b) Floating tenders and finalising the purchase contract/ placement of IFDs
- (c) Giving reasonable time to the suppliers for production, inspection lead time, and finally time for delivery of the stores.

The time frame for the first two exercises is within the control of and, therefore, the sole responsibility of the concerned Fys. except for the items for which total procurement value exceeds the financial power of GM. In regard to DP, no hard and fast time frame can be laid down, as this will depend on the nature of the store, its specification, technology of production, number of established suppliers etc. The delivery period will have to be laid down taking into account the above factors and past experience. Further in many cases it will be necessary to ask for delivery in suitable instalments keeping in view the requirements of production.

3.7.6 Stock Pile :

Stockpile is an emergency reserve and is intended to enable the factories to maximise production of the related end product at short notice or immediately after the emergency arises. The cost of this reserve is capitalised. A separate store ledger will be maintained by the LAO to enter all the stockpile items. The stockpile, being an emergency reserve should be kept in tact. At the same time, as laid down in the provisioning procedure, it has to be turned over from time to time as a measure of preservation. This is effected by transfer from stockpile stock to working stock, subject to the following conditions: -

- a) OF Board approval should be obtained for making any withdrawal from stockpile.
- b) Stockpile is permissible only in respect of 'imported' and difficult indigenous stores, the maximum limit for each category being 6 months' and 3 months' requirement respectively, unless specifically authorised for higher levels.
- c) The withdrawal from stockpile will be first transferred to stock ledger and issued on demand notes.

Once an item is identified for stock piling and the quantum is determined, competent authority shall be approached for sanctioning of stockpile creation. The monthly requirement of stockpile items is determined with reference to the maximum achievable capacity available in the Ordnance Factory for production of the related end product as evidenced by past performance.

Factories will submit a half-yearly certificate to OFB to the effect that all items held in stockpile, are in good condition and have been subjected to due care and preservative treatment.

A register of stockpile items is maintained by each of the holding Fys. and a centralised register of all the items is maintained at Stock Pile Section of MM Divn. at Hqrs. This Section in co-ordination with the concerned Fys. should carry out continuous review of the stockpile items, in pursuance of the stipulation made in the Provisioning Procedure. Such a review is essential having regard to the following factors:

Obsolescence of/reduction in the demand for end products.

- a) Change in specification/substitution.
- a) Indigenisation or expansion of the indigenous manufacturing capacity.

3.7.7 Net Requirement :

Based on quantity permissible for procurement at any stage under the authorised provisioning procedure, the net requirement is arrived at by taking into account the stock dues and WIP.

3.8 Preparation of Material Planning Sheet :

With the computerisation in Fys. MP Sheets are generated based on production programme and standard estimates for the items. MP Sheets indicate the net requirement after taking into account the stock and dues. IFD dues will be indicated in the SHIS/MP Sheet/Data Sheet with rates.

3.9 Preparation of Store Holder Inability Sheet (SHIS)

For all items of procurement factory is to prepare Store Holder Inability Sheet (SHIS) which will show the requirement, present stock and dues, net requirement etc. The SHIS will also give the details of all dues. The SHIS should be prepared preferably on the system and not manually prepared. SHIS should invariably be vetted by LAO in respect of quantity and by QC/Pattern office in respect of the technical specification. The purpose of quantitative vetting is to ensure that there is no over provisioning, whereas specification vetting will ensure procurement of stores to latest approved specifications.

3.10 GOVERNMENT PURCHASE POLICY

3.10.1 **Product Reservation.** In order to encourage indigenous manufacturing particularly by the SSI, handloom and Khadi Bhandars, the Govt. has issued administrative instructions to reserve certain items for procurement from the KVIC, ACASH, CCIC and SSIs only. These units are also exempted from payment of Performance Security Deposit.

3.10.2 **Price Preference.** As per existing Govt. instructions, SSIs can be allowed price preference up to 15% in comparison to the large scale Industries. However, as per Note 2 of Annexure to Rule 102(1) of GFR such a preference “is to be considered strictly on merit in consultation with the IFA in such a manner as to discourage inflation and prevent profiteering and creation of sense of self complacency in economy”. **The RFP can mention regarding existing Govt instructions on price preference consideration to SSIs.**

3.10.3 **Purchase Preference.** As per DPE’s letter dated 26 Oct 2004, purchase preference is to be granted to the Central Public sector Enterprise (CPSE) **at lowest valid price (L1) if the price quoted by a CPSE is within 10% of the L1 price. Such preference is to be granted when**

- (a) Tender / Notice to invitation to tender is of Rs.5 Crores and above
- (b) CPSEs holding in JV is 51% or more
- (c) Minimum value additional of 20% or more by CPSEs/JVs by way of manufacturing and / or services.
- (d) Purchase preference provision shall be part of Notice Inviting Tenders (NIT) for Rs. 5 Cr and above/in accordance with the latest notification issued by Ministry of Heavy Industry and Public Enterprises.

3.11 **Time Limit for Procurement & Accountability.** The effect of delay in processing and clearance of various procurement activities needs no emphasis. The decentralization of decision-making mechanism and delegation of financial powers are aimed at facilitating faster decision making and obtaining best value for money. However, the delegation of powers also implies ‘authority with accountability’. Every individual in the chain of the procurement process is accountable for taking action in a specified time period so that the requirements of the Defence Departments are met on time. **Vetting where required of necessity must be done within 2 weeks including issues relating to TE to pre-empt any disruption in operational/production/ maintenance requirements.** A flow chart showing major activities and time frame prescribed is placed at Annexure- 47 & 48.

3.12 **Procurement of ‘Urgent’ requirement :-** There may be occasions when procurement of certain inputs shall be required on ‘Urgent’ basis. Although procurement for urgent requirement should be minimal and should be avoided as far as possible, it may be considered in following situations:-

- a) Target has been revised by OFB and the increased quantity due to revised target can not be covered under option clause.
- b) Store loss due to natural calamity and the required quantity not covered under option clause on existing SO/ SOs .
- c) Failure in supply of dues from established source(s) / IFD and stock level including stock quantity, W.I.P. quantity, transit quantity, S.I.S. quantity has reached a level sufficient for three months only . Tender action will be initiated after forfeiting the security deposit of the supplier(s).
- d) Procurement under urgent requirement other than (a), (b), and (c) above, shall be done on approval of CFA after investigating the reasons attributable for such situations and fixing responsibility, if possible.

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CHAPTER 4

METHODS OF PROCUREMENT

4.0 PROVISIONING OF STORES:

Stores are normally provisioned through the following methods

1. Inter Factory Demand (IFD)
2. DGS&D Rate Contract (R/C)
3. Direct Purchase
4. Other Military Departments.
5. Other than Military Departments.

4.1 PROVISIONING THROUGH INTER FACTORY DEMAND (IFD) :

The User Factory will place IFD on the supplying factory in the prescribed form viz. IAFA-1921: (Annexure-1) giving inter-alia, the following particulars:

- (a) Connected Extract No. Date.
- (b) Correct nomenclature of the stores demanded together with the relevant manufacturing particulars etc.
- (c) The purpose for which the stores are required.

The indenting factory will be responsible for ensuring that the particulars quoted on the IFDs issued by them are correct. They will also supply to the feeder factory particulars/ drawings/ specifications quoted in the IFDs and required for completion of the IFDs. In order to expedite supply of additional copies/ particulars, if any, request to AHSP should be made while forwarding copies of the IFDs to despatch the manufacturing particulars etc. direct to the supplying factory.

If Raw-Material cost of an item in the quoted price of Supplying Factory is more than the total cost of the trade, the Indenting Factory may go to Trade with prior approval of Operating Member of Supplying Factory and Member/P&MM.

(**Authority : 903/Policy/P(C) dt. 16.10.97**).

Copies of IFDs should be endorsed, among others, to the following authorities: -

- i) Concerned AHSP for vetting of Specification/Particulars and communicating additions/alterations, if any,

- ii) Concerned Inspection Agency, both for inter-stage and final inspection.
- iii) LAO of the user Factory- for post audit
- iv) LAO of the supplying Factory

4.2 PROVISIONING THROUGH RATE CONTRACTS (R/C) :

4.2.1 DGS&D Rate Contracts:

In case of items for which DGS&D Rate Contracts exist, the General Managers as Direct Demanding Officers (DDOs) will procure these items by placing direct orders on the firms as indicated in **Para 4.12** . Such purchases will be treated as Central Purchases.

4.2.2 OFB Rate Contracts:

For some 'A' and 'B' Category items Rate Contracts with reliable established vendors through LTE may also be concluded within the delegated power of GMs/AV Hqrs/OEF Hqrs/OFB wherever DGS&D Rate Contracts do not exist. Any Ordnance Factory can utilise such Rate Contracts concluded. For items required by AV & OEF Groups, Rate Contracts shall be concluded in consultation with concerned Member and Member/P&MM for a period of one year.

4.3 PROVISIONING THROUGH DIRECT PURCHASE :

4.3.1 Single Tender.

As per Rule 154 of GFR-2005, Procurement from a single source may be resorted to in the following circumstances:-

- (i) It is the knowledge of the user department that only a particular firm is the manufacturer of the required goods.
- (ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.
- (iii) For standardization of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm.

NOTE: Proprietary Article Certificate in the following form is to be provided by the Ministry/ Department before procuring the goods from a single source under the provision of sub Rule 154(i) and 154(iii) as applicable.

<u>FORMAT FOR PAC</u>	
(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)	

(a) Single Tender being PAC purchase.

Certain items, particularly equipment, are the propriety product of a manufacturing firm. Such items are only available with that firm or their dealers, stockist or distributors as the detailed specifications are not available for others to manufacture the item. In such situations, a Propriety Article Certificate (PAC) is issued to the original equipment manufacturer (OEM) and items procured on PAC basis from that particular firm or their authorised dealers or distributors. While PAC is issued only in respect of the concerned OEM, the item may be bought from any supplier listed in that particular PAC provided the purchase is accompanied by a proper manufacturer certification. PAC once issued will be valid for the specific case of procurement. PAC for items valuing more than 10 Lakhs is to be approved by the concerned operating member.

PAC bestows monopoly and obviates competition. Hence, PAC status must be granted after careful consideration of all factors like fitness, availability, standardisation and value for money. PAC certificate should be granted preferably by Head of Establishment / Unit to avoid dilution. Many OEMs do not manufacture assemblies, sub-assemblies and components but out source these items. Hence, such items may be available at cheaper prices with the actual manufacturers. The procurement officers must

therefore keep abreast with the proper source knowledge and procure items from the right source to protect the interest of the state. However, the spares have to be sourced from OEM or OEM approved/recommended manufacturers only in order to make the OEM responsible for the malfunctioning of the main equipment in which the spares have been fitted.

When Defence PSUs have specifically developed an item for the department of defence or have taken TOT, such sources could be treated at par with the PAC firms.

(b) Single Tender on grounds of urgency.

Single Tender Powers delegated to General Managers are limited. Single Tendering for non- PAC items may be resorted to only on the grounds of urgency or operational or technical requirements. The reasons for single tender enquiry (STE) and selection of a particular firm must be recorded and approved by the CFA prior to single tendering. Purchases on STE basis should be made from reputed firms after determining reasonableness of rates.

(c) Single Tender being Single Known Source of Supply (SKS)

In such cases Single Known Source (SKS) certificate to be given. The SKS certificate should be backed up by supporting documents e.g. design requirement and also efforts made to know other source/ confirm no other source by floating OTE.

4.3.2 Limited Tender. Limited Tender Enquiry (LTE) may be resorted to in case of indigenous procurement : -

- (a) When the requirement of stores is urgent and the desired delivery schedule cannot be met if the open tenders are invited. The indenting officers should place on record and nature of urgency and why the demand could not be anticipated earlier.
- (b) When the sources of supply are definitely known and limited.
- (c) When it is not in Public interest to call for open tenders due to security reasons.
- (d) When Govt. policies designate specific agencies.
- (e) Besides, when possibility of fresh source(s) beyond those being tapped is remote, TE may also be resorted to for military specific items when the specifications are very stringent, quality of item is of prime importance and the items are generally not available in open market. The indenting officer should place on record the detailed justification.
- (f) The minimum number of suppliers to whom LTE should be sent is normally six. In case less than six approved suppliers are available, LTE may be sent to available approved suppliers with approval of the CFA duly recording the reasons.
- (g) In case it is proposed to exclude any registered/approved supplier, detailed reasons like failure in supply should be duly recorded and approval of IFA be taken before exclusion.
- (h) Adequate time should be given for submission of quotes, which should not be less than **three** weeks. Longer period could be given in case of import and in complex cases.

4.3.2.1 Categories of Vendors:

The purchase procedure and tendering system for all Direct Materials used for Defence Production have great bearing on the categories of vendors available. For this purpose, vendors are broadly divided into the following categories: -

- (A) Registered and Established Vendors for a particular item - LTEs can be given.
- (B) Established vendors since long but not registered. Not to be entertained unless Registered.
- (C) Registered Vendors but not yet established. Source generation Tender Enquiry can be given.
- (D) Potential vendors neither registered nor established supplier for a particular item as yet. No Tender Enquiry can be given at all.
- (E) DRDO/AHSP recommended vendors for new items. Tender Enquiry for Source Generation can be given but the Firm is to get Registered with AHSP etc.

4.3.2.2 Definition of "Established Source":

A vendor can be considered as an established source for a particular item if they have **successfully delivered the quantity against One Supply Order and supplied minimum of 50% of intended quantity against tender meeting the desired quality requirements satisfactorily.**

[Authority: Para 4.3(i) of DPM-2005 & OFB letter 108/TIR/TS/QCS dated 13.9.2005]

4.3.3 Open Tender. Open Tendering is the preferred mode of procurement for common use items of generic or commercial specifications to ensure adequate competition. All items of common use, which are normally available in open market with a wide

range of sources, should be procured against open tender enquiry (OTE). Open tender system involves wide publicity through advertising media (Press, Trade, Journals etc). Open tender notifications will be sent to Director General of Commercial intelligence and statistics, Calcutta for publication in their weekly issue of Indian Trade Journal and to the DAVP, New Delhi for publication in leading National Delhi News Papers. All OTEs should be put on the Ministry of Defence web site, service HQrs/OFB, DRDO HQrs web site (Wherever in place) to ensure wide publicity. In case of OTE, tender forms are also sent to all registered suppliers for the particular range of items. Normally, **Four** weeks time should be given to submit the quotes. Ministry of Finance in their OM dated 17-7-2004, has maintained that NIT for open tenders should be on the departments website and also on the main website of NIC. This should be invariably done in case of Non-lethal items. **Bidding documents, which are distributed by an electronic system, must be secured to avoid possibility of modification and restriction of access to bidders.**

In OTE cases where, an unregistered firm claiming compliance of technical specifications meets the laid down technical parameters detailed in RFQ, before opening the commercial bid of such firm, the approval of the sample and capacity verification by the AHSP/designated inspection agency would be mandatory.

Normally where the specification of the item tendered is very clear and the vendors are in a position to quote without any doubt on the specification, single bid system is followed. However, two bid system can also be followed in exceptional cases for parts/ material/ stores/ services where it is opined by CFA that complexity of stores/ services are such that there are chances of discussion on technical/ comprehension of scope, clarification.

4.3.4 Global Tenders:

In case of global tender enquiries for imported stores/equipment simultaneously with the publication of tender notice in the media within the country, a circular letter may be sent to the Embassies abroad by diplomatic bag indicating the store demanded specification, quantity, delivery period and nature of F.E. available along with a copy of the tender sets. Also Ten copies of tender sets are to be sent by diplomatic bag to each of the supply wings at London and Washington and the Inspection Cell at Japan to enable them to give adequate publicity to the demand.

All tender notices should be displayed on the office Notice Boards, wherever such arrangement is in vogue. A minimum of 6 weeks should be given to the firms for submission of their quotes.

4.3.5 AB-INITIO NEGOTIATION:

Negotiation should be undertaken only in exceptional circumstances. Ab-initio negotiation may be undertaken: -

- a) For purchase of proprietary articles.
- b) Purchase of stores manufactured by only two or three firms or a group of allied firms producing the store. Such negotiation would not be justified on the ground of urgency alone where the more appropriate course will be short-dated limited tender enquiry with selected firms.

Ab-initio negotiation should be restored to only with the prior approval of the competent authority, unless a general dispensation is already available for specific cases or stores.

4.3.6 Resultant Single Vendor Situation

There are cases when only a single quote or a single valid acceptable quote is received even against LTE or OTE. This results in a single vendor situation indicating lack of competition. These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable. ***This will be effective subject to repealing of applicability of DFPR on OFB organization by MOD.***

As per note 27 of Rule 102(i) of GFR, "invitation to one firm only" is single tender. As per amplification note 6 of DPP 2002, when TEC shortlists only one vendor, such cases are not to be treated as single tender case for getting CFA approval. Rule 26 of DFPR clearly stipulates that provisions of DFPR are not applicable to expenditure debitable to defence estimates. Accordingly if a single valid quote is received against LTE/OTE/GTE it may not be treated as a single tender contract.

In amplification of note 6 of DPP it has been clarified that in a two bid system, if the TEC shortlists only one equipment as acceptable it will not be considered as a single vendor. As the techno commercial offers had been received before the opening of bids, the commercial bids were competitive in nature as the vendors would have submitted their price offers in an open competition and would not have been aware of any single vendor getting approved after TEC.

However, there is a need for taking precautions to protect the interest of the state. The following precautionary measures will be considered by the CFA while approving procurement against resultant single vendor situation in case of LTE: -

- (a) One extension of tender opening date should be given before opening the single quote.

(b) Specific approval of CFA is to be obtained before opening single quote.

(c) CFA is to satisfy himself about the method of dispatching TE and consider the possibility of TE either not reaching the vendor or not reaching in time to enable them to quote before approving opening of a single tender.

(d) In case, a single quote out of the multiple quotes received emerges as the acceptable quote after evaluation, then the reasons for rejection of each quote is to be recorded in detail.

[Authority: Para 4.17 of DPM-2005]

4.4 DEVELOPING NEW SOURCES:

For developing new sources following procedure depending upon the type of store should be followed.

4.4.1 Necessity for Vendor Development:

(a) When the number of existing Established Vendors is less than Six for Direct as well as Indirect Materials.

(b) To implement indigenisation programme.

(c) Change in 'Make' or 'Buy' decision.

4.4.2. Multiple/Alternate vendor development programme under the following circumstances :

(a) When it is apprehended that the established vendors have formed a group and quote to the disadvantage of the Govt.

(b) When the rates offered by the established vendors are considered high and not realistic in terms of the prevailing market condition.

(c) When the composite index of vendor rating of an established vendor is found to be below the acceptable qualifying grade in spite of repeated efforts on the part of the purchaser to help the vendor to regain his original grading.

(d) When the total capacity of the established vendors is not adequate to meet purchase requirement including contingencies that may arise due to failure of any vendor.

4.4.3 Procedure for vendor development.

4.4.3.1 For stores requiring long time for development or needs heavy investment for creating manufacturing infrastructure.

For stores which require long period for development or heavy investment for creating the necessary infrastructure, development of new sources is quite difficult. For this purpose, Open advertisement is to be issued every year for enlisting firms willing to participate in tenders issued by Ordnance factory along with details of their manufacturing and financial capabilities. The capacity of the willing firms as received against advertisement shall be carried out by a team of officers. The firms found suitable by the committee of officers shall be considered for issuing tender enquiry to the extent of 20% of the Annual required Quantity. Development order shall be placed for a minimum quantity of 50% of the tender quantity. After successful development and supply of the item the firm shall be considered at par with other established vendors. In these cases orders may be placed on more than one vendor in the interest of developing more sources for wider competition with/without price differential within the financial powers of concerned authority, keeping in view the CVC Guidelines. **A Source which completes successfully one Developmental Supply Order shall be considered as an Established Source.**

4.4.3.2 For stores requiring short time for development

For this category of stores open tender enquiry in two bid (technical and commercial) system may be resorted to. The firms may be evaluated in the first stage (technical bid) for their technical capabilities. Firms qualifying in the first stage only may be considered for the second stage i.e. price bid stage. Other conditions are same as mentioned under para 3.4.1 above.

(Authority: Para 4.3(i) of DPM-2005)

TPC, after taking into consideration various factors highlighted at **Para 4.4.2** above, may decide whether to continue development of new sources if the number of established sources is sufficient, say maximum ten.

4.4.4 Helping hand to New Entrants:

In Vendor Development Orders, realistic delivery schedule may be given. However, if the supplier takes longer time to develop the item, the order on the firm may be cancelled after a reasonable period of extension. **Security Deposit of only 5% on the value of the Development Order will be obtained which may be forfeited by the relevant TPC**, if considered justified in case of failure of the firm to execute the development order within a reasonable time. Proper guidance/help, wherever necessary, should be extended to the vendors for development.

Extension of DP in such cases should be determined on the complexity of the item, estimated time for its development, no of developed sources etc.

(Authority : Vide Discussions with OFB/Finance on 25.06.01 on Material Management Manual)

4.5 REPEAT ORDER:

Repeat orders against a previous order may be considered for approval by the respective CFA in cases of unforeseen additional requirement, for which there is not enough time to position the material by processing the procurement case in the normal manner, subject to the following stipulations:-

- (a) Items ordered have been delivered successfully.
- (b) Original order not to cover urgent/emergent demand.
- (c) It is not placed to split requirement to avoid sanction of the next CFA.
- (d) There is no downward trend in price as ascertained through market intelligence, and **a clear certificate should be extended to that effect.** For ascertaining the market trend relevant index wherever available should be referred. In case no reference is available budgetary quote to be taken as guiding price.
- (e) The firm is prepared to hold the same prices, terms and condition including delivery schedule as per service requirement.
- (f) The requirement is for stores of identical nature/specification, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence should not be precluded from purview of repeat order.
- (g) It is placed within 12 months from the date of supply against previous order and only once.
- (h) Repeat order quantity is to be normally restricted to a maximum of 100% of last order quantity, both in case of indigenous procurement and import orders.
- (j) The original order placed should be on the basis of lowest (negotiated) price and was not on delivery preference.
- (k) This provision could be exercised in case of PAC/Single Vendor OEM cases. However, where multiple vendors are available, necessary care should be taken in exercising the option clause.
- (l) In case S.O/contract where option clause has been availed of, it may not be desirable to place further repeat orders.

(Authority: Para 5.11 of DPM-2005)

4.6 PROCUREMENT OF DIRECT MATERIALS:

4.6.1 Defence Requirements:

4.6.1.1 80% from Established Sources :

Limited Tender Enquiry for about 80% of Annual Ordering quantity is to be floated among the category A Vendors. If minimum six vendors are not available in Category A, Category B Vendors may also be included in the list for issuing tenders. However, even after including all Category B Vendors, if the number remains below Six, LTE will be issued only to the available A and B Category vendors. Vendors enlisted in other factories for the same item should be included in all cases exceeding Rs.30 Lakh.

The list of vendors for issue of LTE in purchase cases falling under the powers of GM, OFB and MOD should be approved by TPC-level I of the Factory. For cases falling under powers of Addl GM/Jt.GM/DGM/ WM the vendor list shall be finalised in the respective TPC. Inclusion of new vendor or deletion of an established source is to be done with detailed reasons recorded in the vendor selection TPC meeting. For this purpose, Fy/TPC meeting will undertake the following two functions viz.: -

- (a) Decisions on the list of vendors on whom LTEs are to be floated and
- (a) Decisions on Tenders opened, based on CSTs placed before TPC.

While finalising the the list of vendors for issuing LTE and development order, there should not be any mix-up in the sources in the sense that LTE should be issued to established sources only and not to any un-established source. Similarly in the case of source development, tenders should be issued to new vendors only and not to established sources. While finalising the list for cases exceeding Rupees Thirty Lakhs the purchase officer shall certify that vendors enlisted in other OFs requiring the same item have been included.

For commercially off the shelf stores, where qualitative requirement and technical specifications are clear are to be procured through OTE on single commercial bid basis.

[Authority: Para 4.3 (i), 4.4.2 & 4.6.1 of DPM-2005]

4.6.1.2 20% from New Sources :

For developing new sources, Open advertisement/OTE as mentioned at para 4.4 is to be issued depending upon the type of item.

Source development open tender enquiry to be done in advance in anticipation of order as the capacity verification exercise is not linked to specific quantity/ indent. Firms found having the capability, as confirmed by capacity verification, shall be issued TE which is deemed OTE.

Vigorous efforts should be made for developing new/additional sources and the vendors should be facilitated for the same. Non-serious vendors- who do not show reasonable progress should not be given D.P extension so as not to block the quantity under procurement. Extension of DP in such cases should be determined on the complexity of the item, estimated time for its development, no of developed source etc.

[OFB Circular No.14/4/LP/MM (Vol.XI) dated 07.06.1995 & Para 4.3 (i) of DPM-2005]

4.6.2 PROCUREMENT OF OTHER THAN DEFENCE REQUIREMENTS :

The Purchase Procedure and Tendering System for all Direct Materials used for other than Defence Requirements will be the same as that enumerated above for Direct Materials used for Defence Requirement. They may get themselves registered with the concerned Ordnance Factory or with DGS&D or in case of SSI Units with NSIC. A Vendor registered with one Ordnance Factory for a specific item may be considered as registered with other Ordnance Factories for the same or similar items. For the purpose of determining "similar item" decision of committee formed by General Manager of consuming factory shall be final.

4.7 NECESSITY OF UN-REGISTERED ESTABLISHED SOURCE TO GET REGISTERED:

Once a Category B vendor secures an order for an item, he must immediately apply for registration within a month's time to Ordnance Factory/DGQA/DGAQA/DGNAI (endorsing a copy to the Factory concerned) to become category A vendor. Such category B vendors will not be given enquiries unless they get themselves registered with Ordnance Factory/DGQA/DGAQA/DGNAI within a reasonable time. Otherwise, they will be removed from the list of category B Vendors.

4.8 FIRST TIME PRODUCTIONISATION OF DRDO/OFB DEVELOPED NEW PRODUCTS:

When for the first time a Factory takes over the responsibility for bulk productionisation of a new end- product, LTE for about 50% of Annual Requirement may be floated for the item amongst the Category E vendors i.e. DRDO/AHSP recommended sources (obtained in writing) who have developed the item at the design and prototype development stage. Such vendors will be advised for registration with factory as per stipulation at **Para 4.7** if not already registered. Balance requirement will be advertised as per stipulation at **Para 4.4** for developing new sources.

[Authority: MOD letter no 4(14)/92-D(SII) dated 7.8.1992]

4.9 STAGGERED DELIVERY SCHEDULE:

In all orders, staggered delivery schedule, either on monthly or quarterly basis depending on volume of the order, requirement schedule and maximum Inventory Holding Level permissible etc. will be given. Such staggered delivery schedule should be incorporated in the tender itself.

4.10 VENDOR EVALUATION

Performance of vendors must be reviewed by the procurement agency periodically, preferably once a year. The general performance criteria for assessing performance of vendors may comprise the following:-

- (a) **Quality.** Quality has to be assessed from the inspector's report as well as the feedback from the actual users.
- (b) **Delivery.** Delivery compliance has to be assessed from the delivery data against purchase orders placed on the supplier. The purchaser from his computer records could generate the percentage of orders that met the original delivery date as per contract and that, which did not.
- (c) **Price.** Price competitiveness of a vendor has to be assessed against his ability to secure orders on competitive basis. Orders secured as percentage of quotes should indicate the price competitiveness of the supplier. This data can be automatically generated by the computer.
- (d) **Service.** The service parameter of the vendors would be indicated in terms of its response time to requests for attending to complaints regarding quality, delivery and other product or technical support. For a supplier of spare parts this will also include the response to enquiries for spare parts and maintenance services for the equipment originally supplied by him.

A detailed plan of monitoring of the performance of established suppliers including the various formulas for working out various ratings and composite index for performance (overall rating) is included at annexure 55.

[Authority: Para 3.3 of DPM-2005]

4.10.1 APPLICATION OF VENDOR RATED PURCHASE SYSTEM:

In order to reduce the procurement lead time, when the number of Category A vendors for 'A' Cat. items is very much limited i.e. 2 or 3 only, Vendor Rated purchase system may be adopted and final allocation of the 80% Annual Order quantity with 25% option clause can be made on the basis of composite index for performance (overall rating) secured by the individual vendors. In this connection, OFB Circular Letter No.108/TIR/TS/QCS dated 13.9.2005 may be referred to for guidance. The weightage factors for different Rating parameters i.e. Quality (VRQ), Delivery (VRD), Price (VRP) and Service (VRS) in respect of each item which will be taken as 60%, 25%, 10% and 5% respectively. Index/score for performance with respect to service (VRS) will have to be determined jointly by the production/user and the materials management department of the factory.

(Authority : 77/P&MM/BS dated 10.09.2001)

4.11 INDIRECT REQUIREMENTS:

4.11.1 Stock Items:

As in the case of procurement of Direct Materials, for Indirect Materials also the category of vendors available may broadly be divided as follows :-

- (a) Registered with any Ordnance Factory/DGS&D/NSIC and established vendors for a particular or similar item.
- (b) Established vendors but not formally registered as above.
- (c) Registered but not yet an established vendor.
- (d) Potential/Renowned vendors but neither registered nor an Established Supplier for a particular item.

LTE may be floated amongst the registered established vendors. Number of established vendors to whom LTE should be floated may preferably be Six, or more if available, **otherwise to the extent available** and the same principle is to be followed as in respect of Direct Materials..

(Authority : 77/P&MM/BS dated 10.09.2001)

Keeping CVC guidelines in view the entire ordering quantity may be allocated to one or more than one established vendors with/without price differential if the Ordering Quantity is sufficient enough for such allocation.

Registered Vendors' list for each item or similar items is to be maintained by each factory.

Cancellation of Registration will be done every alternate year based on responses received and performance observed during the previous years.

4.11.2 Non-Stock Items:

These are the ad-hoc one time requirement directly demanded by the Production/Operative Deptt. through ad-hoc requisitions. Mostly, the requirements are non-repetitive in nature.

Limited Tender Enquiry amongst the Registered Vendors for the same/similar items may be followed. For the purpose of Tendering, Inspection, Drawal of the Item, a Transit Folio may be opened by MCO and it is closed as soon as the Material is drawn by User Section.

(Authority : 77/P&MM/BS dt.10.09.01).

4.12 RATE CONTRACTS :

What is Rate Contract:

A Rate Contract (abbreviation-R/C) is a contract for the supply of stores at specified rates during the period as specified in the Contract. No quantities are mentioned in the Contract, and the contractor is bound to accept any quantity which may be placed upon him during the currency of the contract at the rates specified therein.

4.12.1 DGS&D Rate Contract.

For certain items DGS&D concludes Rate and Running Contracts. Supplies against these contracts can be obtained by the user Deptt./ authorities by placing Supply Orders/ Allocation Orders. These purchases are treated as Central Purchase.

As a reciprocal consideration DGS&D undertakes to order from the contractor all stores under the contract which are required to be purchased during the contracted period, subject to certain reservations. Stores of standard types, other than those required in small quantities only, which are in common and regular demand and the price of which is not subject to wide and

frequent market fluctuation, are generally brought within the scope of Rate Contracts. Govt. Deptt/authorities are declared by DGS&D as Direct Demanding Officers (DDOs) against Rate Contracts who can place Supply Orders against the contracts upto a financial ceiling laid down by DGS&D. When demands arise in excess of the specified ceiling, indents covering them should be placed on DGS&D who will then place necessary supply order. The criterion for inclusion of an indent or in the list of Direct Demanding Officers is that he has large and recurring demands for the particular stores. DGS&D should be kept informed by the indentors of their prospective demand for the store(s) to be covered by a Rate Contract.

4.12.1.1 Procedure for placing R/C supply orders:

The supply orders should be placed in the prescribed form No. DGS&D-131. The D.D.Os should sign the Supply Orders and communications relating thereto over their own designation. The name of the officer signing S.O. should be indicated in block letters. If any subordinate gazetted officer is allowed to sign the S.O. in exceptional cases, his name and designation together with that of the competent authority (Direct Demanding Officer) for whom he is signing, should be clearly stated. When Supply Orders make reference to schedules/enclosures for description of stores, item No. of the contract, total quantity and rates etc. the Supply Orders as well as the enclosures attached thereto must be signed by the Direct Demanding Officer.

4.12.2 OFB Rate Contract.

For some 'A' and 'B' Category items Rate Contracts with reliable established vendors through LTE may also be concluded within the delegated power of GMs/OFB wherever DGS&D Rate Contracts do not exist. Any Ordnance Factory can utilise such Rate Contracts concluded. For items required by AV & OEF Groups, Rate Contracts shall be concluded in consultation with concerned Member and Member/P&MM for a period of one year.

4.12.2.1 Procedure for OFB Rate Contract.

The basic procedure for finalising Rate Contract shall be as per DGS&D practice. For convenience sake OFB shall decide a nodal factory for each of the items for which Rate Contract is to be finalised on the basis of maximum consumption of the store. The nodal factory shall be responsible for the tendering process and to be decided by the concerned Additional DG/ member operating division. The responsibility of the nodal factory and that of OFB in processing a Rate contract will be as mentioned hereunder. Items which are common for factories under different operating divisions shall be decided by Member/P&MM or Chairman/OFB depending on the approximate value of requirement.

4.12.2.2. Processing at nodal factory.

- (i) Nodal factory will collect the approximate annual estimated requirements from all the factories and consolidate.
- (ii) Collect the established suppliers list for the subject item from all the factories and short list the suppliers list as per the performance and registration status of the suppliers. While processing for RC for the first time established suppliers of all the factories shall be taken into consideration.
- (iii) In case the number of established suppliers is less than six, one of the factories other than Nodal factory to take action for further source development through OTE.
- (iv) Issue LTE to those short listed suppliers by clearly indicating the terms and conditions.
- (v) Prices should be obtained on firm and fixed price basis by clearly indicating the period for which the RC is being proposed.
- (vi) Prices should be obtained on FOR firm's works basis.
- (vii) After opening the tenders, case should be forwarded to OFB (MM division) / OEF/ AVHQ along with factory level TPC recommendations.
- (viii) Factory should ensure all the documents such as annual estimated requirements, vendor selection TPC minutes duly justifying addition or deletion of vendors, tender enquiry copy along with terms & conditions, specification of the stores, CST, DATA sheet on prices for last 3 years at which various factories were purchasing the store, certificate from GM that the subject stores is not covered in rate contract concluded by DGS&D or any other department at less price, total estimated value of the RC are forwarded to OFB.

4.12.2.3. Processing at OFB.

- (i) Based on the type of item case will be processed either by OFB/MM or OFB/PV or OFB/PHV or OEF HQ/MM or AVHQ/MM.
- (ii) Case will be put up to appropriate TPC/OFB based on the financial value of the case.

(iii) Based on the approval of relevant TPC/OFB concerned procurement division (OFB/MM, OEFHQ/MM AND AVHQ/MM) will conclude the Contract and circulate the same to all the Ordnance Factories and other concerned agencies.

(iv) Based on the capacity of the firms and annual requirements of the stores parallel rate contracts will be finalised keeping prices at same level or within the delegated powers to OFB. On differential price contracts so that factories can operate the rate contracts depending on the economy of transportation charges and landing charges and also the availability of capacity with the firms.

4.12.3 Long Term Contracts :

For certain Materials/Tools/Components required consecutively for 3/4 years or more for production of End-Stores for which firm Indents are available and are regular priority items of the Indentor, Long Term Contracts for 2 to 3 years may be concluded with more than one Reliable Established Vendors through LTE, with appropriate Delivery Schedules by the concerned authority as per its delegated power. However, Factories should continue to take action for development of new sources as per the guidelines given.

In all Long Term Contracts, the staggered requirement schedule of the consignee will be forwarded to the Vendors on bi-annual basis and in such a way that at any point of time neither any stock-out situation will arise nor the Inventory Level will exceed the maximum level prescribed.

4.13 CASH AND CARRY PROCUREMENT.

Cash and carry purchase is a type of LP resorted to in case of extreme urgency or when the supplier is not willing to supply the required item on credit. Cash and carry powers are very limited as such procurement is made only in exceptional cases when cash payment is made from the imprest of the unit and the same is claimed from the paying authorities who reimburses the amount after due audit of the transaction. Cash Purchase should be encouraged as not only many supplier insist on cash payment, but generally, cash purchases are cheaper than on credit.

[Authority: Para 2.9 of DPM-2005]

Item whose total costing is less than Rs 10,000/- (Ten Thousand) may be treated as being of insignificant cost and elaborate process of tendering can be dispensed off and these can be cash purchased as a routine purchase.

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CHAPTER 5

EARNEST MONEY AND SECURITY DEPOSIT

5.1 EARNEST MONEY DEPOSIT:

As per the General Financial Rules (Note-2 below Rule 273), Earnest Money Deposit should be called for from the tenderers, who are participating against **OPEN** tender enquiry, if they are not registered with DGOF/DGQA/DGS&D/NSIC. The following guidelines may be observed while calling for EMD.

5.1.1 Quantum of EMD:

- (a) The EMD is to be charged at the rate of 2% of the estimated value of the store subject to a ceiling of Rs.2 Lakhs.
- (b) 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.
- (c) For tenders of the value of rupees one lakh or less, EMD need not be called for.

5.1.2 Firms Who May be Exempted From Furnishing EMD :

Firms who are registered with sister Ordnance Factories/DGS&D/NSIC for the same item/process/technology may be exempted from payment of EMD. Organisations like KVIC/NSIC who are treated as registered suppliers against DGS&D contracts on the prescribed norms are also exempted from furnishing EMD. EMD cannot be waived by General Managers once specified in Tender Enquiry unless where firms satisfies waiver condition as given in TE. This is to be made clear in bold capital letters in TE.

5.1.3 Forms Of EMD :

- (a) EMD may be accepted in the form of Demand Draft, Fixed Deposit Receipt, Banker's Cheques, Bank Guarantee (BG) from any of the Scheduled Commercial Banks as per the format at Annexure -2
- (b) If EMD is furnished in the form of BG, then it should be kept valid for 45 days beyond the validity period of the offer.

5.1.4 Ignoring The Offer Of Firms Not Accompanied With EMD :

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

5.1.5 Adjustment Of EMD Towards Performance Security Deposit:

The supplier may adjust EMD furnished towards the Performance Security wherever possible.

5.1.6 Refund Of EMD :

- (a) The EMD of successful tenderers shall be refunded after the Performance Security Deposit as called for in the contract is furnished.
- (b) EMD furnished by all unsuccessful tenderers will be returned as early as possible after the expiry of the period of tender validity but not later than 30 days of the award of the contract.

5.1.7 Forfeiture of EMD:

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.

If the successful tenderer fails to furnish the required Performance Security then the EMD furnished will be forfeited.

5.2 PERFORMANCE SECURITY DEPOSIT:

Performance Security deposit payable to the purchaser is furnished by the supplier, in the form of Bank Guarantee (BG) issued by a scheduled bank in the prescribed format, within 30 days from the date of contract. This deposit is meant to compensate the purchaser for any loss suffered due to failure of the supplier to complete his obligations as per the contract. The BG is returned to the supplier on successful completion of all his obligations under the contract. In case the execution of the contract is delayed beyond the contracted period and the purchaser, with or without LD, grants extension to delivery period, the supplier must get the BG revalidated if not valid already. The performance security deposit is to be paid by all firms irrespective of their registration

status with DGS&D/NSIC. In no case Performance Security Deposit shall be waived in order to safeguard the interest of the Purchaser.

5.2.1 Quantum of Performance Security Deposit:

Preferably, performance security deposit is payable by the supplier at the rate of **10%** of the contract value. The PBG is kept with the Purchaser and must be valid for the entire period of contract and may be retained for the duration of the warrantee period.

PSUs and Firms supplying Proprietary Items shall be exempted from Payment of PS.

5.2.2 Forms of Performance Security Deposit and Conditions for Its Acceptance:

Security Deposit is acceptable in any one of the forms mentioned below on the conditions stipulated against each of them. No other form of Security Deposit will be acceptable.

FORM	IN WHOSE NAME TO BE OBTAINED	CONDITION OF ACCEPTANCE	CUSTODY
1. Demand Draft on Scheduled Commercial Banks	General Manager	Government will not pay interest on any deposit held in the form of cash.	<p>Demand Drafts or receipts will be passed on to the Cash Section by the Purchase Section for depositing the amount into Government Treasury for credit, in favour of the Controller of Accounts concerned and the treasury challan forwarded to him.</p> <p>The Purchase Section, while forwarding documents like Demand Draft etc. to Cash Section, should also furnish Treasury Challans in triplicate, so that there is no error/omission in the particulars furnished in the challan.</p>

<p>2. Bank Deposit Fixed Deposit Receipt on Scheduled Commercial Banks.</p>	<p>General Manager</p>	<p>1. 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>2. The Depositor should agree in writing to undertake any risk involved in the investment.</p> <p>3. 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 into the nearest treasury along with the challan and send the treasury receipt to the pledgee.</p> <p>4. The responsibility of the pledgee in connection with the deposit and interest on it will cease when it issues a final withdrawal order to the depositor and sends an 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 of the Rule 277(1) of the General Financial Rules These should be kept in the Cash Section as valuable documents.</p> <p>Deposits at call Receipts should be encashed and deposited into Government Treasury for credit in favour of the Controller of Accounts under the relevant Head of Account and the Treasury Challan forwarded to him.</p>
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3. Bank Guarantee	General Manager	<p>Bank Guarantees will be accepted in the prescribed format as per Annexure-3.</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 upto 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 purchase officer 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. The letter may be addressed in the form given in Annexure-4. For the purpose of verification of the genuineness of the Bank Guarantee, the name, designation and code numbers of the officer/officers signing the Guarantee are incorporated under the signature(s) of officials signing the Bank Guarantee may be got verified by approaching the Regional Manager/Zonal Manager of the concerned Banks.</p>	<p>The Bank Guarantee should be passed on to the Cash Section for safe custody after retaining a photocopy thereof for reference and any action which may arise thereon. While forwarding the securities, the procedure laid down in Sub-Para 101(b) (ii), 107(a) and Para 108(a) and Para 113 of Chapter-IX of Government Securities Manual should be followed.</p>
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5.2.3 Adjustment of Performance Security Deposit :

Normally, a period of four weeks from the date of issue of supply order should be allowed to the firm to furnish Performance Security Deposit.

The Contractor may request to adjust the Performance Security Deposit demanded against;

1. EMD furnished along with the tender;
2. Pending bills of the contractor, if any, against any other contract.

The competent purchase officer may consider such requests wherever possible.

Before taking action for recovery of the amount of Performance Security Deposit from pending bills of the Firm, the Purchase Officer concerned should ensure that the Firm's bills are actually pending. Once decision is taken to so recover the amount of Performance Security Deposit from outstanding bills of the Firm, it should be immediately brought to the notice of the concerned Accounts Officer

A register in the prescribed form should be maintained in respect of all securities lodged.

5.2.4 Intimation Regarding Receipt of Performance Security Deposit to The Accounts Officer:

- (a) The concerned officer shall be informed immediately of the receipt of the Performance Security Deposit when it is furnished within the period stipulated in the contract.
- (b) In the case of Performance Security Deposit furnished in the form of Demand Draft, the Accounts Officer, on receipt of intimation thereof, will go ahead with the payment of firms bill if otherwise in order without, awaiting the encashment of the Demand Draft.

- (c) The Cash Section to whom the Demand Draft will be passed on, shall take immediate steps for encashment of the Demand Draft and intimate to the Purchase Officer about its encashment or if any difficulty is faced in its encashment, at the earliest, so that the latter can take suitable action. Purchase Officers will be responsible for getting confirmation from the Cash Section about the encashment of the Demand Draft for which they should review the cases fortnightly.
- (d) In the case of Bank Guarantee obtained as Performance Security Deposit, the concerned Accounts Officer will be informed of its receipt promptly indicating clearly the validity period of the Bank Guarantee and that the same has been examined and found acceptable.

5.2.5 Intimation To Quality Assurance Officer:

- (a) Purchase Officers should ensure that the Quality Assurance Officer is informed promptly of the fact that the Firm has deposited the Performance Security Deposit demanded in terms of the contract. Otherwise, the Quality Assurance Officer will start inspection of the stores one week after the expiry of the date stipulated in the contract for furnishing of the PSD.
- (b) The Contractors are not expected to offer the stores prior to submission of the Performance Security Deposit within the stipulated time. If the stores are offered by the contractor prior to receipt of intimation from the Purchase Officer about furnishing of the Performance Security Deposit, the QA Officer may undertake the inspection after obtaining the undertaking from the contractor that the requisite Performance Security Deposit in the acceptable form has been submitted to the Purchase Officer within the stipulated time.
- (c) It shall be the responsibility of the QA Officer to check the veracity of the statement of the firm with the Purchase Officer before release of goods' final instalment.

5.2.6 Course Of Action in The Event Of Failure On The Part Of the Contractor to Furnish the Performance Security Deposit:

- (a) In case of failure on the part of the contractor to comply with the requirement of Performance Security Deposit, it shall be lawful for the Purchase Officer to cancel the contract or any part thereof and to purchase or to authorise to purchase the stores invoking the provisions of clause-14 of General Conditions of Contract DGS&D-68 (Revised).
- (b) In respect of registered firms, they will be treated as unreliable suppliers and will not be considered for award of contract for a duration of one year from the due date for submission of Performance Security Deposit. In case of Unregistered firms the EMD furnished by them may be forfeited.
- (c) If, however, a request is received from the contractor for extension of time for submission of Performance Security Deposit, the same may be considered on merits in exceptional cases and additional time allowed with the approval of General Manager.

5.2.7 Renewal of Securities :

- (a) Where execution of the contract is going to be delayed beyond the period for which the Performance Security Deposit furnished is valid, the concerned Purchase Officer will take action well ahead of the date of expiry of the validity of the Performance Security Deposit for its renewal. For this purpose necessary drill should be introduced for regular monitoring.
- (b) Where a Bank Guarantee is to be revalidated this should be done by the concerned Bank by documents executed in a suitable manner on a Stamp Paper with reference to the earlier Bank Guarantee and not by a simple letter given by the Bank concerned.
- (c) Provision has been included in the Instructions to the Tenderers in the Booklet DGS&D - 229 to the effect that whenever a firm fails to supply the stores within the delivery period of the contract, wherein Bank Guarantee has been furnished, then request for extension of delivery period will automatically be taken as an agreement for getting the Bank Guarantee extended. Banks have also been instructed to make similar provisions in the Bank Guarantee for automatic extension in the guarantee period.

5.2.8 Refund of Performance Security Deposit:

- (a) Performance Security Deposit is taken for the due performance of an individual Contract and becomes liable to be refunded when the contractor duly performs and completes the contract in all respects and presents an absolute No-Demand Certificate in the prescribed form and returns in good condition the specifications, drawings, and samples or other property belonging to the purchaser.
- (b) The contractor is required to submit an application-cum cash bill for refund of the Performance Security Deposit as per Annexure-5. As indicated therein, the contractor has to give certificate that he has not received any complaints from the consignee(s) regarding non-receipt, shortage or defects in the stores supplied under the contract. Where the

Performance Security Deposit has been paid in cash or is encashed and lies with the Controller of Accounts, Part-C of the application will be filled in and signed by the Purchase Officer and passed on to the Accounts Officer for making payment of the amount of Performance Security Deposit to the Contractor. Where the Performance Security Deposit lies with the Purchase Officer, the same will be released by the Purchase Officer.

- (c) In both the cases, the Purchase Officer will verify that no claim is pending against the firm in terms of Clause 7(4), Clause - 18 and 18A of Form DGS&D - 68 (Revised).

5.2.9 Forfeiture of Performance Security Deposit :

- (a) Performance Security Deposit taken for the due performance of the contract can be forfeited and credited to the Government, in the event of a breach of contract.
- (b) Bank Guarantees obtained towards Performance Security Deposit should be invoked only when there is a specific breach on the part of the contractor and strictly in terms of the relevant agreement. The decision to invoke the guarantee should be taken by the General Manager.
- (c) If any Bank delays its action in releasing the guaranteed money thereby giving an opportunity to a firm to get a stay order or to take other legal measures preventing the encashment of the guarantee, the following course of action would be taken:
- i) To report to the Central Office of the Bank clearly expressing that because of the Bank's failure to take timely action Government had to incur loss and also to request, where considered appropriate, to initiate proceedings to investigate the matter and to fix responsibility on the concerned Bank Officer.
 - ii) An administrative decision should be taken to debar acceptance of Bank Guarantee issued by such Branches and from such firms.

5.2.10 Lapsing of Performance Security Deposit :

- (a) Performance Security Deposits, which are not claimed within three complete account years, are treated as "Lapsed Deposits" and are credited to the Government under the Consolidated Fund in terms of Rule 189 of Central Government Account, Receipts and Payments Rules.
- (b) Refund of "Lapsed Deposits" can be arranged as per the procedure laid down in Rule 190 of Central Government Account, Receipts and Payments Rules.
- (c) Time bar will not operate in so far as refund of Performance Security Deposit is concerned.

Extracts of Rules 189 and 190 of Central Government Account, Receipts and Payment Rules are given in Annexure 6 & 7.

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CHAPTER 6

ISSUE & EVALUATION OF TENDERS AND PLACEMENT OF CONTRACTS

6.1 GENERAL PRINCIPLES OF ENTERING INTO CONTRACTS:

The following fundamental Principles enunciated by the Govt. of India for the guidance of authorities who have to enter into contracts or agreements should be borne in mind:

- (i) The terms of a Contract must be precise and definite, and there must be no room for ambiguity therein.
- (ii) As far as possible, legal and financial advice should be taken in the drafting of contracts, before they are finally entered into.

- (iii) Standard forms of contract should invariably be adopted and, wherever possible, the terms should be subjected to adequate prior scrutiny.
- (iv) The terms of a contract once entered into should not be materially varied without the previous consent of the competent financial authority.
- (v) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent financial authority.
- (vi) Whenever practicable and advantageous, contract should be placed only after Open Tenders have been invited, and in cases where lowest tender is not accepted, reasons should be recorded.
- (vii) 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.
- (viii) Even in cases where a formal written contract is not made, no order for supplies etc. should be placed without at least a written agreement as to price.
- (ix) Provision must be made in contracts for safeguarding Government property entrusted to a Contractor.
- (x) All contracts enduring or likely to endure for a period more than 5 years, should, whenever feasible, include a provision for an unconditional power of revocation or cancellation by Govt. at any time on the expiry of six months notice to that effect.
- (xi) The Comptroller & Auditor General and under his direction, other audit authorities have power to examine contracts and to bring before the Public Accounts Committee any case where competitive tenders have not been sought or where higher tenders have been accepted, or where other irregularities in procedure have come to light.
- (xii) Contracts connected with purchase of stores are exempt from stamp duty.
- (xiii) The conditions of contract governing contracts concluded by Govt. Dept. which have been approved by the Govt., cannot be revised, altered or departed from, save to the extent any authority in the Dept. has been specifically empowered to do so, without the sanction of Govt. of India.

[Auth. :Finance Deptt. Resolution No.F.22-XII-Ex.11/27 dated 12.08.29]

6.2 CONDITIONS OF CONTRACT GOVERNING PURCHASE CONTRACTS CONCLUDED BY OFB AND THE FACTORIES :

As direct purchase powers have been given to OFB and the GMs, the need arose for adopting standard detailed 'conditions of contract'. After detailed discussion and in consultation with legal and financial authorities, it was decided with Govt. approval, to adopt the conditions of contract as contained in Form No. DGS&D-68 (Revised) which governs DGS&D Contracts, for large value contracts except clause 24 Arbitration, in respect of O.F contracts also. A clause providing for Sole Arbitration by DGOF or his nominee, has been laid down in lieu of clause 24, mentioned in Para 5.3 below.

It should be clearly stated against the relevant clause of the A/T or Supply Order that wherever the words "Secy., Jt. Secy. etc." occur in DGS&D-68, it would mean the officers of the same designation in the Dept. Of Defence Production and also, the designations corresponding to DGS&D etc. will be DGOF etc.

6.3. ARBITRATION CLAUSE:

"All disputes & differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by Director General, Ordnance Factories. The Arbitrator so appointed shall be a Government Servant who had not dealt with matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in dispute or differences. The Award of the Sole Arbitrator shall be final and binding on the parties".

The invitation to tender should include the above clause, making it clear that it is in lieu of clause 24 of DGS&D-68(Revised). Where a contractor does not agree to this arbitration clause, it will have to be excluded from the conditions/special conditions of contract and disputes arisen from such contracts will have to be decided in Courts according to the usual process of Law.

6.3.1 Foreign Arbitration - The Arbitration and conciliation Act 1996 has provision for international commercial arbitration which will be applicable if one of the parties has its central management and control from any foreign country. The salient features of this law are :-

- (a) The parties can choose either Indian or Foreign Law governing arbitration.

- (b) To minimize interference of courts in stalling arbitration proceedings.
- (c) Arbitrator can be changed by mutual consent without approaching court.
- (d) Vesting of enhanced powers to arbitrator.
- (e) Clearly defining obligations of the arbitrator.
- (f) Arbitrators award to be enforceable as if it were a decree of court.

The Ministry of Law and Company affairs have advised that Arbitration Clause should specify that all our contracts have to be interpreted in accordance with the laws of the Union of India and arbitration proceedings shall be conducted in India under this act.

(Authority: Para 9.44 of DPM-2005)

6.4 STANDARD FORMS FOR TENDER ENQUIRY ETC. :

DGS&D Tender and Acceptance of tender forms with some changes were adopted. Accordingly all Fys. were advised under DGOF circular No. 328/SP/C DT. 17.3.80 to use these above forms in cases where the value of purchase is estimated to exceed Rs. 50,000/-. Standard forms for invitation to tenders etc. were prescribed as under:

- Form No. DGOF/MM-1 (Annexure - 8)Instructions to tenderer.
- Form No. DGOF/MM-1B (Annexure - 9) ... Schedule to tender.
- Form No. DGOF/MM-1C (Annexure - 10) ... Annexure to above schedule.
- Form No. DGOF/MM-2 (Annexure - 11) ... Forwarding letter of tender.
- Form No. DGOF/MM-3 (Annexure - 12) ... Special instructions to tenderers.
- Form No. DGOF/MM-4 (Annexure - 13) ... Compliance Statement.
- Form No. DGOF/MM-5 (Annexure - 14) ...Supply order/Acceptance of Tender.
- Form No. DGOF/MM-6 (Annexure- 15) Acknowledgement of SO/AT by the suppliers.

If any special condition(s) in addition to what are covered by the standard forms is required to govern supply in any particular case, the same should be included in the additional instructions/conditions and the contractor's unqualified acceptance thereof obtained before incorporating the same in the conditions governing the supply order or A/T.

In this connection attention is invited to OFB Form No. MM-16 and MM-27 (Annexures - 16, 17) which lays down certain additional special instructions to the Tenderers. While some of these may have general applicability, others may not be relevant in all cases. Additional conditions by their very nature are intended to suit special requirements and hence these may need to be pruned, amended or enlarged in individual cases according to their peculiarity.

Further, the additional conditions should not be an exact reproduction of any of the clauses of the General conditions and wherever the case /subject is covered by additional conditions, it should be made clear that the additional conditions are in lieu of the General conditions.

6.5 PREPARATION OF TENDER SETS AND NOTICES:

The tender sets and notices should be prepared in the prescribed forms including additional special conditions/special instructions contained in form No. MM-16 and MM-27(annexure-16&17) to the extent these are relevant. The schedule of requirement indicating salient features should be laid down in a special format.

In preparing the Notice/Tender papers particular attention should be devoted to the following aspects: -

- (a) A brief but clear description of the stores required should be given in BOLD TYPE in the proper place in the proforma.
- (b) Where it is desired to provide for advance samples, clear instructions to this effect should be given in the tender notice immediately below the description of the stores specifying the number of samples required to be submitted, the date when and the place where required and the authority to whom to be submitted.

- (c) The destination of the stores (and not the name of the consignee) should be mentioned.
- (d) The quantity to be purchased.
- (e) The time for receipt of tenders should be fixed on a realistic basis.
- (f) Evaluation criteria, both for technical bid and commercial bid (in case of two bid system) or combined technical and commercial bid (in case of single bid system) is to be mentioned.
- (g) The Tender Notice may be standardised. A specimen form is given at Annexure 22.

6.6 CHECK POINTS FOR PREPARATION OF TENDER ENQUIRY:

With a view to ensuring fool-proof preparation of Tender Enquiry, the following check points may be kept in view: -

- (a) Ensure that only the prescribed forms as updated are used for issue of Tender Enquiry as enclosed.
- (b) A definite time and date for receipt and opening of Tenders have been incorporated.
- N.B.** *(The day selected must be a working day: Mondays or days followed by series of holidays should also be avoided).*
- (c) Ensure that the time allowed to the tenderer to submit tenders is reasonable
- (d) Specify a realistic validity period for the tenders to be submitted (this period should be realistically fixed keeping in view the nature of the store and the post-tender formalities. **Normally a period of 90 days in case of single tender bid and 120 days in case of two bid system is to be prescribed** and bids with shorter period to be rejected, as being non-responsive,
- (e) Ensure that description of the stores including specification/drawing is correctly indicated in the Schedule,
- (f) Ensure that the tender enquiry is signed for and on behalf of the President of India,
- (g) Tender samples need not normally be called where specification/drawing are clear and comprehensive. Where tender sample is called and is required to be furnished to a specified authority for testing, ensure that:
 - i) A copy of the enquiry is furnished to the concerned authority,
 - ii) A date is specified by which samples are to reach that authority and
 - iii) A date is specified by which sample report should be sent by that authority.
 - iv) Reasonable time is allowed both to the firms as well as to the Inspecting authority. At any rate, the inspection report should be available by the time the Tender Purchase Committee is expected to meet.
- (h) Ensure that the Conditions of the Contract as applicable has been correctly indicated in the enquiry.
- (i) Ensure that the clauses contained in the standard conditions of contract are not reproduced in the tender enquiry and at the same time make sure that special conditions/instructions, if any, are invariably added to the extent the same are relevant to the particular case.
- (j) Have you incorporated in the enquiry the **option clause relating to coverage of additional quantity upto 100%** if demand for the store is of repetitive nature?

(To be retained vide No.77/P7MM/BS dated 10.09.01)

- (k) Have you clearly indicated the dates by which delivery of the store is required.
- (l) If the resulting contract is likely to be a long term one, and if past experience shows that the contract cannot be placed on firm-price basis, have you incorporated a suitable price variation clause, if one has been standardised for such purchases.
- (m) Have you clearly mention that during evaluation and comparison of bids, the purchaser may, at its discretion ask the bidder for clarification of its bid,
- (n) Has it been made clear that bidder may modify or withdraw his bid after submission provided that written notice of modification or withdrawal is received by the purchaser prior to deadline prescribed for submission of bids? No bids

can be withdrawn in the interval between the deadline for submission of bids and expiry of the period of bid validity specified.

6.6.1 SALE / ISSUE OF TENDER :

6.6.2 Against Advertised Tender:

Against advertised tender enquiry tender sets will be supplied by concerned Factory on payment which will be received in the form of cash, demand draft, pay orders issued by scheduled commercial banks and postal orders. The demand drafts pay orders and postal orders shall be Account Payee. Govt. depts. and SSI units registered with NSIC for any item, desiring to quote may, however, be given the tender sets free of cost

Price of tender sets will be as under: -

Estimated Value of the tender	<i>Price of the tender set</i>
Upto Rs. 50 Lakh	Rs. 100.00
From Rs. 50 Lakh to 1 Crore	Rs. 250.00
From Rs. 1 Crore to 5 Crore	Rs. 500.00
Above Rs. 5 Crores	Rs. 1000.00

The cost of drawings and specifications will be extra and shall be fixed in consultation with the concerned AHSP, if required.

Duplicate or additional tender sets, if required, by any party, may be sold at 50% of the original price. No concession is, however, permissible in case of drawings and specifications.

6.6.3 Against Limited Tender/Single Tender:

Tenders are issued free of cost against limited and single tender enquiries. These tenders should be sent under Certificate of Posting. Additional or duplicate tender sets will be issued at Rs. 100 per set irrespective of the estimated value of the tender.

6.7 PUBLICITY OF ADVERTISED TENDERS:

The Indian Trade Journal, a weekly publication issued by the Directorate General of Commercial Intelligence & Statistics, Calcutta, is regarded as the standard medium for publicity of Tender Notices issued by Govt. Depts. These notices are published by the Journal free of Cost. The I.T.J. is published every week on Wednesday. The matter intended for publication in the Journal should reach them latest by Tuesday (forenoon) of the preceding week, the day on which the Journal goes to the Press. The DGCI&S has however, suggested that tender notices should reach his office 21 days before the date of Publication of I.T.J. A copy of the Tender Notice may also be sent, in some cases, to the appropriate Trade Associations.

Ministry of Finance as well as CVC in their circulars have insisted for hosting of all Open Tenders on the departments website and also on the main website of NIC. In this connection OFB letter no dated (at Annexure-) may be referred to.

6.8 CASES OF WIDER PUBLICITY:

Where wider publicity throughout the country is called for, the matter for publication should be sent to the Director, Audio & Visual Publicity, New Delhi, under a standard letter as per form No: MM-15 circulated under OFB letter No: 541/System/MM dt. 30.8.82. (Annexure - 18) for publication in the important Newspapers.

OTE and global Tenders are required to be published in the newspapers and ITJ, Calcutta. OTE should also be put on the MOD web site, the web site of the respective department, where available so as to ensure that all firms capable of supplying the items/service come to know about the TE. In cases of procurement of highly sensitive nature having national security implications, the tender documents are not be put on the web site. In such cases decision must be taken at the level of CMD or Head of the department, recording specific reasons for not putting an open tender on web site.

(Ref: Para 4.10 of DPM-2005)

6.9 GLOBAL TENDERS:

In case of global tender enquiries for imported stores/equipment simultaneously with the publication of tender notice in the media within the country, a circular letter may be sent to the Embassies abroad by diplomatic bag indicating the store demanded

specification, quantity, delivery period and nature of F.E. available along with a copy of the tender sets. Also Ten copies of tender sets are to be sent by diplomatic bag to each of the supply wings at London and Washington and the Inspection Cell at Japan to enable them to give adequate publicity to the demand.

All tender notices should be displayed on the office Notice Boards, wherever such arrangement is in vogue.

6.10 RECEIPT & CUSTODY OF TENDERS:

All tenders sent by firms in response to the tender enquiries should be deposited in a locked Tender Box, the Key of which should be in the custody of a responsible officer. Tenders including telegrams/telexes received direct by an officer or a section before the specified date for receipt should also be put into the Box, after closing it in an envelop marked with TE No. & Date of opening on it. Immediately after expiry of the prescribed time on the prescribed date for receipt, the tenders which are due for opening on that day, should be linked with the Tender Enquiry. The No. of Sealed Covers received against each enquiry should be noted down and opened by the officers (two) detailed for opening of Tenders who should acknowledge receipt of 'so many' covers.

6.11 EXTENSION OF THE TIME AND DATE OF OPENING OF TENDER:

When a decision for postponement of the date of opening of a tender is taken either at the initiative of the purchaser or at the request of any firm(s), it should be communicated without fail to all the firms addressed originally in case of LTE. and all the firms who have already purchased tender sets in the case of advertised tender. Such communications should be issued well in advance, say 10 days before the date of opening as originally stipulated. In case of advertised tenders, the notice of extension should be published in the Indian Trade Journal without delay and also displayed on 'Notice Boards', if any.

"In cases where firm's request for return of tender documents before the date of tender opening in the event of tender opening being extended, there may be no objection in returning the tender documents to the concerned firms as the documents may accompany EMD.

6.12 OPENING OF TENDERS:

- (a) Two officers (one Purchase Officer and another Officer nominated by GM) will open tenders on the specified date and time normally in the presence of the authorised representatives of the tendering firms. No unauthorised representative or a representative of any non-tendering firm shall be allowed to attend tender opening.
- (b) The representative of National Small Scale Industries Corp. will, however, be admitted when tenders are opened in public to enable him to take down necessary information for communication to SSI units concerned.
- (c) The tender opening officers shall read out the price quoted, other charges, if any, quantity offered, terms of delivery, DP and any other special condition not specified in the tender enquiry.
- (d) Each tender shall be given a SL. No. as the numerator and the total number of tenders received as the denominator e.g.: if total five tenders are received then first tender will be marked as 1/5, the second as 2/5 and so on, on the first page. Both the officers shall initial all the pages in the tender with date.
- (e) Alteration in tenders, if any, made by the firms, should be initialled legibly by the officers opening the tenders to make it perfectly clear that such alterations were present on the tenders at the time of opening. Wherever any erasing/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.**
- (f) No amendments to the tenders will on any account be permitted.
- (g) Telegraphic/telex/fax/letter quotations may be considered as regular tenders if the same is followed by a formal tender within 7 days from the date of opening of tenders provided the telegrams etc. is complete in all respects with regard to price, specification, delivery and other particulars essential for taking purchase decision. Fys. should not ask the Suppliers to quote by Telegram/Fax (Ref: OFB Let.No.14/4/LP/MM dt. 24.6.99).
- (h) An attendance report for tender opening shall be filled up and kept in record in respect of each Tender, in the prescribed form viz. Form No. MM18 (Annexure - 19).

6.13 LATE AND DELAYED TENDERS:

- (a) Tenders or modification to tender received after the specified time for opening are treated as 'Late' tenders while those received after the specified time for receipt but before that of opening, shall be treated "Delayed" and marked as such.

- (a) If late/ delayed quotations are received through post, a similar action should be taken i.e the officer should write “Late/ delayed” tenders on such tenders and file them: ‘Late / Delayed Tenders **shall not be opened but kept sealed in their original envelopes and returned to the firm.**

(Ref: Para 9.17 of DPM-2005)

- (b) **Unsolicited** offers are to be summarily rejected. Offers sent through telegram/telex/fax/letter quotations, which have not been followed up by formal completed tenders within 7 days from the date of opening, must also be ignored. Such quotations may be entered below all the regular tenders in Red Ink in CST.
- (c) The “Delayed” and “Late” Tenders, if any, may be entered below all the regular tenders in Red Ink in the CST.

6.14 EVALUATION OF TENDER AND FORMULATION OF PURCHASE PROPOSAL:

After the tenders have been opened, an abstract of the quotations received, called “Spot Comparative Statement” shall be prepared in the prescribed form viz. Form no. MM-19 (Annexure - 20) which will be signed by both the officers who opened the tenders. The purchase officer, on receipt of tenders along with the Spot Comparative Statement, will have Comparative and Ranking statements prepared to enable him to formulate the purchase proposal. Tender evaluation will be in stages as mentioned below:

6.14.1 Preliminary examination of quotes - The purchase cell will examine the quotations to determine whether they are complete in all respects, and check for any computational errors, submission of required sureties, source of supply, etc.,. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words shall prevail.

The purchase cell may waive any minor informality or non-conformity in a bid, which does not constitute a material deviation, provided such a waiver, does not prejudice or affect the relative ranking of any bidder. Deviation from or objections or reservations to critical provisions such those concerning performance warranty, Force majeure, Applicable Law, Liquidated Damage, non disclosure of source of supply in case of stockist / vendor, quality assurance aspects, etc., will be deemed to be a material deviation. The responsiveness of the quotation shall be determined based on conformity to the terms and conditions of RFP.

6.14.2 Technical Evaluation. Whenever there is a two bid system of tendering followed, technical evaluation of the bid becomes a vital step not only to ascertain conformity of the technical bid with the technical specifications of the tender, but also to bring all bidders on a level playing field in respect of qualitative requirement. Technical evaluation is normally carried out by a technical Evaluation committee (TEC) where Finance is also represented by a member. TEC decides the bids that are meeting the technical criteria.

In cases of single bid system, the offer is to be compared with the specifications mentioned in the Tender Enquiry. In case there is deviation from the specification, same is to be brought out in the brief for TPC so that the committee can take appropriate decision while deliberating the case.

6.14.3 Commercial Evaluation. Evaluation of commercial bids is the core activity in any purchase decision. If the correct evaluation of quoted rates, freight, insurance, taxes, duties and other expenses involved is not carried out as per criteria incorporated in the RFP, purchase decision may become deficient and faulty. Some of the factors which need to be taken into account for evaluation are:

- (a) **Duties and Taxes.** All taxes and duties to be paid in connection with the procurement of an item need to be considered as evaluation of the bids has to be done on the basis of ultimate cost to the purchaser.
- (b) **Delivery Period.** Delivery Period and delivery compliance are important variables for evaluation of bids. Offers not meeting Delivery Period mentioned in the RFP are to be ignored.
- (c) **All Inclusive Cost on Delivery.** The ultimate cost to the purchaser on delivery to the consignee’s premises should be the deciding factor for ranking of bids.

6.15 PREPARATION OF COMPARATIVE/RANKING STATEMENT:

6.15.1 Comparative Statement of Tenders (CST):

After the tenders have been opened and handed over to the Purchase Officer along with the 'on the spot' abstract, he will have a comparative statement prepared on the form prescribed for the purpose. All the necessary details concerning the offers, such

Such references and clarifications must be made quickly with a target date for reply so that finalisation of the tender is not delayed. For making such references or accepting a clarification from the firms for such details, the Purchase Officer will not require approval from any superior authority.

It is, however, reiterated that no clarifications shall be obtained or accepted from the firm, (even if submitted unilaterally by the firm) which have an effect of changing the essentials of the tender or its inter- se position or would give an unintended benefit to the tenderer.

As regards tenders falling under Group (B), such offers should be ignored and rejected straightway and no reference should be made to the firm or clarifications accepted, if submitted by the tenderer unilaterally.

For the guidance of the purchase officers, an illustrative and not exhaustive list of the instances in which the tenders may be ignored and rejected straightway is given below:

- (a) Received after due date and time of tender opening (late tenders):
- (b) Unsolicited offer i.e. offer from tenderer other than those asked to quote against The Tender.
- (c) In the form of Letter Head/FAX/Telex/Telegram not followed up by formal tenders in time.(within 7 Days of opening of T.E)
- (d) Not accompanied with Earnest Money asked for in case the firm responded is not registered with NSIC.
- (e) Does not indicate delivery period by which supplies can be made or delivery offered is vague.
- (f) Does not indicate the terms of delivery.
- (g) Ambiguous with regards to any of the essentials i.e. the items being offered, prices quoted, and the terms of delivery.
- (h) Tender samples as required in the enquiry conditions have not been submitted by the due date.

6.18 REASONABLENESS OF PRICES AND BENCH MARKING:

In the case of competitive tendering where two or more vendors are competing independently to secure a contract, the competitive bids form the basis of pricing. Data base maintained on cost based on concluded contracts, prices of product available through market should also be used to assess reasonableness of price offered.

- (a) Evaluation of tenders is made on the basis of the ultimate cost of the user.
- (b) As a general principle, no offer involving any uncertain or indefinite liability or any condition of unusual character should be considered.
- (c) The reasonability of the price proposed 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, database maintained on costs based on the past contracts entered into, market price wherever available and changes in the indices of various raw materials, electricity, whole sale price index and statutory changes in wage rates etc.
- (d) Procurement of spare parts, consumables and small value contracts which are supplied in the past, the price reasonableness can be determined after comparing with last purchase price.
- (e) The reasonability of price may also be examined by resorting to Cost Analysis in situations where there is wide variance over the LPP not explained by corresponding changes in indices.
- (f) In the case of single tender analysis of costs and price structure may be done to ensure that the price quoted is reasonable with reasonable profit margin.
- (g) Even when only one bid is submitted, it may be considered valid if the bid is satisfactorily advertised and price quoted is reasonable in comparison to market value and assessed price.
- (h) Assessing of reasonability may be an arduous task, especially where price data is not available or in case of overseas suppliers. In such cases it is important to place on record efforts made for arriving at a price and taking procurement decision.

(Ref: DPM para 13.7, 13.18.4 & 13.18.5)

6.18.1 LAST PAID PRICE

To ascertain the reasonability of the prices received against the tender enquiry they should be compared with the prices paid in the last contract, if any, for the same item, on the following lines:-

- (a) The Last Paid Rate is the price paid in the latest contract. The Basic Price, Taxes, Duties, Transportation charges, P&F Charges to be indicated separately
- (b) Where the firm holding the LPR 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 LPR contract, where supplies have been completed, should be indicated.
- (c) Where the price indicated in the LPR is subject to variation, besides indicating the original price as of the LPR contract, the updated price as computed in terms of the price variation clause, may also be indicated.
- (d) Where the supply against the LPR contract is yet to commence i.e. delivery is not yet due, it should be indicated in the purchase proposal, whether the contract holder is a past established supplier / new supplier.
- (e) In case of new supplier the price paid against the previous contract as in the case of (b) above should be indicated.
- (f) In case the LPR is more than three years old it can not be taken as a real scale for comparison. However, such LPR can be used as an input for assessing the rates.

In the case of wholly imported stores the comparison of the Last Purchase Rate should be made with the net C.I.F. value in foreign currency only.

6.18.2 BENCH MARKING

When it is observed after analysing the cost data available from various sources that the rates offered by the vendors are not reasonable, negotiation with them is inevitable. Before scheduled negotiation it is advisable to work out estimated reasonable rate. In case of single tender cases, a technical committee should make an assessment of estimated cost based on available information.

6.19 TENDER PURCHASE COMMITTEES FOR PROCUREMENT OF STORES

Tender Purchase Committees (TPCs) have been constituted under orders of OFB (OFB Order No.359/BS dt.21.02.1989 as amended from time to time) for scrutiny of Tenders for purchase of Stores at Headquarters as well as Factories as detailed hereunder :-

The basic purpose in delegating powers is to enable the Factories to keep in readiness the inputs and facilities essential for maintaining continuity of production and achieving the production targets without any let up or hindrance. The exercise of powers in consultation with Finance is intended to bring in financial expertise in the decision making process. The Finance thereby become a part of the Management Team instead of an outside Agency making Ex-Post-Facto analysis. It should be the endeavor of the Finance functioning as Internal Financial Adviser to be pragmatic and, make available to the Management the best Financial Judgement. Financial scrutiny should be undertaken as a Tool to help production and other operations and the financial implication and repercussion of exercising of any power will have to be clearly brought out with reference to the alternatives available in a given time, in order to guide the decision to the best course from the financial point of view.

All Members should be made to resolve differences through personal discussion instead of making to and fro references in writing. Where it is considered necessary to keep record of such discussion, agreed Minutes should be drawn up and recorded.

Financial consultation is distinct from financial concurrence. The officers exercising the delegated powers may decide not to accept the advice tendered by Finance but this, they will do entirely on their own responsibility, and the reasons/justifications for doing so should be recorded in writing.

The dates of the meetings of TPC should be notified sufficiently in advance so that the briefs and relevant files can be studied by the committee members including the finance representative before they attend the TPC meeting.

The CFA in any purchase case is to be determined on the basis of cost of each item..

6.19.1 TPCs at Hqrs.

(A) Level-I:

- (a) For Procurement of Stores above Rs. 20 Crores RE and FE above Rs. 10 Crores and above Rs. 3 Crores RE for Single Tender/Proprietary items.
- (b) All those cases of Procurement of Stores exceeding the delegated financial powers of OFB which require the approval of Ministry of Defence.

Chairman/OFB	Chairman
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Member/P&MM	Member
Member/Finance/Controller of Finance *	Member
Member/Operating Division Or Addl.DG/AV (for AV Hqrs. Cases) Or Addl.DG/OEF (for OEF Hqrs. Cases)	Member
DDG/Operating Division	Member
DDG/Director/MM/PV(VFJ & GIF Cases)	Secretary
* C of F will represent the Committee only in the absence of Member/Finance.	

(B) Level-II

- (a) For Procurement of Stores valued between Rs. 5 Crores and Rs.20 Crores RE and Rs.2 Crores and Rs. 5 Crores of FE
- (b) In the case of Single Tender and Proprietary Items, the Committee exercises the financial power between Rs.50 Lakhs to Rs. 2 Crores.

Member/P&MM	Chairman
Member/Finance or his representative	Member
At C of F/JCF Level Member/Operating Division Or Addl.DG/AV (for cases of AV Group) Or Addl. DG/OEF (for cases of OEF Group)	Member
DDG/Operating Division	Member
DDG/Director/MM/PV(VFJ & GIF Cases)	Secretary

NOTE : For release of Foreign Exchange between Rs.2 Crores and Rs. 5 Crores, the case shall be put up for sanction of Chairman/OFB.

(C) Level - III

- (a) For Procurement of Stores valued between Rs. 1.5 Crores and Rs. 5 Crores of RE and upto Rs. 2 Crores of FE.
- (b) Upto Rs. 50 Lakhs in case of Procurement of Single Tender and Proprietary Items.

Member/Operating Division Or Addl. DG/AV (for cases of AV Group) Or	Chairman
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Addl.DG/OEF (for cases of OEF Group)	
Controller of Finance/JCF	Member
DDG/Operating Division	Member
DDG/Director/MM/AV/OEF/PV (VFJ & GIF Cases)	Secretary

Note : The Committee will also dispose those cases involving price differential beyond 5% but within 10%.

(D) Level - IV

For Procurement of Stores valued upto Rs. 1.5 Crores of RE

DDG/MM/OFB Or DDG/Veh. (For VFJ/GIF Cases)	Chairman
Controller of Finance/JCF/AFA	Member
DDG/Director (Operating Division)	Member
Director/Jt. Director/MM Or Director/Jt.Director/PV (for VFJ/GIF Cases)	Secretary

Note : This Level will not be operative for AV & OEF Divisions. Such cases will be put up to Level-III

SPECIAL NOTES :

- (1) All cases where "make or buy" decision is involved, especially all IFD cases will be carefully decided by Member/P&MM in consultation with concerned Operating Members to optimise full utilisation of available capacities with the Ordnance Factories and reasons clearly recorded if it is decided to go to Trade when capacities are available in the Ordnance Factories.
- (2) Nodal Agencies and procedures for procurement of bulk common materials should be decided by Member/P&MM and the performance of Nodal Agencies right from necessity/TE stage onwards and this should be carefully watched and monitored.
- (3) PFCs will be chaired and approved by the concerned Operating Member/Addl.DG and a presentation will be made in the next Board Meeting by the DDG/Operating Division and DDG/Engg. For ratification. PFCs for the year 2002-03 should be completed by 31.12.2001 to ensure proper investment projection and similar exercise will be carried out for subsequent years also. PFCs pertaining to AV and OEF Group will be attended by DDG/Engg./OFB and representative of Member/Finance.
- (4) Level-IV TPC for Stores will have powers to negotiate with Vendors as considered appropriate. The CVC Guidelines will be followed.
- (5) The Finance Representative in Level-III in OEF and AV Hqrs. shall be at the Level of Controller of Finance and Accounts only. In the absence of Controller of Finance and Accounts, an officer of the rank of Joint Controller of Finance and Accounts will be nominated to represent the Committee.
- (6) The Secretary of respective TPC shall provide a full brief of the cases in stipulated time to each Member and Chairman. He should not put up the brief unless he is fully satisfied on the above account. Important points needing special attention/consideration should be highlighted.
- (7) The sanctions issued under the delegated powers by the individual Members of the Board should be got ratified by the Board through Secretary/OFB.

[Authority : Finance Divn. I.S. Note No.1136/FM-II dated 21.08.01]

6.19.2 TPCs at Factories

(a) Level-I

For purchases of stores/components etc. exceeding Rs. 20 Lakhs in each case.

GM	Chairman
AGM/Jt.GM in Charge of Procurement	Member
Other Concerned Officers including QC	Member
C.O.A (Fys.)/JCA (Fys.)	Member

(b) Level-II:

For purchase of stores/ components etc. exceeding Rs. 10 Lakhs and upto Rs. 20 Lakhs in each case.

AGM/Jt.GM in Charge of Procurement	Chairman
Other Concerned Officers including QC	Member
JCA(Fys)/DCA(Fys)/ACA	Member

(c) Level-III:

For purchases of stores/ components etc. exceeding Rs. 4 Lakhs and upto Rs. 10 Lakhs in each case.

Dy.GM in Charge of Procurement	Chairman
Other Concerned Officers including QC	Member
DCA/ACA/A.O/(Fys.)	Member

(d) Level-IV:

For purchase of stores/components etc. upto Rs. 4 Lakhs in each case.

Works Manager in Charge of Procurement	Chairman
Other Concerned Officers including QC	Member
Accounts Officer /(Fys.)	Member

Note:

1. Due to unforeseen reasons, if the Chairman of any TPC is out of station or on leave, the next senior member of the relevant TPC may conduct its proceedings, depending upon the urgency. However, the minutes of the TPC meeting will be got approved by the Chairman of the relevant TPC on his return.

6.19.3 Cases not requiring approval of TPC:

OFB has decided that no TPC would be necessary for

- (a) Purchase of stores, sub-assemblies, and components from collaborators under collaboration agreement.

(b) Items valuing less than Rs. 50,000

(Authority : M of D Letter No.01/5/SP/C/Part/4847/D(Prod.) dt. 11.06.73 vide Page 65 in Volume II)

6.19.4 Preparation of Brief for TPC:

The brief giving details as per the following proforma be prepared by the Purchase Officer and submitted to TPC (giving reasonable time for convening the meeting)for deliberation along with the Comparative Statement of Tender, Ranking Statement and Data Sheet:

1. Name of Store:
2. Whether Single Source/PAC:
3. Type of Tender Enquiry:
4. Date of Issue & Opening of TE:
5. No. of Established firms available:
6. Whether any established firm & past suppliers has been excluded from TE? If so, reason thereof :
7. Quotation received from No. of firms:
8. Tender Quantity :
9. Quantity in MP Sheet:
10. Delivery required as per TE :
11. Likely Value of order :
12. Last Purchase Rate (LPR) giving details of S.O and name of firm :
13. Lowest Rate Received :
(A) Ist Lowest:
(B) IInd lowest:
14. Average proven capacity of firms quoting:
(Based on orders executed in last 3 years or last 3 orders which ever is covering more period)
15. Requirement :

End Store	Unit Requirement	Target for the Year	Requirement for the Year
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16. Total availability since 1st April of the year :
17. Total Dues (if any portion of the Dues are “doubtful”, the fact should be brought out with clear reasons including remedial measures taken/contemplated:
18. Net deficiency, with justification, if TE qty. is different:
19. Date of recommendatory TPC-I (for cases being sent to OFB) of Factory:
20. Date of sending the case to OFB:
21. Remarks:
22. Recommendation of Fy. TPC-I:

6.20 CRITERIA FOR TENDER SELECTION:

The TPC will give proper weightage to each of the following factors while selecting the offers.

- a) Price quoted
- b) Delivery Promised
- c) Capability and reliability of the concerned firm(s) as indicated by their past performance and the latest facilities at their command for production of the stores.

- d) Load factor i.e. whether the concerned firm is already holding orders and if so, how much more they can be realistically expected to supply within the required delivery period without prejudice to their commitments vis-à-vis the outstanding orders.

A view should be taken whether in the given case it is necessary to incorporate an 'option clause' in the contracts (in pursuance of the provisions of Tender Enquiry).

Further, at times it becomes necessary to cover more quantity than originally tendered, due to change in programme/target etc. In such cases the question will arise, had more quantity been tendered, there would have been possibility of getting offers at lesser rates due to quantum discount etc.

In such cases, if the entire quantity is to be covered on a single source, then the Supplier should be asked for quantity discount in view of the enhanced quantity. However, if the quantity is to be covered on more than one Firm, and no Firm is getting more than the original tendered quantity even after considering enhanced requirement, then no reference for quantity discount need be made.

In case of single tender purchases, if no Last Purchase Rate is available, a break-up of the price quoted (Material, labour, overheads, profit etc.) may be obtained from the firm and data analyzed to take a view as regards the reasonableness or otherwise of the price quoted. Comparison may also be made with the price of similar stores. If necessary, a technical assessment of cost may also be undertaken having regard to the material required its quantum, operations and processing involved etc.

6.21 DIFFERENCE OF OPINION AMONGST TPC MEMBERS:

In cases where it is not possible to come to consensus and differences persist amongst members of TPC, the reasons for dissent of a member should be recorded. When Chairman of the TPC finds the dissent as unconvincing, he can overrule such dissent notes after recording reasons for doing so clearly. Chairman of TPC shall be fully responsible for such decisions.

After the decision is taken in such cases, the matter will be brought to the notice of next higher authority.

6.22 PREPARATION OF TPC MINUTES:

Minutes of the TPC proceedings clearly bringing out its recommendations/ decisions should be prepared by the Member Secretary immediately after the committee's deliberations are concluded. He should get all the copies of the minutes signed by all the Members and distribute the copies to each Member.

TPC recommendations/decisions will provide necessary authority for placing orders only after completion of above formalities.

6.23 POST TENDER NEGOTIATIONS & COUNTER OFFERS:

Negotiations, after tenders have been opened, should be severely discouraged. Negotiations vitiate the sanctity of the tender system & reduce the credibility of the purchase organisation, Quality becomes the casualty. 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.

As per CVC's instruction issued under letter No. 8(1)(h)/98(I) dt. 18.11.98 post tender negotiations have been banned except with L-1 i.e. lowest tenderer. However, vide their Circular No. 98/ORD/1 dt. 18.3.99, CVC has clarified that in cases where the quantity to be ordered is much more than L-1 alone can supply, the quantity to be ordered may be distributed in such a manner that the purchase is done in a fair, transparent and equitable manner. This implies that if L-1 does not have the capacity to supply full tendered quantity, and the price offered by next tenderer is considered to be unreasonable, the price can be negotiated with him before deciding the order on him. Thus in exceptional cases negotiation can be done one by one with the firms till the full tendered quantity is distributed as per their capacity to supply.

Counter offer of a price by the purchaser is also covered by the term "negotiations" and hence the same principle as given in the previous Para shall apply for counter offer also.

(**Authority : Vide No.77/P&MM/BS dated 10.09.01**)

6.24 PLACEMENT OF ORDER ON PRICE DIFFERENTIAL:

If L1 does not have the capacity to supply within the delivery period as per RFP, after loading L1 fully as per its capacity and past delivery, order can be placed on L2, L3..... for the balance quantity at L1's rate sequentially.

When it's not possible to obtain L1's rate and there is an operational or production compulsion, CFA can approve the price differential upto 5%, within his financial powers in consultation with finance. For calculating price differential, all inclusive price quoted by the firms have to be reckoned. At present only Board members/ Chairman can operate the power of placing order at differential rate of 5%.

**For any price differential above 5% approval of next higher CFA would be necessary.
(Ref: Para 5.10 of DPM-2005)**

6.25 OFFERS WITH DISCOUNTS FOR QUICK COVERAGE, INSPECTION/PAYMENT:

In case any tenderer offers discount for coverage within a shorter period, for quicker inspection/payment such offer is to be considered/compared only as per the price quoted (without consideration of discounts). The contracts as a result of acceptance of such offers shall not include any clause with regard to these discounts.

6.26 POST TENDER REVISION:

Any post tender revision, which has the effect to influence the purchase decision, should make the firm's tender unacceptable and be rejected.

However, if the firm would have got the order without the revision and at the same time the revision gives some benefit to the purchaser it may be accepted. The TPC within whose power the case falls would be competent to admit such post tender revision.

6.27 REGULATION OF CLAIMS FOR EXCISE DUTY:

The Excise Duty clause provided in the Instructions to Tenderers stipulates that where the tenderer intends to ask for excise duty as extra, he is required to state it specifically. In the absence of any such stipulation it is to be assumed that the prices quoted include the element of excise duty and no claim for the same will be entertained after opening of tenders.

Where the tender mentions that the prices are exclusive of excise duty which will be payable extra, it should be definitely stated in the Acceptance of the tender that the duty is payable at a specified rate, in addition to the cost of stores, instead of mentioning its payment as extra.

The mere statement in the tender that the prices are exclusive of excise duty does not entitle the firm to the reimbursement of the duty. Where the tenderer indicates in his tender that prices are exclusive of excise duty but no mention has been made that excise duty will be charged extra, no claim for the same will be entertained after the opening of tenders. If such offers are successful in getting the order, it should be clearly stated in the Acceptance of Tender that prices are exclusive of excise duty. It should also be stated that the excise duty will not be payable extra and prices shall be treated firm and final

In the cases where prices are firm and inclusive of excise duty the contract will reflect the offer correctly. The certificate prescribed for claiming excise duty need not be called for in such contracts as otherwise these would attract Section 64 (A) of the Sales of Goods Act, which is reproduced below:

“64 A.- In contracts of sale, amount of increased or decreased taxes to be added or deducted:

1. Unless a different intention appears from the terms of the contract, in the event, any tax of the nature described in sub-section (2) below, being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax-paid where tax was chargeable at the time:
 - (a) If such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition, and
 - (b) If such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax, or remitted tax, and he shall not be liable to pay, or be sued for or in respect of such deduction.

2. The provisions of sub-section (1) apply to:
 - (a) any duty of customs or excise on goods;
 - (b) any tax on the sale or purchase of goods.

By virtue of the provisions of Section 64 A of Sales of Goods Act, 1930, even in the absence of a stipulation in the contract providing for statutory variation in excise duty, the contractor is entitled to be reimbursed for such additional amount as he is obliged to pay as a result of any increase or fresh imposition of duty provided that such increase or imposition takes place after the making of the contract and the increase or imposition is in respect of the ordered stores as distinguished from the raw-material. It is, therefore, imperative that the intention to allow or deny increases under Section 64 A of the Sales of Goods Act be specifically incorporated in the contract.

As per legal advice where there is a stipulation in the tender to the effect that any variation in the excise duty will be to the purchaser's account, the quotation is altered by an alteration in excise duty taking place before Acceptance of the Tender. All variations taking place after the date of tender in such cases have to be taken into account and allowed in the Acceptance of tender. If it is not allowed and the variation involves increase of price, there will be no contract between the parties. In view of this legal position, it is necessary that where firm's tender states that the prices are based on the excise duty prevailing on the date of their quotation and any statutory variation in the rates will be to the purchaser's account, the Acceptance of the Tender should specifically incorporate that statutory variation in the rate of excise duty will be allowed from _____ (date specified here should be the date of firm's tender) and not usual stipulation that statutory variation in the duty will be adjusted.

It is further legally advised that the statutory variation in the customs duty/excise duty (up or down) taking place between the date of the tender and the date of the A/T would be admitted, if in the A/T it is definitely stipulated that the custom/excise duty has been included at a particular rate, which is the prevailing rate at the time of submission of tender and there is a stipulation that statutory variations up or down will be adjusted.

6.28 INTIMATION TO UNSUCCESSFUL TENDERERS :

Unsuccessful tenderers should be informed of non-acceptance of their tenders without assigning any reasons.

6.29 SCRAPPING OF TENDERS :

Scrapping of tenders should be avoided as a rule. However, such a course may be justified in the following cases :-

- (a) Change in basic specification governing supplies after opening of tenders.
- (b) Non-receipt of offers as per specification laid down.
- (c) Sudden downward market trend.
- (d) Prices quoted being very high / unreasonable.

6.30 RETURN OF TENDERS RECEIVED AGAINST TENDER ENQUIRIES CANCELLED/SCRAPPED SUBSEQUENTLY :

Such tenders may be returned on request. It is not necessary to authorise refund of cost of tender on scrapping. Claims when received should be finalised with the approval of competent authority.

6.31 PREPARATION AND ISSUE OF SUPPLY ORDER/ ACCEPTANCE OF TENDER :

Supply orders should be placed separately on each firm for quantities as decided by the TPC. It must be ensured that the order incorporates only such terms and conditions and special conditions/ instructions, if any, as have been expressly agreed to by the firm. If there is any doubt in this regard and if any special condition insisted upon by the firm has been ignored, the matter should be resolved through the TPC before Orders are released.

If payment in foreign exchange (either for the imported stores to be purchased or for import of components/ semis/ materials by the supplier) is involved, requisite foreign exchange should be got released through the authority before any commitment is made with the suppliers.

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.

When a specific stipulation has been made by a tenderer 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 tenderer to enable him to receive it by the date fixed. If despatch of the intimation is delayed and tenderers receive it after the expiry of the specified date, the contract will not be a valid one and it will be open to the tenderer to refuse to accept the same. All Purchase Officers should, therefore, ensure that in all such cases, the decision is communicated sufficiently in advance so that the tenderer will definitely receive it before the due date.

Sometimes it may be necessary to conclude the contract by issue of a letter of intent or advance supply order or telegraphic acceptance due to imminence of expiry of the offer or any other reason. In such cases the letter of intent/ advance supply order / telegraphic acceptance concludes the contract and it is, therefore, imperative that all important and relevant aspects such as description of stores, quantity, price, delivery period etc. are properly reflected in the advance communication. It must also be ensured in such cases that there is no variation between the letter of intent etc. and the formal supply order issued subsequently. The advance acceptance should specifically state that it concludes the contract and the formal supply order showing full details will follow. The formal supply order should be issued without any avoidable delay.

6.32 CHECKPOINTS FOR PREPARATION OF SUPPLY ORDER/ ACCEPTANCE OF TENDER:

- (i) Use prescribed form as amended up-to-date.
- (i) Fill up each and every clause with care and if there is any clause, which is not applicable to the contract, give clear indication to that effect against the particular clause.
- (ii) Have the name and address of the contractor been correctly incorporated in the supply order?
- (iii) Have you satisfied yourself that the delivery period stipulated in the contract is in accordance with the delivery agreed to by the tenderer ?
- (iv) Have you ensured that prices have been correctly indicated and variation, if any, has also been stipulated on the basis of a well-defined and clear-cut price variation formula?
- (v) Have the firms asked for sales tax extra? Have you made provisions for that in the contract ?
- (vi) Have the firms asked for Excise Duty as extra and have you made provisions for that in the contract ?
- (vii) Have you ensured that the terms and conditions including special conditions stipulated in the contract are in conformity with the offer of the firm and variation, if any, has been mutually settled ?
- (viii) Have you given the consignee instructions correctly?
- (ii) Have you given despatch and inspection instructions correctly?
- (iii) Have you stipulated that the stores should on no account be despatched/delivered without getting the same inspected and passed by the Inspection Officer stipulated in the order (unless inspection at destination is specified)?
- (iv) Have you made sure that inspection authority and Inspecting Officer have been shown separately and correctly ?
- (v) Have you given the Heads of Account and indicated correctly the Accounts Officer who will make payment and mode of payment ?
- (vi) Have you checked whether the tendering firm has accepted the standard "Standard Arbitration Clause"? If no, have you made suitable alternative provision ?
- (vii) Have you ensured that specifications given in the contract are in accordance with those accepted by the firm and are complete in all respects?
- (viii) Have you made sure that all relevant communications from the contractor leading to their agreement to the contract terms and conditions have been referred to in the contract?
- (ix) Have you ensured that it contains the clause on Security Deposit indicating correctly the quantum of Performance Security and the time for furnishing the same

- (x) Does the contract provide for submission of advance sample? If so, has a definite, reasonable and correct time-limit been laid down making it clear that the contract is liable to cancellation at the risk and cost of the contractor if he failed to submit acceptable samples within the stipulated period?
- (xi) Has the Transit risk clause been correctly stipulated?
- (xii) Have you checked whether the firm has asked for any assistance for clearing the raw materials and if so, has suitable provision been correctly incorporated making it clear whether it is a contractual obligation or otherwise?
- (xiii) Has the firm asked for any Import Assistance and if so, has necessary Foreign Exchange clearance obtained and release of F.E. obtained from the competent authority ?
- (xiv) In case of importation on F.O.B. basis has the Customs Duty clause been correctly incorporated?
- (xv) Has the firm agreed to placement of additional quantity against option clause? If so, has the purchaser's right to do so been reserved ?
- (xvi) Have you advised the firms as regards information and documents they are required to submit along with their bills for payment against the last instalment of the contract ?
- (xvii) Have you incorporated necessary instructions regarding issue of Military Credit Note, if required?
- (xviii) Has it been stipulated that the stores should be despatched against clear Rly. Receipt and not on "said to contain" basis and in closed wagons only (unless the material is such as are normally carried in open wagons)?
- (xix) Have you advised the firm that the stores should be suitably packed so as to be reasonably secured against loss or damage in transit?
- (xx) Make sure that the order is issued under Registered Cover with Acknowledgement Due.
- (xxi) If the contract provides for advance payment (before commencement of Supplies), have you provided for adjustment against subsequent bills, recovery of interest, differential rate of interest during the contract D/P and thereafter?
- (xxii) If Bank-guarantee is to be obtained from the Contractor as Security for Advance Payment, has a suitable form for the guarantee been adopted?
- (xxiii) If materials are to be issued to the Contractor from factory stock, has suitable provision been made as regards Issue Price, Security Deposit, Care & Custody, Accounting etc. ?
- (xxiv) Have copies of the S.O. been endorsed to all concerned including Inspectorate and Accounts, ITO etc?
- (xxv) Standard LD Clause as per Para 8.14 to be included
- (xxvi) Force Majeure Clause should **not** be included in S.O. in a routine manner unless specifically asked for by the Supplier.

(**Authority : Vide No.77/P&MM/BS Dated 10.09.2001**)

6.33 DESPATCH OF SUPPLY ORDER/ ACCEPTANCE OF TENDER :

The Supply Orders/ Acceptance of Tenders should be despatched under Registered Post with acknowledgement due.

The postal A.D or the acknowledgement slip, on return from the Contractor, should be pasted on the reverse of the office copy of the A/T/Supply Order. If no acknowledgement is received from the contractor within 14 days from the date of issue of Supply Order/ Acceptance of Tender , then the Contractor should be reminded and the matter pursued till acknowledgement is received from him.

6.34 ACKNOWLEDGEMENT OF CONTRACT:

Main aspects to be taken care of -

6.34.1 Purchaser's Obligations :

Execution of contracts may be contingent on the purchaser's fulfilling certain conditions/ taking certain actions, such as, furnishing additional technical particulars/ literature, assistance for securing raw materials, issue of Import recommendation Certificate, advance payment before commencement of supply etc. These have to be taken care of by the concerned Purchase Officer and it is incumbent on him to ensure that such conditions as stipulated in the Supply Order are met with utmost expedition so that the supplier may be prevented from delay in supplies on their part.

Other aspects to be taken care of are timely payment for supplies made in accordance with the terms of contract, prompt response to requests for inspection of stores tendered, release certificates in respect of stores received and accepted by the consignee, prompt action in respect of transit loss/ damages etc.

6.34.1 Supplier's Obligations :

(a) Submission of advance sample:

If a contract provides for submission of advance sample by a stipulated date, attention should be focussed on this aspect immediately after issue of the order. If on the basis of inspector's report or otherwise, it becomes evident that the supplier does not have either the capability or intention to produce/ supply the stores, necessary action to terminate the contract and securing remedies as per the terms of the contract should be initiated. If there is any element of doubt as to whether there is a clear breach of contract or not, legal advice should be sought without delay.

(b) Steps taken to start and sustain production:

It will be the responsibility of the **Inspecting Officer**, specially in case of orders where long lead- time (say, more than 4 months) is allowed, to report to the Purchase Officer, after a study of the ground conditions at the supplier's end what steps have been taken by the supplier to commence and sustain production of the items on order in conformity with the contract delivery date(s). Any laxity noticed on the part of the supplier should be taken note of and kept in view while considering any request for extension of contract D/P.

The contractor is also required to submit Progress Reports against contracts to the Purchase Officer. Suitable forms for this purpose may be devised and receipt of these returns watched according to prescribed periodicity.

6.34.2 Intimation to Inspector :

The concerned Inspector should be advised not to undertake inspection of stores tendered after expiry of contract D/P, until the same has been formally extended. If the stores are inspected after expiry of D/P, it will amount to keeping the contract alive by conduct and time will no longer be of the essence of the contract.

If a falling trend in price of the contracted stores is noticed, the Inspector should be immediately alerted and asked not to respond to any request for inspecting the stores beyond the contract D/P.

6.35 Contract Effective Date:

The contract effective date is to be invariably indicated in each contract as per agreed terms and conditions. The effective date will be the date on which the last of the conditions, as applicable is complied with, viz:-

- (a) Date of signing of contract.
- (b) Furnishing of Performance Bond in the form of PBG by the seller.
- (c) Obtaining the Export Licence for supply of stores by the seller and a confirmation in writing sent to the buyer within specified days of signing of contract.
- (d) Receipt of Bank Guarantee for advance payment.
- (e) Date of Issue of End User Certificate.

Date of placement of LOI along with short intimation of conclusion of contract with details of cost, supply detail in brief (with reference to TE/firm's offer), delivery period, quantity and a clear mention of starting of delivery period from the date of LOI should be taken as the effective date of contract irrespective of the date on which contract is actually signed.

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CHAPTER 7

ORDERS ON OVERSEAS SUPPLIERS

7.1 PROCUREMENT OF IMPORTED STORES

OFB/OFs have been authorised to float Global Tenders as well as limited tenders to the OEMs/Firms as authorised by their respective Governments to export, for the import of the items. Depending upon the powers delegated, Factory can place order directly or forward it to the concerned higher TPC for approval and sanction.

7.2 ASPECTS REQUIRING SPECIAL CONSIDERATION

Special consideration and arrangement is called for in respect of contracts with overseas firms in the following areas:

1. Inspection & testing & warranty
1. Vintage/source of manufacture
2. Shipping & handling at Ports
3. Payment
4. Settlement of disputes

7.3 INSPECTION, TESTING & WARRANTY.

In case pre-despatch inspection is required to be done at the manufacturer's work, special arrangement should be made at the purchaser's cost.

Inspection of stores/equipment against orders placed on manufacturers/suppliers may be arranged only in the following cases:

- (a) Stores which have to be inspected/tested during manufacture and where the inspection and testing of raw materials used in the manufacture are considered essential, the purchaser will make necessary arrangement for the same, which will be clearly brought out in the contract
- (b) Where the nature of store is such that full performance test and thorough inspection has to be carried out at the makers works, the purchaser will make necessary arrangement for the same, which will be clearly brought out in the contract.

Performance Bank Guarantee of 10% of the value of contract to be provided by the supplier for the delivery schedule/quality.

Where inspection at the makers' end is not provided for, stores/equipment may be accepted against manufacturers' inspection certificate and guarantee. In such contracts suitable warranty clauses should be framed having regard to the end-use / performance and invariably incorporated in the Contract with the agreement of the suppliers. Suppliers should be asked to confirm that in case of defective supplies/rejection, they will make good the same by replacing with new ones or in case of failure to do so, the cost will be adjusted against outstanding orders/supplies/performance guarantee.

7.4 VINTAGE/SOURCE OF MANUFACTURE :

The Tender Enquiry/Contract should clearly bring out the requirement of, the year of manufacture and also the source of supply.

7.5 SHIPPING AND HANDLING AT PORTS OF ENTRY

The terms of delivery in a contract for imported Stores for delivery direct to the purchaser may be as per following INCOTERMS-2000:

- (a) F.O.B. (Free on Board)
- (a) F.A.S. (Free Alongside ship)
- (b) C.I.F. (Cost Insurance & Freight)
- (c) C & F (Cost & Freight)

Other terms included in INCOTERMS-2000 can be seen at annexure 51.

When the orders are placed on the basis of (c) and (d) above, the supplier will normally be free to select the shipping line for despatch of the consignment. The position is the reverse in case of FOB/FAS contracts. With a view to ensuring that the cargo is carried by the Indian Shipping Lines, contracts for direct imports should, as a rule, be made on FOB basis and suitable provision made therein to the effect that shipping arrangements will be made by the Secretary, Shipping Co-ordination Committee, Ministry of Transport and Shipping, New Delhi or the Ordnance Factory Board through their forwarding agents (in position for the time being) to whom prompt and adequate notice shall be given by the contractor about the readiness of the cargo for shipment. Any departure from this standard shipping clause, if unavoidable, should be made only in consultation with the Co-ordination Committee, Min. of Transport.

A specimen-shipping clause is reproduced below:

- (i) "Shipping arrangements will be made by the Shipping Co-ordination and Chartering Division, Ministry of Shipping and Transport, New Delhi (Cable: TRANSHART: NEW DELHI, TELEPHONE VAHAN-IN 2312,24448 & 3104) through their forwarding agents M/s. Schenker & Co., 2002 Hamburg 11, P.O.No.110320 (CABLE: SCHENKERCO HAMBURG, TELEX 0213094) to whom adequate notice of not less than six weeks about the readiness of Cargo for shipment should be given by the Sellers from time to time for finalising the shipping arrangements.
- (ii) The Bills of Lading should be drawn so as to show:
 - SHIPPER : THE GOVERNMENT OF INDIA
 - CONSIGNEE : The General Manager,
 - POST CONSIGNEE : Embarkation Commandant
 - Embarkation Hqrs
 - Calcutta/Chennai/Mumbai
- (iii) Two non-negotiable copies of the Bills of Lading indicating the gross freight amount and rebate allowed, should be forwarded to the shipping Co-ordination Officer, Ministry of Shipping and Transport, New Delhi after the shipment of each consignment is effected.
- (iv) The stores being of security nature, should be dispatched by Lock Fast Cargo, if this type of stores on board is available and provided no extra expenditure is incurred. However, the despatch of stores need not be held up for want of this facility.
- (v) To be shipped on Indian Vessels only.

Or

Failing that by non-Pakistani Vessel and which are NOT manned by Pakistan Crew."

7.5.1 Embarkation Commandant (EC)/Embarkation Headquarters (EHQ) of the area in which the Port of entry in India is located, arranges clearing, handling and transshipment of imported consignment from the Port to the ultimate consignee. Shipping advise shall be sent to the port consignee i.e. the concerned Embarkation Commandant by telegram/FAX or Air-mail within 3 days of shipment.

7.5.2 All correspondence are to be made with DGOF Cell at EHQ Mumbai in respect of consignments imported through Mumbai Port. On behalf of Ordnance Factories, DGOF Cell Mumbai will co-ordinate with the EHQ Mumbai for necessary action. However duties and responsibilities of EHQ Mumbai vis-à-vis DGOF Cell are presently under review. For other Ports, the documents are to be sent directly to concerned EHQs.

7.5.3 Hazardous/Explosives Cargo are cleared mid-seas under supervision of Naval Armament Depot (NAD) at Mumbai and Alwaye. However, as regards duties and responsibilities of NAD Karanja (Mumbai) vis-a-vis EHQ Mumbai are presently under review.

7.5.4 The concerned Factory should make the following documents available to DGOF Cell in case of EHQ Mumbai or directly to EHQ Chennai/Calcutta for consignments arriving through the respective Ports.

Shipping Procedure, 1996, circulated vide Min. of Def. Letter No.3(5)/71/D(MoD) dated March 31,1977, provides that shipping documents and Original Bill of Lading, Invoice/Packing Accounts, Specifications to invoice where necessary, Packing List/Packing Note and Insurance Policy, if the stores are insured, are to be made available at least 14 days before arrival of the vessel at the port of discharge by the consignor to the Embarkation Headquarters. Delay in submission of these documents lead to delay in clearance and resulting in payment of extra wharfage or at times incorrect assessment of customs duty. Late receipt of customs duty exemption certificate also leads to excessive charging of customs duty. Such excess levy of wharfage and customs duty are avoidable, if documents are received in time.

The concerned Factory should make the following documents available to DGOF Cell in case of EHQ Mumbai, or directly to EHQ Chennai/Calcutta for consignments arriving through the respective Ports.

- (a) Original Bill of Lading.
- (b) Non-negotiable copies of Bill of Lading : 4 Copies.
- (c) Invoice/Packing Account - 5 Copies.
- (d) Specification to Invoice where necessary - 1 Copy.
- (e) Packing List - 1 Copy.
- (f) Packing Note - 1 Copy in addition to one in the packing.
- (g) Insurance Policy, if the stores are insured - 1 Copy.
- (h) Specification/Certificate of quality - 1 copy.
- (i) Customs Duty Exemption Certificate, if any.
- (j) Bank endorsement on Bank's Letter Head.
- (k) NMI (Not manufactured in India) Certificate, as required.
- (l) Consignee release order.
- (m) A copy of Certificate of Country of Origin may also be despatched for clearance.
- (n) The supplier is also required to send a sketch of the consignment along with out ward dimensions and gross weight etc. along with the despatch documents.

For **Air Consignments**, the following documents are to be furnished :

- (a) Airway Bill/Copy of Airway Bill
- (b) Cargo Arrival Notice.
- (c) Banker's endorsement on Banker's Letter Head .
- (d) NMI Certificate, as required.
- (e) Consignee's release order.
- (f) Invoice/Packing List
- (g) Customs Duty Exemption Certificate, if any.

7.5.5 The above documents should be made available to DGOF Cell Mumbai or EHQ Calcutta/Chennai, as relevant, 14 days in advance for effecting timely clearance. A suitable clause is to be incorporated in supply order to that effect that, if clearance is

delayed for non-receipt of documents from supplier in time, supplier should make good the losses towards payment or extra wharfage.

7.5.6 Consignee Factory should make very close liaison with the DGOF Cell at Mumbai, or EHQ Chennai/Calcutta and monitor activities relating to clearance of consignment and assessment of Customs Duty for ensuring timely clearance and correct assessment of Customs Duty.

7.6 PACKING

Stores/equipment supplied from overseas sources shall be packed in seaworthy packing to avoid any transshipment loss/damage and tropical storage. Clean-on-board Bills of Lading only will be accepted as a proof of outwardly seaworthiness of packing.

7.7 MARINE INSURANCE

Ordinarily Govt. goods are not insured as a matter of policy. However, where marine insurance cover is considered essential for any special reason and the supplier is not agreeable to bear the cost, necessary arrangement may be made with the concurrence of Finance. The policy should, however, be taken with the concerned nationalised insurance Co.

7.8 PAYMENT

The normal terms of payment to foreign vendors are 100% payment through irrevocable letters of credit or Direct Bank Transfer. The paying authority is C of F&A. For contracts below USD 50,000.00, DBT payment terms should be insisted upon, at the time of concluding the contract. All LC's will be opened through C of F&A in State Bank of India or any other Public Sector Bank. Confirmed LC's should not be opened as it undermines the credibility of our nationalised banks. Payment to the contractors is done through Irrevocable Letter of Credit.

7.8.1 Letter of Credit

Letter of Credit is a documentary credit. It is an instrument and an arrangement whereby a Bank undertakes to pay another firm/recipient, on behalf of a customer, an amount as per agreed stipulations and against presentation of specified documents. This is done in a trade transaction whereby goods move from seller to buyer and in return payment made from buyer to seller. This is done by ensuring the interest of all parties by Banks who act as fiduciary agent. The essential features of documentary credits are that they are undertakings made by Banks to make payments, made on behalf of a person, normally the buyer, to third person normally the seller. It is conditional undertaking, wherein compliance to the conditions contained in the documents is checked. The uniform customs and practices for documentary credits, laid down by ICC lays down in its Article 4 that Bankers should deal in documents and not in goods. Art. 14(b) stipulates that Bank should decide admissibility of documents and hence a careful scrutiny is imperative.

7.8.1.1 The parties to a letter of credit are :-

- (i) **Applicant** : It is normally the buyer, who applies to the authorised dealer to open a Letter of Credit. He should ensure that the items under import are not included in the negative list of export - Import Policy 1992-93.
- (ii) **Issuing Bank** : It issues the Letter of Credit and undertakes to make the payment. As per provisions of exchange control regulations of RBI only authorised dealers are permitted to open Letter of Credit on behalf of their customers, who are parties to the trade.
- (iii) **Beneficiary** : He is the seller of goods to receive the payment. He should be the first or more (Second) beneficiary in case of transferable LC.
- (iv) **Advising Bank** : A bank normally in the country of the beneficiary who advises the LC, thereby assuring genuineness. As per Foreign Exchange Control practices, if the advising bank does not involve itself in the process of checking, they must say to the beneficiary.
- (v) **Confirming Bank** : It confirms and adds its guarantee to the credit of another bank. It stays in and allows reimbursement/payment on behalf of the opening bank. The cost of confirmation is ordinarily borne by beneficiaries.

- (vi) **Negotiating Bank** : It is the bank nominated to negotiate the documents or pay the proceeds of the bill against presentation of documents specified.
- (vii) **Reimbursing Bank** : It is designated by the issuing bank to reimburse to the negotiating bank when payment is claimed against retirement of bills. Normally opening/issuing bank has accounts to which such reimbursement are to be debited.

7.8.1.2 The common types of credits are :

- (i) **Irrevocable LC** : This most commonly used LC cannot be considered without the consent of all parties concerned. In contrast revocable LC can be cancelled/amended by issuing bank at any time, except that it has to honour payment liabilities before notice of cancellation. Revocable LCs are not generally issued by banks in India unless specially permitted and therefore unless specified, all LCs are irrevocable.
- (ii) **Confirmed LC** : Sometimes a bank in the country of the beneficiary does confirmation. This is done at the instance of beneficiary, an undertaking by the confirming bank in addition to issuing bank. If the seller invites for confirmed LC, the cost of confirmation may be borne by them.
- (iii) **Sight Credit** : Under this credit the beneficiary receives payment upon presentation of documents to the payee/negotiating bank, after due examination by the bank.
- (iv) **Revolving Credit** : Under this credit a commitment made by the issuing bank to restore the credit to the extent of amount utilized. In cumulative revolving credit, the un-utilized amounts in a period can be added to the amount during next period. In the non-cumulative credits, un-utilized amounts lapse, if not used. The permissible duration and period of utilisation of these credits are specified in the Letters of Credit.
- (v) **Acceptance Credit** : The beneficiaries draw a time draft and the draft is accepted by banks for payment as a discountable instrument upon presentation of document. The seller may get the draft discounted against guarantee of issuing/confirming banks and the payment is debited to the buyer on maturity.
- (vi) **Deferred Payment Credit** : Both are retired after a period specified in the contract, after documents are presented. It is financing instrument for the buyer and ensures payment by buyer on the due date.
- (vii) **Transferable Credit** : In this arrangement, the first beneficiary, transfers his rights and obligation to one or more (Second) beneficiary/beneficiaries only once. Subsequent transfers to the third beneficiaries are not permitted. Whenever, partial shipments are permitted, fractions of a transferable credit can be made available.

7.8.1.3 The Letter of Credit should contain the following :

- (i) Name and Address of the Applicant,
- (ii) Name of issuing Bank of the Credit document on pre-printed stationary
- (iii) The Dates of issuance of Credit and date and place of expiry of the credit should be clearly stated.
- (iv) Name and Address of the beneficiary (or beneficiaries) in case of transferable credit)
- (v) The Letter of Credit should mention, if it is confirmed, revocable or not. In case of confirmed credit, the name and address of confirming Banks should also be mentioned.
- (vi) Terms of despatch i.e. FOB, CIF and FAS etc. should also be mentioned.
- (vii) The documents to be presented for payment
- (viii) The credit amount and its currency are also to be stated. The amount should be in figures and words. The expression "Circa", and "About" may be construed as 10% above and less than the amount stated.
- (ix) Credit is negotiable by Bank of beneficiary's choice, unless it is stated explicitly in the credit as to which Bank should negotiate.
- (x) The credit also states modes of payment like " at sight" or "deferred payment" terms.
- (xi) If the import bill for payment has not been drawn up as specified on Letter of Credit, or drawn up on acceptance basis, the same is referred to importer for their acceptance, before any bills are paid by the Negotiating Banks.
- (xii) In case final payments are to be accepted by the buyer, depending upon the pending claims to be settled, it must also be mentioned in the L/C. This will help in settling all the pending claims of the Purchaser before final payments are made.

7.8.1.4 Mechanics of opening of L/C

The actual mechanics of opening a letter of credit are as follows:

The concerned authority in OFB/the concerned Factory makes an application duly supported by (i) a guarantee in Form No.2 (ii) a copy of the relevant contract with amendment, if any and (iii) connected sanctions (foreign exchange etc.) and attested copies of relevant notes and correspondence. On receipt of these documents the Accounting Authority (C of F&A/Fys. Or Branch A.Os.), after necessary scrutiny/audit forwards the application together with the guarantee form to the State Bank of India (Overseas Branch). An undertaking as under is also required to be given to State Bank of India while sponsoring such cases.

The forwarding letter and undertaking will be signed “for Controller of Finance & Accounts(Fys)” by an officer whose specimen signature is on record with RBI.

SBI will establish Letter of Credit with the Foreign Bank (Supplier Banker) specified on the contract or as mutually agreed between the Supplier and the Purchaser.

The Foreign Bank makes payment to the supplier on presentation of the prescribed documents and claims the amount from the SBI etc. who in their turn gets reimbursed by the RBI who then sends debit advice to the Accounts Officer.

The Controller of Finance and Accounts (Fys) has requested under his U.O. No.S/I/019 dt. 30.11.81 that the following instructions should be incorporated in the Contracts providing for payment by letter of credit.

“As soon as a consignment is ready for shipment a copy of your invoice and inspection Note relating thereto shall be mailed directly to Group Officer I/C, Store Section, Office of the Controller of Finance & Accounts (Fys), 10A, S.K.Bose Road Calcutta 700001.

While claiming payment from the Bankers you will furnish additionally one more copy of your invoice and the Bill of Lading marked specifically as follows:

“Copy meant for Officer I/C, Store Section, Office of Controller of Finance & Accounts (Fys), 10A, S.K.Bose Road Calcutta 700001.

The documents on the presentation of which payment through letter of credit will be released shall be clearly laid down in the contract. Normally these should be (in requisite numbers).

- a) Clean-on-Board Bill of Lading
- b) Original Invoice
- c) Packing list
- d) Certificate of Origin from Seller’s Chamber of Commerce
- e) Certificate of Quality and current manufacture from OEM
- f) Dangerous Cargo Certificate, if any.
- g) Insurance Policy of 110% if CIF/CIP contract
- h) Certificate of Conformity & Acceptance test at PDI, signed by Buyer’s and Seller’s QA Deptt.
- i) Phyto sanitary/ Fumigation Certificate.
- j) Performance Bond/ Warranty Certificate
- k) Authenticated signature of the supplier or his authorised rep should be available with the bank and verified by them before releasing LC payment.

Small value say within Rs. 10 Lakhs equivalent payment may be remitted to the seller’s bank a/c by Direct Bank Transfer (DBT) which is more economical.

7.9 ACTIONS RECOMMENDED AT CONTRACTING STAGE.

- (a) Embarkation Headquarters concerned should be indicated as port consignee/landing officer in the contract in case of non-explosive cargo.

- (b) NAD Karanja/Alwaye should be indicated in the contract as port consignee/landing officer in case of explosive cargo. For P&M, being non-explosive cargo, clearance is to be through EHQ.
- (c) A copy of the contract should be forwarded each to Q/Mov (Shipping) in case of sea cargo and Q/Mov (Air) in case of Air Cargo, Embarkation Headquarters concerned and Landing Officer.
- (d) A copy of contract should also be forwarded to Govt. forwarding agent viz. Schenker & Co. for sea and Balmer Lawrie for Air Consignments respectively. Besides smooth function, it earns Govt. rebate.
- (e) Contracting authorities should make the supplier responsible to bear the cost of extra wharfage if the delays in clearance are due to late receipt of documents or due to wrong/obliterated marking on the packages by inserting a suitable penalty clause in the contract. The supplier should also be responsible to process the original Bill of Lading (B/L) expeditiously abroad and despatch by courier. In case delay is anticipated the foreign supplier should inform consignee/indenter and concerned Emb. HQ. The details of cargo, Marine & Ship despatched on date. Also Shipping Agent in India is to be requested to release cargo in absence of original Bill of Lading to avoid extra wharfage.
- (f) In case payment is through Bank a suitable clause may be added in contract that B/L will be presented in the Bank within 2 days of B/L. In case of any errors in documents due to supplier, extra wharfages on this account will be borne by supplier.
- (g) Clauses like 'shipper to order' and 'order of Bank' should be avoided as far as possible in the contracts so as to avoid delay in clearance and payment of extra wharfages.
- (h) Bank operating the Letter of Credit (LC) should be advised and closely liaised for arranging issue of Bank Release Order (BRO) immediately on receipt of documents to concerned Emb. Hqrs.
- (i) Whenever insurance is done it should be from Port to Consignee and not from Port to Port. Cargo is to be despatched through SCI or Air India normally.
- (j) A clause is to be added that one additional copy of packing note along with value of each item in respect of each package is to be forwarded to landing officer (concerned (EHQ). This will be in addition to the copy placed in each package. In case the same is not provided, and any loss is suffered an account of that, supplier will be required to make good the loss.
- (k) Modalities of recoveries towards the losses suffered on any of the above to be contained in the contract.
- (l) The code head of accounting should also be mentioned in the contract/covering letter.

Nature of transaction	Head to which to be debited	
	Customs Duty	Freight Charges
Stores	01/806/10	01/808/02

7.10. SETTLEMENT OF DISPUTES

Having regard to legal complications, cost involved in litigation and difficulties in enforcing legal awards, all efforts have to be made to settle disputes with overseas contractors by negotiation specially in case of small value contracts.

The sole-arbitration clauses as laid down in the general conditions of contract are not accepted by the foreign firms. As an alternative, Provision may be made, where necessary, for arbitration by three arbitrators, one each nominated by the Purchaser and the Supplier and the third, who should not normally be a native of either India or the contractor's country chosen by these two arbitrators. In case of disagreement between the two arbitrators, the third arbitrator may be left to be nominated by the Chairman of International Chamber of Commerce, Paris or similar prima facie neutral and reputed institutions.

7.10.1 Foreign Arbitration - The Arbitration and conciliation Act 1996 has provision for international commercial arbitration which will be applicable if one of the parties has its central management and control from any foreign country. The salient features of this law are:-

- (a) The parties can choose either Indian or Foreign Law governing arbitration.

- (b) To minimize interference of courts in stalling arbitration proceedings.
- (c) Arbitrator can be changed by mutual consent without approaching court.
- (d) Vesting of enhanced powers to arbitrator.
- (e) Clearly defining obligations of the arbitrator.
- (f) Arbitrators award to be enforceable as if it were a decree of court.

The Ministry of Law and Company affairs have advised that Arbitration Clause should specify that all our contracts have to be interpreted in accordance with the laws of the Union of India and arbitration proceedings shall be conducted in India under this act.

Purchase contracts with Foreign Firms should preferably be in the form of self-contained agreements, specially for large value contracts or those for costly plant and machinery which involves elaborate erection & commissioning, trying out of capacity/quality/consumption rate/time cycles warranty period etc.

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CHAPTER 8

DELIVERY DATE IN CONTRACTS, PROGRESSING OF SUPPLIES, REVIEW OF PERFORMANCE & INSPECTION OF STORES

8.1 DATE OF DELIVERY - ESSENCE OF CONTRACT :

As per the Clause 14(4) of the General Conditions of Contract (Form DGS&D-68 (Revised) the time for and the date of delivery of the stores stipulated in the contract shall be deemed to be the essence of the contract. It is, therefore, necessary that a definite date for supply of stores is stipulated in the contract and expressions, such as "Immediate", "Ex-Stock", "As early as possible", are avoided.

The delivery date in the contract should be stipulated in accordance with the provisions thereof in the accepted tender. Incorporation of the delivery period in the contract in variance with that of the tender and which is not agreed to by the tenderer will not constitute a legal binding contract.

It is required that delivery must be completed by the agreed date. The contract comes to an end, by way of a breach, on the failure of the seller to deliver the goods by the agreed date; and the purchaser may refuse to take delivery of goods, if offered after the agreed delivery date.

In certain cases where the contractor offers stores for inspection during the last few days of contract DP or on the last day of the contract DP the inspector can inspect the stores and sentence it as per standard franking clause.

8.2 DEFINITION OF DELIVERY DATE :

Delivery date in respect of contracts placed by the Factories shall be deemed to be as follows depending upon the terms of delivery specified in the contract:-

Terms of delivery	Date of Delivery
a) Local Delivery	The date on which the delivery is actually effected to the consignee.
b) Where Quality Assurance Officer is also the consignee	Where the Quality Assurance Officer and the authority nominated for the purpose of taking delivery of the goods is the same, the date of delivery will be the date on which the goods are tendered for inspection provided always that they are found acceptable to the Quality Assurance Officer-cum-Consignee. (N.B.: This definition will hold good only in cases where inspection is carried out at the consignee's premises and will not apply to cases where the inspection is carried out at firm's premises). Also see note at *
c) F.O.R. station of despatch	The date on which the goods are placed on Rail i.e. RR date, after inspection and acceptance by the Quality Assurance 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 the 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 Indian Port unless otherwise stated.

***Note:** Where the item is not inspected by the consignee themselves but by some other designated agency or undergoes proof test etc. by such other agency, a reasonable time for such activities should be indicated in the TE by taking into consideration such proof/test schedule. In case the actual time taken exceeds the the time provided for, which is not attributable to the supplier then purchaser has to cover such delays by way of DP extension without LD/ denial clause.

“The authority available to the inspecting officer in terms of clause 14(8) of the General Conditions of Contract to amend the delivery period where supplies are delivered within 21 days of the contract delivery period will not apply in respect of the Acceptance of Tender”

In fact the Grace Period is meant for completing inspection and other formalities culminating in delivery and not for offering the stores for inspection.

8.1 CLASSIFICATION OF INSTALMENT DELIVERY CONTRACTS :

A contract in the sale of goods to be delivered by Instalments may be: -

- i) An "entire" contract.
- ii) A “severable” contract.

Illustrations :

- i) **Entire Contract** : "Delivery to commence after 45 days from the date of receipt of order and to be completed within three months @ 20,000 units per month i.e. 31.03.99 or earlier.
- ii) **Severable Contract** : Delivery date : 7410 units by 15.2.99.
8510 units by 31.3.99.

According to legal advice, in the case of a severable contract, each Instalment constitutes a separate contract and extension in delivery period would be necessary for each Instalment separately. If stores are accepted after expiry of the delivery date of a particular Instalment without extension in delivery period being given with reservation of right to liquidated damages, the purchaser will not be legally entitled to claim the liquidated damages.

8.4 GRACE PERIOD :

The General Conditions of Contract - DGS&D-68 (Revised) Clause 14(8) provides a grace period of 21 days automatically in all the contracts, unless specifically not allowed.

For urgent requirements where the delay of 21 days would have perilous effect on the supplies, grace period may be disallowed. However, if it is intended not to allow the grace period in any particular case, the fact should be clearly stated in the Invitation to Tender that clause 14 (8) of the General Conditions of Contract DGS&D 68(Revised) will not apply in respect of this Invitation to Tender, and a similar provision made in the contract.

Where supplies are made within the grace period, there is no necessity for any extension in delivery period and the paying authorities will make payment without any amendment to the contract delivery period. No liquidated damages are leviable in respect of supplies made within the grace period. The extra expenditure the purchaser may have to incur on account of increase/fresh imposition of Sales Tax, Excise/Customs Duty etc. which takes place within the grace period of 21 days will also not be recoverable from the suppliers.

The period of 21 days is allowed as a matter of grace and is not intended to operate as extension of the delivery period and the same will be available only for despatch and not for offering stores for inspection which should be made within the original delivery period or the refixed date of delivery.

If the stores are tendered for inspection within the original D/P stipulated in the A/T and the firm despatches the stores within the grace period, the purchaser is bound to accept the stores even though the inspection continued after the delivery date and the inspection note was issued with a franking clause.

The grace period will only apply to the original contract delivery period/refixed delivery period and will not be applicable once an extension of delivery has been granted by the Purchase Officers.

When the contract is for delivering the stores in Instalments and when the delivery period for each Instalment is fixed, the grace period of 21 days will apply to the delivery period of each Instalment, and not only to the delivery period of the final Instalment.

8.5 PROGRESSING OF SUPPLIES/REVIEW OF PERFORMANCE :

Placement of the contract on a particular supplier does not essentially ensure the completion of supplies to the consignee's satisfaction. A constant watch after the placement of the contract, more often than not, thus becomes essential.

It is, therefore, necessary that effective watch is kept in respect of contracts so that timely action can be taken in case supplies are not materialising.

Each purchase officer upto the level of AGM will keep special watch for contracts relating to :

- a) Urgent demands
- b) Critical short supply items
- c) Cases where delivery has been delayed beyond 3 months.

Quality Assurance Officer should also be vigilant and there should not be any avoidable delay in inspection of stores in such cases.

8.6 PERFORMANCE SECURITY DEPOSIT - COMPLIANCE THEREOF:

The purchase officer should also watch whether the contractor has complied with the requirement of furnishing the Performance Security Deposit as per the terms and conditions of the contract. If not, timely action should be taken as per the guidelines given in Chapter-5.

8.7 REVIEW OF PERFORMANCE :

Where delivery dates are due to expire in the next month, Purchase Officers should immediately review the purchase files and if supplies have not been completed against any Acceptance of Tender as per records, issue a registered letter (well within the contract delivery period) to the firm asking them to intimate within 15 days or before the expiry of the contract delivery date, whichever is earlier, the prospect of supplies. This letter will be issued without prejudice to Purchaser's right in terms of the contract.

A copy may also be endorsed to the Inspector to immediately advise within the contract delivery date the prospects of completion of supplies by the firm even if extension has to be given.

The Purchase Officer should watch for the response to the above communication for taking further course of action.

8.8 OPTIONS AVAILABLE TO PURCHASER IN CASE OF NON-MATERIALISATION OF SUPPLIES WITHIN THE CONTRACT DELIVERY PERIOD :

When the supplies do not materialise by the stipulated contract delivery date, the purchaser has the following options depending upon the conditions/circumstances of the case :

- i) To extend the delivery date,
- i) To refix the delivery date,
- ii) To cancel the contract and to re-purchase the unsupplied quantity at the risk and expense of the defaulting firm.

8.9 POINTS TO BE CONSIDERED FOR EXTENDING THE DELIVERY/OR TO CANCEL THE CONTRACT :

Whether the extension of delivery date is to be granted as asked for by the supplier or the contract may be cancelled, would be decided on the merits of each case. The Purchase Officer has to balance time factor required for making repurchase and the needs of the production section i.e. whether supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative sources and in the latter case whether the production section can reasonably wait to take advantage of lower trend in prices. Extension should be granted only where the competent purchase officer is convinced that supplies 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. Extension of DP can be granted by CFA, but with prior concurrence of LAO/Finance.

8.10 REFIXATION OF DELIVERY DATE :

Normally, in the following categories of cases the delivery period should be refixed.

- i) where the manufacture of stores is dependent on the approval of advance sample and delay occurs in approving the sample though submitted in time.
- i) Where extension in delivery period is granted on account of omission on the part of the purchaser effecting his right to enforce delivery date within the stipulated time.
- ii) Cases where the entire production is controlled by the Government.

The delivery cannot be refixed to make the contract a severable contract, without the specific agreement of the firm, if the delivery originally stipulated made the contract as an 'entire' contract.

8.11 EXTENSION OF DELIVERY PERIOD :

8.11.1 Extension Of Delivery Date To Be Only With The Express Consent Of The Supplier :

Extension of delivery date amounts to changing the terms of the original contract and such an extension can be only with the consent of the parties i.e. the purchaser and the supplier. Extension granted without any application on the part of the contractor has no effect in law and does not bind the contractor. Therefore, the purchaser would have to consider the question of granting extension of the delivery date on a specific request from the contractor as well as formal acceptance by the contractor thereof. This is necessary to avoid litigation.

8.11.2 Consideration of Request For Extension :

In response to the follow up actions, the firm asks for extension of delivery period, the purchase officer can take further action to grant extension of delivery date.

An extension is binding on the supplier firm if it is granted on the same terms as asked for by the firm. While granting extension of the 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.

Illustration:

A contractor asks on 15th January for the extension of delivery period upto 31st May. There was delay in deciding firm's application and the extension upto 31st May asked for was granted on 1st April. Though grant of the extension may seem to be in accordance with the request for extension, the extension granted does not comply with the spirit of the application where under four months extension was called.

It is to be noted from the illustration given above that the extended delivery time should be fixed in such a way as to give the supplier effective time required by him for the performance of the contract.

8.11.3 Extension of Delivery Date to be With R/R and Denial Clauses :

The purchase officer within whose powers the value of the acceptance of tender falls, will be competent to consider requests for extension and to decide whether the extension of time should be given. Such extension in delivery period will be given by the competent purchase officer by reserving the right of the purchaser to levy liquidated damages for delay and with denial of increase in price, taxes, duties etc. taking place during the extended period. These are called R/R and denial clauses. Where value of acceptance of tender falls under the powers of OFB, the extensions will be decided by General Manager upto two years.

Standardised form of extension letter is given in Annexure- 23. In the case of contracts of imported stores on F.O.B./F.A.S. terms of delivery basis, the form given in Annexure- 24 should be used.

Copies of letter granting extension in the contract delivery period should invariably be endorsed to the Inspector concerned. In cases, where the time lag between the date of issue of the extension letter and the expiry of the extended delivery date is short the inspector should be informed telegraphically/by telex/fax of the extension of the delivery date.

8.11.4 Performance Notice - Notice-cum-Extension Letter :

If there is no response or no satisfactory response from the firm, the competent purchase officer should take a decision, depending upon the circumstances of the case whether to cancel the contract and repurchase the unsupplied quantity or to give a further extension of delivery period.

In case it is considered expedient to give further extension in delivery period in a bonafide effort to procure the stores, the purchase officer may do so by issuing **Notice-cum-Extension Letter (Performance Notice)** in the form as per Annexure-23. If there is no response within 15 days, notice may be issued to the firm in the manner as provided for in Annexure-25. If the contractor does not acknowledge/communicate acceptance of the extension-cum-performance notices, the Purchase Officer would then be in a position to cancel the contract after the aforesaid 15 days notice period, in which case the date of breach will still remain the originally agreed delivery date.

8.11.5 Extension of Delivery Period in cases where downward trend in prices is indicated :

When there is downward trend in prices, advantage thereof should be taken while considering the request of the contractor for extension of the delivery period. The following actions should be taken.

Where the lower trend in prices is such that it can be legally recovered through the pre-estimated damages against the higher priced Acceptance of Tender, then the delivery period should be extended with R/R and Denial Clause.

In case the amount of pre-estimated damages does not cover the total cost differential on account of lower trend observed, then the lower price should be counter offered to the firm. Where there is a range of lower price available, the competent purchase officer in consultation with Finance will determine the price to be counter offered to the firm keeping in view the rate at which the maximum quantity has been covered, the delivery schedule, capacities of lower quoting firms etc. Such counter offer should be sent in standard format given in Annexure-26. The Ministry of Law have opined that communication in this form is not likely to have the effect of keeping the contract alive.

In case the firm does not accept the lower price, the contract may be cancelled and action taken to repurchase the stores as per conditions governing the contract. In case the firm agrees to the lower price counter offered, the delivery period will be extended without liquidated damages and R/R and denial clauses.

8.11.6 Intimation of lower tend in prices to the quality assurance officer

When the lower trend in prices comes to the notice of the purchase officer, he should advise immediately the Quality Assurance Officer concerned, preferably by telegram/fax not to inspect the stores offered after the expiry of the delivery date while the question of securing the reduction in price, negotiation or repurchase at cheaper rates after cancellation of the original contract is under consideration.

Such an intimation should be given to the Quality Assurance Officer even in cases where the delivery date has not expired so that the Quality Assurance Officer is forewarned.

8.11.7 Guidelines for determining the lower trend in prices :

In the light of the case law opined by the Ministry of Law from time to time the following guidelines are indicated in determining the lower trend in prices.

- a) The quantity in the lower priced contract should be comparable with the existing contract.
- b) The delivery period in both the cases should be comparable.
- c) There should be more than one contract with lower price. If there is only one contract with the lower price, the tenders against that case should be examined to see whether the lower price in unaccepted tenders were available.

8.11.8 Extension of Delivery Period in instalment Delivery Contracts :

According to legal advice, in case of contracts provided for delivery in instalments (severable contracts), each Instalment constitutes a separate contract and the purchase officer should grant extension in delivery period as per standard format wherever there is delay in supplies against individual Instalments.

In the case of an "entire" contract providing phased delivery schedule it is not necessary to grant extension in the delivery period in the case of delay in intermediate Instalment and such extension would be necessary only in case of delivery beyond the final date for completion of delivery.

8.11.9 Inspection of stores after the expiry of the delivery period of a particular given instalment:

In the case of an Instalment contract, each Instalment constitutes a separate contract. If there is a default in the case of first Instalment, it is for Purchase Officer to make up the mind to take advantage of that default and cancel that Instalment quantity as per the provisions of contract conditions. If it is decided not to do so, there is no legal impediment to the acceptance of deliveries after the default of the first Instalment.

The question of appropriation will arise in such a case. It is the right of the supplier to appropriate towards the defaulted Instalment or subsequent Instalment. If he does not exercise this right, it is the right of the purchaser to appropriate as he likes.

It will be open to the purchaser to re-appropriate the stores offered after the expiry of the delivery period of a given Instalment towards the supply due for the next Instalment.

Illustration:

A contract provides Instalment delivery of 10,000 Nos. in March, 2000, 10,000 Nos. in April, 2000 etc. and the contractor defaults to supply anything in the month of March, 2000 and tenders some quantity for inspection in the month of April, 2000.

The purchaser has the right to cancel the contract in respect of Instalment due in March, 2000 in respect of which the default has already taken place and to reappropriate the stores offered towards the Instalment due in April 2000 instalment only.

For this purpose, it is necessary that a letter of cancellation in respect of the defaulted Instalment is issued at the time of acceptance of the part delivered stores if not already done or soon thereafter making it clear that appropriation of the stores is in respect of the April, 2000.

The Quality Assurance Officer should also inform the firm in writing that the stores tendered in the month of April, 2000 are being accepted for inspection against the Instalment due for that month and the acceptance of the same is without prejudice to the purchaser's right to cancel the Instalment due in the month of March,2000.

8.11.10 Refixation /Extension of the Delivery Period in Cases Where the Supplies Were To Commence after Approval of The Advance Sample.

a) Cases where there is delay on the part of the firm in submitting advance pilot sample :

In cases where the pilot samples are required to be submitted within the period stipulated in the Acceptance of Tender, the firm would have committed a breach of the contract if they had not supplied acceptable pilot sample within the time limit allowed to them in terms of the contract. In such cases if any extension of time limit is asked for by the firm for submission of the advance samples and if request for the same is to be accepted and it is decided not to cancel the contract on account of breach, the delivery period can be extended subject to the denial clauses. But before doing so, the firm will be addressed by a letter by adopting the format in Annexure-26 with necessary changes, and based on the firm's response the delivery period may be extended, subject to the denial clauses being agreed to by the firm.

a) Cases where advance sample is submitted in time but rejected :

There may arise cases where advance samples submitted by the firm within the prescribed time limit are rejected and the firm comes up with the request for extension of time limit for the submission of fresh samples and extension is granted in such cases.

Consequently, the delivery period would have to be refixed/extended with reference to the date of submission of fresh advance samples and their acceptance. Each case will have to be decided on its merit whether the delivery period be refixed or extended with R/R and denial clauses. Under the provisions of Clause-9 of the General Conditions of Contract (Form DGS&D-68 Revised), if the Purchase Officer is satisfied that a reasonable ground for extension of time exists, he may allow such additional time as he may consider justified for submitting the advance sample, and his decision shall be final. The aforesaid clause goes on to say that the extension of time may be granted on such conditions as Purchase Officer deems fit.

The terms and conditions on which extension of time limit for submitting the advance sample is granted to the firms may vary depending on the working of the delivery clause in each case and it may not perhaps be so advisable to impose in all cases R/R and denial clauses. Each case will have to be dealt with on its facts and circumstances. If terms and conditions incorporated in the letter of extension are accepted by the firm concerned within the period indicated in

the letter, the firm will be bound by the same. If on the other hand, the firm does not concur, the Department should take steps to cancel the contract treating the date fixed in the Acceptance of Tender, within which a satisfactory advance sample should have been submitted, at the date of the breach of the contract.

Accordingly, whenever an extension of time is granted for the submission of fresh sample in a case where advance sample has been rejected, the Purchaser should address a letter to the firm in the proforma given, in Annexure-27 and based on the firm's response and circumstances of the case, necessary action to extend the delivery period with or without reservation will be taken.

8.11.11 Follow-up action after issue of extension letters :

An extension letter as issued in standard form can operate only if there is an acceptance, 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.

If the contractor does not agree to the extension of delivery date subject to the conditions stipulated in the extension letter (i.e. R/R and denial clauses), the alternative course left to the purchase officer would be to cancel the contract and to repurchase the outstanding quantity provided that the purchaser is legally entitled to cancel the contract.

In case of difficult items or items for which sufficient capacity does not exist, the purchase officer will have to take a conscious and pragmatic view, whether on the refusal of the firm to accept the stipulated conditions, the contract may or may not be cancelled. Sanction of the competent authority would be required if it is decided to allow a firm to execute the contract by granting extension of delivery date without insisting on the conditions stipulated in the extension letter.

In respect of cases wherein suo-moto extension has been given in a bonafide effort to procure the stores, the purchase officer must obtain expeditiously the supplier's concurrence to the proposed extension of delivery date so that the purchaser's right to repurchase the stores as per the contract terms, in the event of the supplier not agreeing to the extension of delivery date, is not frustrated by lapse of time.

It is necessary that effective watch is kept and the following procedure has been laid down for keeping a watch.

- i) Purchase Officer should arrange to maintain a register showing the A/T No., name of the firm, original delivery period, extended delivery period as granted and remarks and make a note in the Register for review on a suitable date so that each case may be reviewed after 15 days of issue of extension letter to watch the acknowledgement and the prospect of supplies.
- ii) If as a result of review, it is found that the extension letter has neither been acknowledged unconditionally, nor acted upon by the supplier, a notice as per standard letter (Annexure-25) should be issued.
- iii) In the event of failure of the supplier to acknowledge the acceptance of the extension letter by the date mentioned in the notice or his failure to act on the extension letter, the Purchase Officer should proceed to cancel the contract for breach and after ascertaining from the Quality Assurance Officer that no supplies have been either made or tendered for inspection after the last agreed delivery period. This, action is necessary because if the officer had already accepted the stores for inspection, by his conduct the contract has been kept alive and the cancellation letter will not be of any effect. Besides, the purchaser becomes liable for damage for breach of contract.

8.11.12 Extension of delivery period for replacement consequent to rejection of stores by the consignee :

Supplies in replacement of stores rejected by the consignee need to be inspected by the Quality Assurance Officer before despatch. Such replacement supplies if tendered after expiry of the delivery period should not be inspected by the Quality Assurance Officer unless delivery period has been got extended by the supplier.

The purchaser, the Quality Assurance Officer or the consignee should not enter into any such correspondence that would have the effect of keeping the contract alive from the date of expiry of the agreed delivery period. Any request for effecting replacement of the stores during this period will tend to keep the contract alive and replacement supplies made after expiry of the delivery would involve extension of delivery period and inspection also.

8.11.13 Extension of delivery period not necessary for replacement in pursuance of the warranty/guarantee clause

In certain cases claim may be made for replacement of stores under conditions of warranty either implied or express contained in the contract after issue of the certificates by the consignee or Inspector in token of receipt of stores in good condition.

There can be no question of extension of delivery date for replacement/rectification of stores in pursuance of the warranty/guarantee clause.

8.11.14 Effect of correspondence with the supplier after breach of contract :

It is permissible to ask for some information regarding past supplies etc. at the same time making it clear to the party that calling of such information is not intended to keep the contract alive and it does not to waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. For this purpose, the letter should be addressed in the proforma given in Annexure - 28 to ascertain the supply position.

The Quality Assurance Officer should also not enter into correspondence with the firm after expiry of the delivery date stipulated in the contract.

8.11.15 Inspection of stores tendered at the fag end or last date of D/P :

As far as possible, the inspection should be commenced and finished during the validity period of the contract and Inspection Notes issued. In such cases, there would be no question of keeping the contract alive and no occasion of franking the Inspection Notes will thereby arise.

In case where the contractor offers stores for inspection during the last few days of the contract D/P or even the last day of the contract D/P, efforts should also be made by the Inspector to commence the inspection before the expiry of the D/P.

In case where it is not possible to commence & conclude the inspection before the expiry of the D/P, the Inspector should immediately on receipt of the intimation or request for inspection of the stores, bring to the notice of the contractor orally as well as in writing that the stores have been submitted for inspection at the very late stage and that it is not possible to commence/ conclude the inspection before the expiry of the D/P.

The contractor should also be informed that the stores offered for inspection will, however, be inspected till the completion of the inspection which can be after the expiry of the D/P and such an inspection continuing after the expiry of the D/P is neither intended nor is to be construed as keeping the contract alive.

The Inspector should invariably issue such notices to avoid the contract being kept alive before the inspection is concluded after the expiry of the D/P. In such cases where the inspection is commenced before the expiry of the D/P, a notice is sent to the supplier, and the Inspection Note is issued after the expiry of the D/P, the Inspection Note, whether accepting or rejecting the stores, should be duly franked as per the standard franking clause as an abundant precaution against keeping the contract alive.

The standard Franking Clauses to be used by the Inspectors are given below:

(a) Franking Clause To Be Adopted In The Case Of Acceptance Of Stores:

" The fact that the stores have been inspected after the D/P and passed by the Inspector will not have the effect of keeping the contract alive. The stores are being passed without prejudice to the rights of the Purchaser under the terms and conditions of the contract."

(b) Franking Clause In Case Of Rejection Of Stores :

" The fact that the stores have been inspected after the D/P and rejected by the Inspector will not bind the Purchaser in any manner. The stores are being rejected without prejudice to the rights of the Purchaser under the terms and conditions of the contract."

8.11.16 Despatch Of Stores After The Expiry Of D/P :

In terms of enquiry and contract conditions, the supplier shall not despatch the stores till such time an extension in D/P is granted by the Purchaser. If the stores are despatched by the supplier before obtaining an extension, he would be doing so at his risk and no claim for payment shall lie against the Purchaser either in respect of the cost of the stores despatched or any other expenses which the supplier may have incurred. The Purchaser shall, however, has a right to cancel the contract in terms of clause 14(7) of DGS&D-68 (Revised). It shall be no defence that the consignee has taken delivery of stores despatched by the supplier without getting an extension letter and therefore the contract has been kept alive.

If the consignee does not require the stores, he can reject the supplies made by the firm and tell the firm accordingly viz., that the supplies stand rejected for the reason that they have been made after the expiry of the D/P and simultaneously return the R/R to the firm. The Purchaser shall have the right to cancel the contract in terms of contract conditions.

If the consignee requires the stores he may accept and extend the D/P. Any such extension will be subject to applicability of denial clauses and right to claim damages for delay in supply.

8.12 CANCELLATION 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 as per Annexure -29 :

- a) 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
- b) If the supplier fails to perform any other obligation under the contract.

In the event the purchaser terminates the contract in whole or in part;

- a) The Performance Security Deposit furnished will 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) However, the supplier shall continue performance of the contract to the extent not terminated.

(Authority : No.77/P&MM/BS Dated 10.09.2001.)

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CHAPTER -8

MISCELLANEOUS MATTERS RELATING TO PURCHASE CONTRACTS

9.1 ACCEPTANCE/REJECTION OF STORES BY CONSIGNEE AFTER INSPECTION AND APPROVAL BY THE INSPECTING OFFICER.

As per General Condition of Contract (DGS&D-68/Revised) the contractor is entirely responsible for execution of the contract in all respects in accordance with the terms and conditions as specified in the S.O. Any approval, which the Inspector might have given in respect of stores, material or other particulars of the work/ workmanship involved in the contract (with or without test carried out by the contractor or the Inspector), shall not bind the Purchase Officer. Notwithstanding any approval or acceptance given by the Inspector it shall be lawful for consignee of the stores on behalf of the Purchase Officer to reject the stores on arrival at destination, if it is found that the stores supplied by the contractor are not in conformity with the terms and condition of the contract in all respects.

To exercise this right the consignee should undertake check of the stores immediately, on receipt, both quantitatively and qualitatively. It is essential that such right of rejection is exercised by the consignee within the reasonable time depending on the nature of the stores and the quantity involved and the contractor is notified of it, failing which it is likely that rejection may not be legally tenable. Clause 4(2) of the General Conditions stipulates that such rejection has to be notified to the contractor: -

- a) In case of stores within 45 days after actual delivery at the place of destination specified in the contract and
- (b) In case of plant and machinery, equipment to which additional conditions as per DGS&D 71 & 73 applies within 90 days reckoned from the date of receipt of complete equipment with spares and accessories. It is for the consignee exercising the right of rejection to prepare necessary documentary particulars immediately so as to

substantiate the rejection, to ensure that un-inspected stores do not get accepted. In addition, the consignee should check the stores on receipt with the details furnished in the relevant Inspection Note or Annexure thereof that will be submitted to him directly by the contractor as proof of acceptance of stores by the Inspecting Officer.

After necessary inspection and check the stores may be sorted into lots of :-

- a) Those, which conform to the specification and bear inspection mark and tally with the description of particulars given in the Inspection Note.
- b) Those bearing inspection mark but not conforming to specification.
- c) Those bearing inspection mark and conforming to specification, but not tallying with other particulars as indicated in the Inspection Note.
- d) Those not bearing Inspection Mark (i.e., unpassed).

Lots (a) should be accepted'

Lots (b) & (d) should be rejected forthwith.

Regarding Lots (c) the consignee should immediately bring the discrepancies to the notice of the Contractor as well as the Inspector who passed the stores and call for explanation of the contractor and if the explanation furnished by the contractor is unsatisfactory and in case the consignee have been given ground for concluding that the Inspection Mark are spurious and the stores are unpassed, he should reject lots (c) on the ground that the stores are unpassed and consequently the despatch was not in accordance with the terms of the contract, simultaneously informing the contractor that the unpassed stores received by him are lying at contractor's risk and cost and that the contractor must arrange to remove the same forthwith failing which necessary steps will be taken in accordance with law for its disposal and the cost incurred in keeping such rejected stores in custody and their disposal shall be recovered from the contractor in accordance with law. The same applies to lot (b) and (d) also as regards disposal and recovery.

If the firm has drawn any advance payment necessary action should be intimated in consultation with Ministry of Law to recover the amount.

9.2 CONTRACT WITH PRICE VARIATION CLAUSES :-

As per the General Principles of entering into a contract, no contract involving an uncertain or indefinite liability should be entered into. As a rule, firm prices should be stipulated in the contract, especially in case of short-term contracts where delivery is expected to be completed within a period of 4/6 months. However, in the present day uncertain market condition the firms may sometimes insist on variable prices especially in case of long term contracts. While this may be considered on merit in cases where no firm price offers are available and even if available, the same are not competitive. Even in these cases price variation should be allowed on the basis of a clear cut and well defined price variation formula, the data base of which should be variable with reference to authenticated documents, which the contractor should submit along with their claims for variation. The formula should provide for variation both ways, i.e. both upwards and downwards and not merely for escalation. A quantum of the contract price representing contractor's make up and other fixed elements should be earmarked as fixed.

As a matter of policy OFB does not approve acceptance of any variation with reference to wage factor, since this element of cost is not susceptible of effective scrutiny. In extreme cases wages variation may be considered only when orders are placed on public sector undertakings when they insist on the same. In case of private firms, as far as possible variation should be allowed to be computed with reference to principal material input only. In no circumstances conditions such as "prices ruling on the date of supply" shall be accepted except in case of PSUs such as IOC, HPCL, RCF but not in respect of Private Sector Units.

(Authority : Discussions with OFB/Finance on 25.06.2001)

.Framing of price variation formula will, for obvious reasons, vary from case to case depending on the nature of stores/equipment under order, the nature of material input, whether the same are indigenous or imported etc. Therefore, there is no question of devising any standard price variation, which would be applicable to all cases.

Price variation for imported stores/equipment will be related to few other additional elements apart from intrinsic cost/price of the manufacturer. These are exchange rate variation, variation in ocean freight and variation in the rate of Custom Duty. Where

orders are placed direct on the manufactures on the basis of FOB price, variation will, however, be related only to basic cost element viz. Materials, labour and overhead. The other additional factors (exchange rate, customs duty etc.) will come into play when orders are placed on Indian Firms on FOR basis.

DGS&D has laid down some guidelines in their Office Order No.16 dated 01.01.78 as regards PV Clause to be adopted for regulating variation with reference to certain elements of cost viz. Customs Duty, Excise Duty, Steel Price, Price of non-ferrous metal, exchange rate variation and wage escalation etc. These instructions may also be looked into wherever necessary.

9.3 PRICE INCREASE IN FIXED PRICE CONTRACT

As laid down in rule 247 of FRI Part-I (1963 Edition) any amendment affecting the contract price amounts to modification of contract warranting approval of next higher authority. This, however, does not extend to statutory variation, i.e. when statutory levies such as sales tax, excise duty etc. are levied/enhanced after placement of the contract and during the contract delivery period. In other words, extra expenditure resulting from such statutory levies will have to be paid and will not amount to modification of contract.

When the contract delivery period is extended, generally a condition is laid down that the purchaser will not be responsible for any increase in price due to any reason whatsoever including statutory levies.

Nevertheless, if under circumstances of each case and according to legal advice, it becomes necessary to entertain claims for such levies even during the extended period, the purchaser will have the remedy of recovering part or whole of the increased amount in the shape of liquidated damage as recoverable under the terms of the contract, increased/new levies being treated as a potential loss.

In all other cases against fixed price contracts where there is no price variation clause, the contractor does not have any legal claim for increase in the contract price for any reason whatsoever. Such claims can be considered only on ex-gratia basis. OFB have been given powers to accept increase in price against fixed price contracts upto a limit of 10% of the contract price. Similar power has been given to General Managers of factories to accept increase upto a limit of 5%. These powers may be exercised in cases, where price increase is justified on account of circumstances beyond the control of the supplier. The price increase in such cases should be allowed only after conducting negotiation with the supplier and after taking all relevant factors into account, such as whether effective alternative arrangements are feasible, whether the firm is really capable of supplying the required stores and the claims for increase is related to factors which could not be foreseen at the time the quotation was submitted etc. In determining the new price the aim should be to compensate the firm against the loss they would suffer but for the proposed increase, but in no circumstances the approach should be to protect the profit element in the same.

9.4 REGISTRATION OF FIRMS:

Purchases are required to be made not only at the most competitive price, but also from sources that are capable of supplying goods of the specified quality within stipulated delivery period. In other words, the reliability of the Supplier is a crucial factor in making tender decisions. The purchaser needs to have a fair idea of the antecedents of the firms, their resources, both technical and financial and their standing and reputation. For this purpose, a system of registration of firms for different products required by the purchaser should be in vogue.

As per latest instructions of MOD vide their letter no. 16(2)/2004/D(QA) dated 31.3.2005 (annexure-55) Vendor development, capacity verification and registration of vendors supplying input material to the Ordnance Factories shall be undertaken by the respective Ordnance Factory.

9.4.1 Procedure for Registration of firms.

Firms intend to get registered with Ordnance Factory shall apply to the factory in the prescribed form called "Vendor Registration Request Form". Based on the information furnished by the firms classification of the firms will be done by a multifunctional team of Gr.A officers from Quality, Production, Material Management and Finance function. The committee will be headed by AGM/QC of the factory. Firms qualifying will then be required to go through a process of physical capacity verification by a team of officers. The team shall verify the facts as furnished by the firms in their Vendor Registration Request Form and allocate marks and rating in "Vendor Quality Survey Report". After capacity verification the grading of the firms shall be done on the basis of guidelines and numbering scheme. In addition to grading, vendors will be assessed for categorisation depending on their infrastructures and capabilities for one or more type of activities like design, development & production. After vendor assessment and approval of recommendation to register a firm in the compendium of approved supplier by the accepting authority, a registration certificate, at a nominal fee, valid for 3 years shall be issued.

9.4.2 Vendors Registration shall be for a particular item or a group of items or for a process/ technology. The registration certificate issued to the vendor after carrying out capacity verification shall indicate the list of items or the process/ technology for which they are granted registration.

9.4.3 **A Vendor holding valid registration for an item in one 'factory' shall be considered as valid for other factories also.**

9.4.4 Detail procedure for Registration of firms is given under Standard Operating Procedure for capacity verification and vendor registration issued under Ordnance Factory Board letter no. 108/TIR/QCS dated 13.9.2005 a copy of which is included at Annexure 56.

(Auth: OFB letter 108/TIR/TS/QCS dated 13.9.2005.)

9.5 REMOVAL OF FIRM FROM THE COMPENDIUM OF REGISTERED SUPPLIERS:

A continuous watch needs to be maintained over the performance of the Registered /Established Firms. Removal of vendors from the compendium of registered suppliers may be ordered on the following grounds:-

- i) If a firm fails to execute a contract.
- ii) If the Composite Index of vendor rating falls below 70%.
- iii) If a firm is declared bankrupt or insolvent and in case of a limited company, it is wound up or taken into liquidation.

In the above said contingencies, except under © it shall be necessary to give the firm an opportunity of showing cause against the proposed action. Orders removing the firm from the compendium should be communicated to it along with reasons. Orders regarding removal for reasons mentioned in © above shall apply for all items for which the firm is registered.

The decision of GM i.e. the acceptance authority for registration of firms shall be final. However, in case of dispute between firm and factory, Member/TS, Ordnance Factory Board shall be the Appellate Authority.

(Auth: OFB letter no. 108/TIR/TS/QCS dated 13.9.2005.)

9.6 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. Presently, the authority in this regard is vested with the Chief Vigilance Officer of the Department of Supply.

9.6.1 Grounds 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.

9.6.2 Grounds 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, its 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 malpractice such as bribery, corruption, fraud, substitution of tenders, interpolation, mis-representation, evasion or habitual default in payment of any tax levied by law; etc.
- iv) If the Firm continuously refuses to return government dues without showing adequate cause and government are satisfied that this is not due to reasonable dispute which would attract proceedings in Arbitration or Court of Law, and

- v) If the Firm employs a government servant dismissed, removed on account of corruption or employs an official convicted for an offence involving corruption or abatement of such an offence, in a position where he could corrupt government servants.

9.7 GENERAL MECHANISM FOR REGISTRATION.

Open advertisement shall be made indicating intent for source development mentioning the requirement of the item. Advertisement will make it explicit that only actual manufacturers will be considered and tender will be issued after satisfying in respect of capacity & capability after due verification. Such other conditions in regard to specific plant & machines and manufacturing capability, which the firm must possess in order to manufacture and supply the item, should also be included in the advertisement stating that only those firms who possess these capabilities should apply. Otherwise their offers will be summararily rejected. Also the firm will be required to quote for minimum 50% of the intended quantity against Tender, otherwise their offer will be treated as invalid.

Vendor Registration Request Forms shall be issued to prospective vendors on request by each Ordnance Factory.

Based on the information furnished by the firms in the Vendor Registration Request Forms, classification of the firms will be done by a multifunctional team of Group 'A' officers from production, quality control, planning, material management and finance functions. The committee will be headed by AGM/QC. Qualification of Firms shall be done as per guidelines and marking scheme given in Guide. The firms qualifying shall be subjected to capacity verification.

The team for Capacity Verification shall comprise of officers from factory's QC Department and Production Department. The team shall consist of officers in gazetted Group 'A' or 'B' rank and at least one of the member should be a qualified lead auditor. If none of the member in teams is qualified lead auditor, an additional member at Sr. NG level with this qualification can be included in the team. The team will verify the facts as furnished by the firm in Vendor Registration Request Form, after visiting the firm's production units and allocate marks and rating in the vendor quality survey report.

After capacity verification the grading of Firms shall be done based on guidelines and numbering scheme. The firms meeting the specified criteria shall be included in the compendium of approved suppliers and registration certificate valid for a period of 3 years shall be issued to them. On expiry of the period the firm has to apply for renewal of registration. The charges for registration shall be as under:-

- | | |
|-------------------------------------|-------------|
| (a) Large & Medium Scale Industries | Rs. 5,000/- |
| (b) Small Scale firms | Rs. 2,000/- |

For more details regarding Capacity Verification & Vendor Registration instructions issued under OFB letter no. 108/TIR/TS/QCS dated 13.9.2005 (at annexure 56) may be referred to.

(Auth: OFB letter no. 108/TIR/TS/QCS dated 13.9.2005.)

9.7.1 Enlistment of Indian Agents.

As per Rule 143 of GFR-2005 the compulsory enlistment scheme of the Department of Expenditure, Ministry of Finance, it is compulsory for Indian Agents, who desire to quote directly on behalf of their foreign principals, to get themselves enlisted with the Central Purchase Organisation (eg. DGS&D). However, such enlistment is not equivalent to registration of suppliers as mentioned under Rule 142 of GFR-2005.

9.8 PLACEMENT OF ORDERS ON UN-REGISTERED FIRMS

9.8.1 Calling Capacity Reports

If it becomes necessary in any case to consider offers from unregistered Firms, orders should be placed on them only after due investigation as regards their capability/capacity.

In respect of SSI Units who are not already approved by N.S.I.C. reference should be made to that organisation.

In respect of other Firms capacity/capability should be investigated through the concerned inspector. A specimen of the letter that should be addressed to the Inspector in this regard will be found in OFB Form No.MM-24.

Capacity reports on all the unregistered Firms whose offers are proposed to be considered (having been found technically acceptable and competitive), should be obtained simultaneously and not piece-meal. Full particulars of the stores required and as offered by the Firms should be furnished to the Inspector along with full Specification/Drawings (if not already available with them). The Inspector should be suitably advised as regards the specific/special information required in each case, if any, in addition to what is covered by the standard form. Having regard to the validity of the offers received against the particular tender enquiry, a realistic date should be fixed for submission of capacity reports to the Purchase Officer.

On receipt of favourable capacity/capability reports, orders may be placed on unregistered firms, if their offers are otherwise found in order.

9.8.2 Assistance to Suppliers:

Suppliers sometime ask for purchaser's assistance in securing raw materials which are scarce and/or under some kind of distribution control and are required for production of the items on order. Assistance may also be sought in the matter of transportation etc. In all such cases where necessary assistance may be offered in the form of recommendations (such as Essentiality Certificate) to the appropriate authority bringing out the fact that the facilities in question are required for meeting Defence requirements, contractual commitments should be avoided as far as possible in keeping with the spirit of 4(4) of the General Conditions

9.8.3 Issue of material from Fy. Stock:

General Managers have been given powers to issue material to contractors from factory stock against Security Deposit equal to book value of the stores plus 5% plus another 5% on the all inclusive cost. They have also powers to waive S/D in case of Public Sector Undertakings and other reputed and reliable Firms. However, as far as practicable, such issues should be made in suitable instalments and fool proof arrangements made for their accounting including scrap arisings, if any, Such issues are apt in case of fabrication contracts.

As per Clause 5 of the General Conditions, the purchaser holds a lien on the material/items issued to a firm or obtained by them with purchasers assistance.

9.9 FORCE MAJEURE CLAUSE :-

The term 'Force Majeure' literally means irresistible compelling circumstances beyond one's control, pleadable in excuse of non-fulfilment of contract. Accordingly, a 'Force Majeure Clause' in a contract is intended to visualise the developments which may render performance of a contract impossible totally or for sometime. Although mainly a safeguard for the supplier against eventualities, the clause should provide for mutuality i.e. reciprocal relief from obligations. Force Majeure clause is not included in the General Conditions of the contract governing DGS&D/OFB/Fy. Contracts, and none should be incorporated in the Tender enquiry also. A suitable clause may be incorporated in the Supply Order where such provision is insisted upon by the Supplier.

A model clause as vetted by Ministry of Law is reproduced below:-

9.9.1 Force Majeure Clause as vetted by Ministry of Law

Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected part within 15 days of its occurrence informs the other party in writing.

Force Majeure shall mean Fires, Floods, Natural Calamities or other acts such as War, Turmoil, Strikes (as not limited to be establishment of the seller), Sabotage, Explosions, Quarantine restrictions beyond the control of either party.

It is understood and agreed between the Parties hereto that the rights and obligations of the Parties shall be deemed to be in suspension during the continuance of the Force Majeure event as aforesaid and the said rights and obligations shall automatically revive upon the cessation of the intervening Force Majeure event. The period within which the rights and obligations of the Parties shall be in suspension due to Force Majeure event shall not be considered as a delay with respect to the period of delivery and/or acceptance of delivery under the contract or otherwise to the defriment of either party.

Notwithstanding, the provisions of the immediately foregoing clauses it is further understood and agreed between the parties hereto that in the event of any Force Majeure persisting for an uninterrupted period exceeding 6 (six) months, either Party hereto reserves the right to terminate this contract upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in this agreement for the goods received.

(Authority : Vide M of D I.D. No.34(9)/2000/D(GS-IV) dt. 18.07.2001.)

9.10 TRANSPORTATION :

Consignments against orders placed by Factories are required to be despatched to the consignee factories by the cheapest mode of despatch and the shortest route. In actual practice this means despatch by goods train under Military Credit Note. As use of M.C. Notes is permissible only for Defence properties, it is necessary that the terms of delivery prescribed in the Supply Orders should be F.O.R. station of despatch. Selected Officers in Factories are authorised to issue M.C. Note. Generally, however, M.C. Notes for despatch of goods to the Ordnance Factories are issued by the concerned Factory and the provision made in the contract is usually as under: -

"To be despatched by Goods Train under clear R/R against M.C. Note to be obtained from the Consignee."

Officers who are authorised to sign and issue M.C. Notes are made personally responsible for care, custody etc. of these forms and also any extra expenditure caused to the state for incorrect preparation of the same or their misuse. Failure to pay freight by M. C. Note (to take advantages of concessional rates) under normal circumstances will give rise to extra expenditure which will have to be treated as loss and regularised as such. If, Transportation by Road is permitted and the transport contract has a PV Clause, the price hike in transportation cost is to be in commensurate with the hike of Diesel Price. A standard formula may be incorporated in such contracts.

(Authority : Vide Discussions with OFB/Finance on 25.06.01 on Material Management Manual)

Alternative and costlier mode of despatch may be resorted to where such a measure is considered inescapable to maintain continuity of production. Necessary powers in this regard have been delegated to OFB as well as the GMs which cover Road transport also. In certain circumstances, Transportation by air may also be authorised upto certain limits of freightage by OFB as well as HVF. The quantum of air - lift should, however, be restricted to the inescapable minimum and as a rule, should not exceed what is expected to be consumed during the time lag between receipt by air lift and surface transport.

Air lift to and from overseas sources will involve extra expenditure. As the Factories except VFJ and HVF have no powers for release of foreign exchange (except HVF), all proposals for such air lifting will be referred to the concerned section at Hqrs. duly supported by all relevant facts and figures as specified in Form No.SP(C)-12.SP(C)-11(Annexure- 30).

9.11 INSURANCE :-

It is the normal policy of the Govt. not to insure its property against loss or damage. It, therefore, follows that where the terms of delivery is "F.O.R - Station of despatch" or F.O.B./F.A.S., the consignments should not be insured. However, in special cases where the stores are of fragile nature or have such feature as would warrant insurance cover, consignments may be insured with Financial Concurrence with the subsidiaries of the General Insurance Corporation of India operating at the particular zone. The policies in such cases should be taken in the name of the consignee who will be responsible for timely submission of claims in the prescribed manner, if and when any loss or damage is detected/reported.

Where the suppliers offer to insure the goods at their cost or quote "F.O.R. - Destination" price inclusive of insurance charges or C.I.F. price, their price inclusive of insurance charges should be compared with the quotations of other competitors for the purpose of tender decision. Claims for payment of insurance charges separately in such cases should not be entertained as a rule.

9.12 ACCEPTANCE OF EXCESS/SHORT SUPPLY :

Sometimes due to various reasons supplies tendered against a contract may exceed or fall short of the contracted quantity. Small variations in such cases may be condoned. Accordingly in such cases variation (both ways) up to 5% of the contracted quantity may be accepted.

9.13 LIQUIDATED DAMAGES :-

Liquidated damages are damages which are assessed and determined in advance i.e. at the time of concluding the contract, by mutual agreement between the parties to the contract, as a measure of damage payable by the party which causes the breach to the other in the event of breach. This assessment of damages on account of delay in supply has been provided for in the Clause 14(7)(I) of the condition of contract contained in Form No.DGS&D-68(Revised). **The clause stipulates that in the event of late delivery of stores the purchaser is entitled to recover from the contractor by way of liquidated damages a sum equal to 2% per month (or part thereof) of the price of the store delivered late subject to a maximum of 5% of the contract price of the undelivered/delayed goods.**

The above clause also stipulates that the time for date of delivery of the stores as laid down in the contract shall be the essence of the contract. It is, therefore, essential that to safeguard the purchaser's right to recovery of the liquidated damages the contract delivery date must always be maintained as of the essence of the contract. Normally, the contract comes to an end on the failure of the seller to deliver the acceptable stores by the stipulated date and the purchaser may refuse to take delivery of the store offered after the said date. If delivery is taken unconditionally after stipulated date of delivery, the agreement as regards 'the time being the essence of the contract' would be deemed to have been waived and the purchaser would not be entitled to claim any damages for delay in delivery. Therefore, wherever occasion arises for extending the contract delivery date, unless a deliberate decision is taken to refix the same without claims from either side, the extension letter must make it clear that the extension is subject to purchaser's right to claim liquidated damages as provided for and also that the revised date would again continue to be the essence of the contract (reservation will also have to be made as regards purchaser not being liable for any increase in price of the store delivered late for any reason whatsoever).

It should be noted that liquidated damages, being related solely to the time factor of the contract, accrue only in cases of delay in supply. In other words, claim for these damages arises only when the contract is performed but not in time and only in respect of quantities, which have been supplied beyond the contract delivery date as originally stipulated. Liquidated damages have no relevance where the contract (or part thereof) is not performed at all.

9.13.1 Standard LD Clause :

In the event of delayed delivery of stores by the contractor, the Purchaser is entitled to recover LD @ 2% per month or part thereof of the cost of stores delayed to compensate for the delay in use of stores subject to a maximum of 5% of total cost of delayed supplies. The total cost includes taxes and duties.

(Authority : No.77/P&MM/BS dated 10.09.2001)

9.13.2 Token LD.

There may be situations when there are reasons for the delay in delivery by the supplier, but these are not adequate to waive off the LD all together. In such cases, at the sole discretion of the purchaser, a token LD up to 10% of normal LD may be imposed. Such cases must be approved by the CFA who approved the contract in consultation with IFA.

9.13.3 Potential Loss:-

There may be cases where the price of goods undergo a downward variation beyond the contract delivery date. This means that the purchaser suffered a potential loss due to delay in supply in-as-much-as, had the contract been cancelled, he could have effected repurchase at a lower cost. This is called potential loss and is recoverable in the shape of liquidated damages.

Notwithstanding the fact that generally a reservation is made in the letter extending the contract delivery date exempting the purchaser from any liability for increase in price of goods during the extended period due to any reason whatsoever including statutory levies such as Excise, Customs, Sales Tax etc., it sometime becomes necessary to accept claims on the above ground. In such cases also the extra expenditure incurred can be offset against liquidated damages incurred due to breach of time factor of the contract. Even where no tangible loss or damage is suffered by the purchaser but is put to inconvenience which cannot be quantified in financial terms, Liquidated Damages may be recovered according to DGS&D practice, the quantum in such case being restricted to 10% of the amount which is arrived at, at the stipulated rate of 2% P.M (i.e. 0.2%)

Where delay in supply is clearly due to wilful neglect on the part of the Firm, a token liquidated damage subject to a maximum as stated above may also be recovered as per DGS&D practice.

9.13.4 Factors to be considered for examining cases for levy/waiver of L.D

There could be cases when the delay in delivery was due to reasons not within the control of the supplier or when the supplier cannot be held responsible for the delay in delivery. In such cases, the CFA may consider waiving off the LD with the concurrence of IFA. However, in such cases, adequate reasons must be recorded to justify such a waiver of LD.

OFB , General Managers and other officers at the factories have been given powers to waive L/D against contracts which falls within their respective powers provided the delay in supply has not given rise to any loss (actual or potential) or inconvenience. In such cases, adequate reasons must be recorded to justify such a waiver of Liquidated Damages.

The following factors should be taken into account while examining cases for purpose of liquidated damages:-

- i) Whether the indenter has suffered any actual or potential loss due to delay.
- ii) Whether the loss as reported by the consignee has been quantified and can be sustained by evidence.
- iii) Whether delay in supply has resulted in payment of additional sales tax, excise duty or other import duties,
- iv) Whether delay has resulted in payment of additional freight charges,
- v) Whether the contract contained provision for recovery of pre-estimated damages,
- vi) Whether delay in supply has been wilful on the part of the Firm,
- vii) Whether delay has been caused by factors where the purchaser has any obligation such as payment within stipulated period, providing import licence or whether the Govt. have any control over raw-material or other facilities required for production/supply of the contracted store and

- viii) Whether the contract is in the nature of a development order (in which case the matter may be considered sympathetically).

9.13.6 Liquidated Damages For Non-Return Of Particulars/Samples

Clause of the general conditions provides for recovery of liquidated damages when the contractor fails to return drawings/specifications certified samples etc. in tact. The pre-estimated amount of such damages is three times the cost of the documents/samples or Rs.500/- whichever is higher.

9.14 HANDLING OF LEGAL NOTICE RELATING TO PURCHASE AND DISPOSAL CASES

All Legal notices, summons or other legal process etc. will be received and dealt with by the Legal Cell in co-operation and co-ordination with the concerned Purchase/Disposal Section, who will take steps to collect and preserve documents, identify and present the required evidence etc. as in the case of arbitration proceedings.

It is necessary to emphasise in this connection the importance and urgency underlying the cases filed under Order No.37 (as amended in Section 84 of the Code of Civil Procedure Amendment Act, 1976) according to which in all suit arising out of written contracts there is no right to the Defendant to defend the suit unless:

- i) He enters appearance within ten days of service of the notice in the suit and
- ii) Apply for leave to defend the suit within ten days of the service of summons for judgement served on the Defendant after he enters appearance.

(Extracted from DGS&D office order No.30 dt.1.1.78 which may be consulted, if necessary, for further details).

9.15 VIGILANCE IN EXERCISE OF 'OPTION CLAUSE' IN CONTRACTS:

Factories should decide at the tendering stage itself, as to whether any option clause for quantity enhancement will be included in the Supply Order to be finalised against the tender (It may be noted that even if no mention is made specifically about **Option Clause the right to order and additional quantity up to 25% is catered for** vide para B.1(a) of Special Instructions to tender contained in Form No.DGOF-3). Where it is decided to include such option clause, the matter should be indicated in the tender enquiry itself and **tenderers should be directed to quote for quantities mentioned in the tender as well as give consent for upto 100% enhanced quantities against option clause** to be operated within the currency of the initial supply order. The relevant TPC will decide on the inclusion of the option clause and the option quantity on the basis of the quotations received.

- a. Option quantities specified in any supply order must not exceed the quantity ordered against the original supply order.
- b. Subsequent exercise of the option clause will be decided on the standard factors like existence of requirement, market trend, quantity and quality of supply received etc. upto the point of time of exercising the option with due care to avoid over provisioning.
- c. The question regarding validity of exercising such option clause during refixed/ extended D/P has been examined by M of D in consultation with the Ministry of Law and DGS&D after which it has been decided that additional quantities can be covered under the option clause during D/P as originally fixed in the contract up to a ceiling of the percentage of the quantity indicated in the option clause. In case the D/P as originally fixed in the contract expires and extension is given to the firm to supply the balance quantity of materials outstanding at the relevant point of time, the percentage indicated in the option clause will be applicable only in respect of the balance quantity which was outstanding and in respect of which the D/P extension has been granted. In all such cases, however, it should be stipulated in the amendment/ extension letter that "other terms and conditions of the contract remain unaltered" with a view to ensuring that right reserved in the original contract subsists after the amendment.
- d. It is, therefore, necessary that proper vigilance is exercised to ensure that the option is exercised in time without fail, if :-
 - (i) additional demands are available for coverage,
 - (ii) there is no declining trend in the price of the stores.

(iii) For exercising necessary vigilance in this regard a Register may be maintained in the following form :-

S.O. No. & Date	Name & Address of the firm	Store	Qty. on order	Qty. under option	D/P	Option Utilisation Detail	
						Qty.	Date

If not already agreed upon a mutually agreed D/P shall be fixed for the additional quantity.

Option clause is normally exercised after seeing that supplies against the contract has started and hence it is normally done after receipt of 50% quantity, but if the D/P is going to expire and above mentioned two conditions are fulfilled, it can be exercised even early. Similarly for small quantity orders where entire quantity can be received in one lot leading to completion of the contract, it should be exercised as soon as it is known that the material has been offered for inspection provided above mentioned two conditions are fulfilled.

In the case of Empties of Shells, Cartridges etc. it should be exercised as soon it is known that entire quantity in one lot of Empty before proof is passed in inspection.

To assess there is no declining trend in price of the store.

In case of single vendor OEM, option clause should be normally operated up to 50% subject to there being no downward trend. However, in multi vendor contracts, great care should be exercised before operating option clause up to 50%.

(**AUTHORITY ; PARA TO BE RETAINED VIDE 77/P&MM/BS dt. 10.09.01**)

9.16 CVC GUIDELINES.

The Central Vigilance Commission Ordinance 1998 empowers CVC 'to exercise superintendence over the vigilance administration of various Ministries of the Central Govt, or corporations established by or under any Central act, Govt. companies, societies and local authorities owned or controlled by the Govt.' The CVC has been working towards system improvements to encourage transparency and the culture of honesty. In order to achieve this objective, the CVC have issued a number of letters containing instructions and guidelines. All procurement agencies must disseminate these guidelines to all concerned so as to ensure compliance at all levels.

The instructions and guidelines issued by the Commission from time to time are available on CVC website www.cvc.nic.in. For the updates also the website may be accessed.

9.17 DATA BASE ON COST & PRICES:

OFB is to make arrangement for data base on past contracts showing details of items procured, their essential spec(s), unit rate, quantity, total value, mode of TE, number of tenders received, number of tenders considered acceptable, reasons for exclusion of overlooked tenders, un-negotiated rates of L1 and contract rates are to be maintained to help in ascertaining reasonability of prices of future procurements.

The data in respect of supply orders in excess of Rupees 20 Lakh is to be made available in OFB website for information of all factories.

CHAPTER 10

RECEIPT OF CONSIGNMENTS AT THE FACTORIES

10.0 CONSIGNMENTS DESPATCHED BY SUPPLIERS WITHIN THE COUNTRY

10.1 DESPATCH BY RAIL

10.1.1 Delivery of consignments -

10.1.1.1. Action prior to receipt of consignment-

- (i) The Particulars of Railway Receipt will be entered in prescribed register and the estimated date of arrival of consignment recorded.
- (ii) The local railway authorities will be contacted at reasonable periods until arrival of consignment. In this connection it may be borne in mind that the Railways are absolved of all responsibilities after a wagon is placed at the siding and the consignee is duly informed. At any rate, Railways will not be liable for any damages after expiry of 7 days after termination of transit.

10.1.1.2. Delivery of full wagons

- i) Whether seals and rivets or locks of wagons are intact will be checked.

- ii) The wagon number shown on wagon will be checked with that shown on Railway Receipt. If the two do not tally, Railway Representatives must be present to witness opening of the wagon and checking of the contents.
- iii) If the seals and rivets or locks are not intact or show any sign of a tampering or if the seal is not clear or is not that of the consignor, this should be noted in the Railway Receipt and the Railway Representative must be present to witness the opening of the wagon and checking of the contents.
- iv) Loaded wagons will be weighed to facilitate approximate check with weight shown on Railway Receipt. Railway authorities do not, however, recognise such check weighments, if the original seals and rivets or locks are intact.
- v) All discrepancies will be recorded in the Railway Delivery Book as far as possible within three hours after unloading the wagon.

10.1.1.3. Checking of consignments

- i) Wagons will be unloaded under the supervision of a representative of the factory who, as far as practicable, should not be below the grade of a Chargeman of stores section. The persons deputed to check the contents of wagons will be clearly defined in Factory Orders.

Note - In the case of despatch and receipt of full wagonloads of items of special value, e.g., non-ferrous metal ingots, the gross and true weights of the wagons will invariably be checked in all factories, where facilities to do so exist, in the presence of the Railway Staff. This will enable a check to be made of the weight shown on the Railway Receipt.

- ii) Packages will be inspected to ascertain extent of damages, if any caused to them during transit.
- iii) The contents of packages with particulars shown on relevant issue Vouchers, either by counting or by weighting or both.

10.1.1.4. Delivery of Smalls

When taking delivery from the local Railway Authorities particulars of discrepancies will be recorded on the Railway Receipt and in the Railway Delivery Book.

10.1.2 Preferment of Railway Claims

10.1.2.1 Checking by GO/Committee/Board

All damaged packages will be segregated for inspection and checked by a Gazetted Officer, in cases which are important or show very unusual features, by a Committee or Board consisting of a Gazetted Officer and one or more other individuals.

In cases of deficiency in receipts, the packing cases with their notes and wrappers will be retained until such time as the discrepancy is settled.

The Gazetted Officer/Committee/Board will record to the best of their ability the apparent cause of discrepancy and record it on the Material Inward Slip. Such entries on the M.I.Slip will be quite clear and it will be recorded whether a claim on the consignor or the Railway can be made or not. In border-line or in very difficult cases, the decision on this point will be that of the GM. The principle for fixing responsibility for transit losses will be as under:

- a. In the case of contracts stipulating delivery F.O.R. Station of destination: -

The contractor is liable in such cases for any loss or damage that may occur in transit and to make good the same by replacement free of charge at destination or accept deduction from his bill for the quantity lost or damages in transit.

- b. In the case of contract stipulating delivery - F.O.R. Station of despatch :

- (i) In cases where the contractor has agreed to the condition that they will be responsible until the stores contracted for are received in good condition at the destination, the responsibility is the same as in (a) above.

(ii) In other cases i.e. where transit risk has not been accepted by the contractor, property in the goods passes to the consignee as soon as the same is accepted by the Rly. Administration for carriage, the Rly. acting as a bailee. Thereafter the contractor is not ordinarily responsible for any loss or damage to the goods that may occur en route, if he has been able to book the goods in a rail-worthy condition under a clear receipt without any adverse remarks as to the condition of the goods or the packing.

In cases, however, where goods are sent under a "said to contain" receipt the supplier should not be absolved of his responsibility for loss in transit unless he is able to prove beyond doubt that he was not responsible. Each case should, therefore, be examined on its merits.

In case of (a) F.O.R. destination contracts and (b) also F.O.R. Station of despatch contracts where the suppliers have accepted the transit risk as per (b) (i) above, the consignee will only lodge the claims with the carrier and report the fact to the suppliers. Thereafter, it will be for the suppliers to pursue the claims with the Rlys. and settle the matter.

c. Before coming to a decision to prefer a claim on the Railway the following points will also be considered:

i) Military stores are despatched at concessional rate of freight under Military Credit Note at owner's risk in terms of risk note 'B' which states that the Railway will be free from all responsibility for any loss, destruction, deterioration or damage arising from its conduct on the part of the Railway Administration or its servants provided that in the following cases :-

1) Non-delivery of the whole of the said consignment or of the whole of one or more packages forming part of the said consignments packed in accordance with the instructions laid down in the tariff or where there are no such instructions, protected otherwise than by paper or other packing readily removable by hand and fully addressed where such delivery is not due to accidents to trains or to fire.

2) Pilferage from packages or packages forming part of the said consignment properly packed as in (1) when such pilferage is pointed out to the servants of the Railway Administration on or before delivery.

ii) The Railway Administration will be bound to disclose to the consignor or the consignee how the consignment was dealt with throughout the time it was in its possession or control and if necessary to give evidence thereof, before the consignor/consignee is called upon to prove misconduct, but, if misconduct on the part of the Railway Administration or its servants cannot be fairly inferred from such evidence, the burden of proving such misconduct will lie upon the consignor/ consignee. It should be noted that "misconduct" and "negligence" has to be proved.

10.1.2.2 **Claims of Suppliers.**

a If it is decided that a claim on the supplier can be made, brief reasons for the decision will be recorded and action taken immediately. In the case of losses during transit, immediate action should be taken to establish whether the supplier is responsible in any way for the loss. Suppliers cannot normally be held responsible for losses during transit unless the Railway Receipt is qualified with a remark such as (1) "defective packing" (2) "said to contain", (3) "sender weight accepted" or negligence in packing can fairly be attributed to the supplier.

b If it is finally decided that the supplier will make good the deficiency at his expense, the stores received in replacement of those lost or damaged will be counted for by the Accounts Officer as "Miscellaneous Receipt."

c. If the supplier is a Govt. Department the discrepancy will be brought to notice on the Receipted copy of the Consignor's Issue Voucher which will be returned to the supplier and in the cases of supplies from Defence Establishment accompanied by a Discrepancy Report on the prescribed form. If the supplier does not accept the discrepancy, it will be reported to DGOF for decision.

Such reports will be accompanied by 3 copies of important correspondence together with the relevant loss statement, in quadruplicate, and will be routed through the Accounts Officer to the DGOF for a decision.

10.1.2.3 **Claims on Railways.**

a. If it is decided that a claim on the Railway can be made, this should be recorded with adequate reasons and the claim preferred immediately.

- b. In all cases formal claims must be received by the Railway within six months from the date of the Railway Receipt. They must include the required particulars and be addressed to the prescribed Railway Authority and arrangements made to secure proof of delivery.
- c. If on some later date the full consignment or a portion thereof is delivered by the Railway the stores will be accounted for by the Accounts Officer as "Miscellaneous Receipts", being brought on charge by the Factory by MI Slips as Certified Receipt Voucher under R.A.I. instruction 913. In such cases the claims on the Railway should normally be withdrawn and the net loss, if any, written off under normal rules. If however, it is considered that a modified claim can be established on the Railway, the original claim should be modified and pursued to finality.
- d. Where iron and steel structural viz. angles, bars, channels, joists(R.S.), poles, rods, stay roads and tees are booked in wagon loads and loaded in open wagons under special packing conditions as prescribed by the Ministry of Railways(R.B.), claims of losses or shortages occurring en-route should be preferred by the consignee on the Railway Authorities in the following cases irrespective of whether the materials were booked under a 'said to contain' Railway Receipt, or under a 'clear Railway Receipt', except in cases where the loss or shortage was due to an act of God, civil commotion etc. over which the Railways have no control :-
 - i) In respect of despatches in covered wagon the 'seals' are found broken at the destination station.
 - ii) In respect of despatches in all types of open wagons when the 'lead seals' of the packages despatched in an open wagon under 'special packing condition' are found broken at the destination station and or the binding wires on structural are out or broken and the contents of the open wagon are disturbed.

10.1.3 Assistance by OFB - In the event of any claim on the Railways not being brought to a satisfactory conclusion within 6 months from the date of preferment, the case will be reported to OFB. A clear resume of the case and three copies of all important correspondences including the actual claim will accompany all such reports.

Note: - Copies of routine correspondence issued by Factories in the ordinary course of pursuing such claims are not required by OFB.

10.2 DESPATCHES BY ROAD:

The procedure as for Rly. consignments will be adopted mutatis-mutandis and deficiencies/defects/damages clearly recorded and noted down in the Challan/ Delivery Note accompanying the consignment. Claims should be lodged with the carrier or the supplier, as found appropriate according to terms of the contract(s).

The Lorry Receipt will not be considered at par with Railway Receipt as ownership does not pass on to the the purchaser and carrier is not a government owned. Only delivery challan with provisional receipt by factory will be considered at par with Railway Receipt.

10.3 DESPATCHES BY SEA.

10.3.1 The concerned Embarkation Commandant clears such consignments at the port of embarkation.

10.3.2 Anticipated Put-turn Report-Intimation of a shipment will be generally sent to the Embarkation authorities at ports by bill of lading packing notes/Invoice. On receipt of this intimation the Embarkation Authorities will prepare the Anticipated Out-Term Report (AOTR) which will broadly contain the particulars of the cargo expected to arrive by the vessel and distribute to all concerned as a matter of advance information.

"The consignee factory on receipt of the Anticipated out- turn Report from the Landing Officer will forward the 'Retention' copy of the Packing Account to the OFB, Calcutta for issue of Disposal order and return."

10.3.3 Clearance against Bill of Lading. The Embarkation Commandant on receipt of the stamped and negotiable copy of the original bill of lading will surrender it, duly signed, to the Steamer Agents and obtain the Delivery Order for the goods.

(Note:- In case the Bill of Lading is in favour of the Consignee or any other authority, it will be ensured by such authority that it is endorsed in favour of the Landing Officer concerned and sent to him immediately on receipt to enable him to obtain the Delivery Order from the Steamer Agents).

10.3.4 On receipt of Shipping documents, the following actions will be taken :

- a. Consignee Factory to forward shipping documents DEC (Duty Exemption Certificate obtained from M of D), Bank endorsement, Bill of Lading etc., to DGOF Cell, Mumbai/EHQ Chennai, 14 days in advance of expected arrival of ship.
- b. Anticipated Out Turn Report (AOTR). Escort is to be arranged, if asked for.
- b. Bill of Entry will be prepared by EHQ.

In case any of the documents required for clearance of consignments was not sent earlier, the same has to be rushed to the DGOF Cell or concerned EHQ for effecting clearance within the due date.

- d Assistance and payment of Custom Duty.
 - i) Invoice/Packing list/Specification Certificate to be sent to EHQ, if not sent earlier.
 - ii) Consignees have to send Technical representative, where required.
 - iii) Custom Duties Exemption Certificate to be sent in advance.
- e. Marine/Insurance Survey : Consignee has to send Technical representative for Marine/Insurance Survey. Consignee will send Technical representative whenever required.
- f. Prefer claim raised Port Trust Authorities/Agents/Customs for short receipt of consignments and damages etc.; Consignee has to forward the cost/repaired value/depreciated value of the Stores, if required. The invoice of the items wise value is to be sent to EHQ, if not available at their end. Consignee has to confirm the correctness of claim.
- g. Despatch of Stores to the ultimate Consignee:
 - i) The normal mode of despatch of Stores is by Rail, for full Rakes. However, sanction to move Stores by Road is to be given by the Consignee whenever asked for by EHQ. Other-wise transport is to be arranged by Consignee, when transportation by Rail is not feasible.
 - ii) Disposal Instructions are indicated by Consignee for "Will follow" Consignment well before the arrival of the ship.
 - iii) Consignee is to send escorts wherever necessary.
- h. Issue of FOTR (Final Out Turn Report) : Consignee has to confirm the correctness of the FOTR.

N.B: In all cases where Stores are cleared on letter of Guarantee/Indemnity Bond, Expeditious action will be taken by Controlling Hqrs. to obtain original Bills of Lading from the shippers/suppliers/consignees to redeem the Letter of Guarantee/Indemnity Bond.

10.3.5 **Clearance from the Customs** : Customs Bill of Entry, completed in all respects will be submitted by the Embarkation authorities to the Customs to effect clearance of the stores through the Port Trust.

10.3.6 **Clearance from Port Trust** : 'Port Trust Chappa' or 'wharfage Bill of Entry' will be prepared and submitted by the Landing Officer to the Port authorities for effecting delivery of the goods.

Survey of cargoes landed damaged : As soon as the packages are landed, they will be checked up with the remarks list of the Port Trust and application will be made to the Steamer Agents to arrange survey of the package(s) found damaged, irrespective of the fact that they appear or not in the remarks list of the Port Trust. Immediate attention of the Port Trust authorities will be drawn to damaged stores, which do not appear in the 'remarks list'. Application for survey will be made within 3 days of the landing from the vessel.

10.3.7 **Booking of goods by Railway** : Stores intended for Ordnance Factories will be generally booked by Rail at a concessional Tariff Rate against Military Credit Notes at owner's risk. Despatch from the Docks by Rail will commence as soon as the cargo is located in the Port Trust Sheds. Endeavours will be made to despatch each consignment as a whole. Consignments covering full wagonloads will be despatched direct to the Consignees from the port.

Small consignments will be sent through the Ordnance Depots for reasons of economy in Railway freight. Ordnance Depot will receive the Small consignments from the Embarkation authorities and as soon as full wagon load is completed, they will despatch them in a wagon to the consignee.

10.3.8 Convoy Notes - Is an accounting document between the forwarding authority and the consignee. The forwarding authority will issue convoy Note. The distribution of this document will be 2 copies in each wagon and one copy to consignee with the Railway receipt.

If stores from more than one vessel are placed in one wagon, Convoy Notes will be prepared from stores from each vessel. The consignee factory will return one copy of the Convoy Note duly acknowledging the receipt of the stores to the Embarkation Commandant, Ordnance Depot concerned within one month from the date of receipt of stores.

10.3.9 Railway Receipt - Railway Receipt (a copy of the Invoice or Way bill) is granted after the goods are booked by the Railway Authorities and sent to the consignee with a copy of Convoy Note without delay.

10.3.10 Wagon Despatch Signal - After the goods booked 'Wagon Despatch Signal' will be issued to the Consignee Factory quoting wagon numbers, tonnage of stores despatched, Railway receipt number and also quoting reference to the relevant item number in the Anticipated Out-turn Report.

10.3.11 Final Out-turn Report - On completion of the clearance and despatch of all consignments shipped per vessel, the Embarkation authorities at the port will prepare a Final Out-turn Report in respect of cargoes arrived by that particular vessel and distribute copies to all concerned. A copy of the Final Out-turn Report together with the 'Returnable' copy of the Packing Account with its portion 'A' of page 3 duly completed will be also sent to the consignee concerned as a matter of final information regarding the disposal of the cargo arrived by the vessel.

10.4 SHIPMENT CLAIMS

10.4.1 Claims against Steamer Agents.

Authorities responsible for such claims : The responsibility for handing claims in respect of cargoes short landed (i.e. actually shipped from the forwarding station but not discharged at the port of destination) or landed damaged at ports is that of the Embarkation Commandants at ports who will deal with them from the time of initiation to the time of their final settlement.

As soon as a case of short landing or damage to an imported cargo becomes apparent, the Embarkation Commandant will at once make a formal application to the shipping companies calling for the Marine Survey of the goods so as to assess the extent of loss/damage. (Marine Surveys are conducted under the authority of the carriers by approved parties who record their observations in the report to the carriers). Marine surveys will be held within the stipulated time limit (generally 3 days from the date of landing of the package) and claims against the Steamer Agents will be preferred within the prescribed time-limit, with all available supporting evidence and pursued till its final settlement or repudiation in accordance with the provisions of Law.

A copy of the claim on account of stores short landed or damaged will be forwarded to the Controller of Defence Accounts in whose area the port is located for watching the progress of the claim. The amounts recovered from the shipping companies will be credited into the treasury on I.A.F.E.507(Military Receivable Orders) and the Treasury Receipts(triplicate copies of Military Receivable Orders, duly receipted by the Bank) will be forwarded to the Controller of Defence Accounts concerned in whose area the port is located.

The Army Headquarters, New Delhi in consultation with the Ministry of Law and Ministry of Finance (Defence) will decide the question whether a legal action will be taken in a case or a claim will be dropped. The losses/damages discovered at the port of landing as also information on any claims preferred on the carrying companies will be endorsed on the relevant Packing Accounts by the Embarkation Commandant concerned, to be transmitted to the consignee factories.

10.4.2 Claims against the Port Trust.

The Embarkation Commandant at ports are also responsible for preferring claims against the Port Trust Authorities on account of stores 'landed but missing' or 'found damaged' while in their custody. In cases of claims for stores 'landed but missing', wharfage charges and customs duty will invariably be added to the value of claim in addition to other charges, while in respect of damages', customs duty only will be added.

9.1.1 Consignee will be responsible to make available requisite shipping documents and cost of losses/repairs to the damages. Action are to be taken in due time in view of time bar applicable under the port laws and **Indian Carriage of goods by Sea Act 1925**. It will be noted that in case the claim becomes time barred for reasons attributable to consignee, onus of the regularisation of loss by obtaining sanction of competent authority will be on the consignee.

10.4.4 **Contracts/Supply Orders** : It should be sent to EHQ at the earliest and ahead of the expected date of despatched from abroad. If, for some reasons, it is not possible to furnish a complete copy of contract, the contract No., expected date of arrival of such stores in India, name of the consignee and quantity and nature of Stores with a certificate that these are Defence Stores, will be sent to EHQ. However, the requisite documents should be sent at the first opportunity to DGOF Cell/EHQ as may be relevant.

10.4.5 Packing Note : As per Marine Laws and Customs Act, the compensation from the Shipping Co./Port Authorities and refund of Customs Duty are assessed on the basis of each package. It is, therefore, imperative that the following details are submitted in support of the claim against each package involved :

- (a) At the Survey they should be able to establish the quantity and nomenclature of the Stores packed by the consignor in the package involved.
- (b) Value of the items received short/damaged in the package involved.
- (c) If claim involves whole package, the value of package.

Package-wise details of stores are given in packing note in each packet. Copies of packing notes are not normally forwarded with other shipping documents. It has been found that whenever there is pilferage, this document packed inside the package is also removed along with the stores taken out so that loss can not be established. It is, therefore, imperative that while finalising a contract, the contracting authority include a specific clause in the contract for supply of an additional copy of packing note along with value of each item in respect of each packet to the landing officer (Embarkation Commandant) . This will be in addition to the copy placed inside each packet. In case of loss on this account, a suitable penalty clause should also included.

Indent carriage of goods by sea at 1925, Para 5 (4) , Art. IV of Schedule II : It stipulates that "Neither the carrier nor the ship shall be responsible in any event for loss of damage to or in connection with goods if the nature of value thereof has been knowingly mis-stated by the Shipper in the Bill of Lading".

In case the store are shipped 'To order of shipper' , the agents do not grant delivery order and the stores remain uncleared with the Port Trust till such time as the original Bill of Lading duly endorsed in favour of EHQ is produced or a Released Order is obtained from the Shippers abroad. The responsibility for regularising due to failure of the consignee to fulfil this requirement will rest with consignee and no claim is preferred by EHQ.

10.5 PROCEDURE FOR SUBMISSION OF CLAIMS FOR STORES IMPORTED FROM U.K./USA AND THE CONTINENT UNDER THE BILL OF LADING RECEIVED FROM THE DGSW, LONDON/USA.

According to the existing procedure claims for short landed or damaged stores in respect of shipments arranged by DGSW will be preferred on the Agents of the Shipping Companies in India for settlement. The following points will be carefully remembered while preferring claims against the Steamer Agents.

- a. That the claims will be at the invoice rate i.e. C.I.F. cost.
- b. That in cases of shortages or losses in contents, claims will be lodged on the Steamer Agents irrespective of the tolerance limits prescribed for claims against the suppliers.
- c. Those in case of shortages or damages to stores, proportionate customs duty will also be added.
- d. Those claims will be submitted to the Steamer Agents within the prescribed time limit.

10.6 CLAIMS AGAINST THE SUPPLIERS : PROCEDURE TO BE FOLLOWED

To ensure that the claims against the overseas suppliers for losses or damages due to their faults do not get time-barred, the consignee factories will check up the contents of the packages immediately they are received from the port and forward at once a 'discrepancy report' for shortages or damages detected to the Director General, Ordnance Factories, Calcutta.

The discrepancy Report must be complete, precise and correct in all particulars, viz., quantity of stores found short/damages, value involved including the estimated cost of repair if reparable at the consignees and all such information that will be helpful to DGSW London to negotiate with suppliers for settlement of the claims. The reasons for damage/rejection of stores, including any manufacturing defects, will be furnished in detail along with the conditions of packing noticed. It will also indicate whether replacement is necessary or not.

While preferring claims against the suppliers the tolerance limit as prescribed by the Depot of Supply will be adhered to where there is no prima-facie evidence of defective packing on the part of the suppliers.

Time limit for submission of claims to the DGSW London.

- i) For shortages, damages etc. 6 months from the date sailing of the vessel
- ii) For defects and faults in material workmanship, manufacture etc. As per terms of the contract including warranty

10.7 LIMIT UP TO WHICH CLAIMS CAN BE WAIVED

The discrepancies will be considered as trivial and need not be perused, if the total value does not exceed \$15 in the case of imports through India Supply Mission, Washington and \$5 in respect of stores imported there DGSW, London. However, claims for the loss of vital components, which are quite essential for the running of the entire machinery instruments, should always be preferred irrespective of the value involved.

10.8 ASSESSMENT OF CUSTOMS DUTY

For purposes of valuation and assessment of customs duty, the stores can be broadly classified into the following categories :

- (a) Non-dutiable.
- (b) Dutiable.
- (c) Preferential assessment.

10.8.1 Non-dutiable store

Consignee will advise DGOF Cell/EHQ Concerned on non-dutiable items. For such items customs duty exemption certificate (DEC) is to be obtained, Consignee will take action to obtain DEC from MOD signed by appropriate authority as per ICT Act as soon as supply order is concluded. DEC is to be obtained well in advance of arrival of consignment and made available to EHQ.

10.8.2 Dutiable stores

- (h) Each store is required to be classified under appropriate I.C.T. item for purposes of assessment. It will be ensured that every possible care is taken in indicating the correct I.C.T. classification for each item in the Bill of Entry. Consignee should advise DGOF Cell/EHQ concerned in time on the classification applicable for assessment of Custom Duty.
- (i) The other important aspect is the authentic proof of value. Invoice/packing accounts, where available, will invariably be furnished. Consignee should keep close liaison with DGOF Cell/EHQ concerned for documents/certification etc. as required.

10.8.3 Preferential assessment :

Preferential assessment of duty is permissible in respect of some stores provided documentary evidence e.g. country of origin, certificate is produced before the customs authorities. It will be ensured that the required documents/certificates are made available to DGOF Cell/EHQ for submission to customs authorities.

10.8.4 Refund claims/appeals/revision applications :

The claims for refund of customs duty can be broadly classified as under :-

- (a) Claims pertaining to short landed cargo,
- (b) Claims pertaining to the cargo landed but missing from the port premises,
- (c) Claims pertaining to the packages pilfered/damaged before or during landing ,
- (d) Claims pertaining to packages landed in sound condition but damaged/pilfered during storage with port authorities.
- (e) Claims pertaining to excess levy of customs duty due to arbitrary assessment, difference of opinion on ICT classification, levy of duty on exempted stores and mistake in calculations.

10.8.5 Consignee Factory will follow up the issues and pursue with DGOF Cell/EHQ concerned for filing claims with concerned agency within time limit available for such purposes. All supporting/proof etc. are to be provided, as required, and it is to be ensured that no claim becomes time barred for want of action on the part of consignee. Similarly revision application/appeals are to be pursued where appropriate.

10.8.6 Claims pertaining to excess levy of customs duty

- a. **Arbitrary Assessment** : Normally there should not be any case of this nature because in the absence of Invoices/Packing Accounts, the Customs Authorities accept valuation certificate issued by Min. of Def. With the concurrence of associated Finance. However, in case where invoices/packing accounts or valuation certificates are not available consignee should examine the matter and arrange for necessary action.
- b. **Difference of opinion on ICT items** : In such cases, relevant documents and data should always be made available to Embarkation Headquarters. The grounds for a claim should be clearly stated and supported by documentary evidence.
- c. **Refund Claims due to Levy of Customs Duty on Exempted Stores** : If the Assessing Officer does not accept the Duty Exemption Certificate and levies the Customs Duty, reasons therefore and the additional evidence required by them in support of Duty Exemption Certificate, the same are to be furnished so as to ensure that the refund claim, when preferred, is duly supported by additional required data and evidence. This will avert the necessity to go in for appeals/Revision Petitions and considerably reduce the work required to be put in on appeal/Revision Petition.

10.8.7 Revision and Appeals :

In the event the submissions of Embarkation Headquarters and the consignee is not accepted by the Collector Customs, petition for Revision may be filed with the Appellate Collector and then with Customs Excise and Gold Control Appellate Tribunal (CEGAT). For filing appeal with CEGAT approval of Committee of Dispute (COD), Government of India is necessary.

10.9 Despatch by Air: -

OFB have powers to authorise despatch by Air under certain circumstance upto Rs.1.50 Lakhs in freightage in each case. Limited powers for air despatch are available to the General Managers of VFJ and HVF also. As far as possible air-despatch should be arranged through Air India International.

- 1) Clearance of consignments by Airfreight a) the responsibility of clearing parcels received by Airfreight is vested in the respective. Embarkation Commandant. The parcels will, therefore, be generally sent to their consignee C/O Embarkation Commandant/The Landing Officer concerned.
- 2) The Embarkation Commandant on receipt of the documents (Air- way Bill, Invoice, etc.)will obtain the delivery order from the Air Lines and thereafter will effect clearance in the normal procedure.
- 3) Clearance of Foreign Parcels by Air/Mail/Sea Mail. The parcels arriving in India from abroad by Post will be collected by the consignee concerned from the postal authorities after paying the customs duty and other charges in cash.

All claims lodged against either the carrier or the suppliers in respect of consignments received against central purchase should be reported to the concerned central purchase organisation also and their intervention sought, wherever necessary, for settlement of the claims.

10.10 INSPECTION BY THE CONSIGNEE

As already stated, the General conditions of contract contained in DGS&D-68(Revised) provides for inspection of stores by the consignee on receipt at his end, and, if found not conforming to prescribed specification, rejection thereof by the consignee notwithstanding acceptance accorded by the Concerned Inspecting Officer.

10.11 BRINGING RECEIPTS TO STOCK

Introduction - These instructions relate to the receipt of stores and materials of various kinds from outside a factory. Only very few classes of receipts do not come within the purview of these instructions. These instructions are in application, and not in super session, of the instructions contained in Factory Accounting Rules and other basic regulations on the subject.

10.11.1 Use of MIS Forms.

- a) Without exception what so ever, all receipts handled by the Receipts Branch will be entered in accordance with the following instructions without delay on a Material Inward Slip and whether or not the materials are to come to stock or deposit ledger charge. In addition, all materials are to come to stock or deposit ledger charge. In addition, all materials which although not handled in the first place on their arrival in the Factory by the Receipts Branch and are to come to stock or deposit ledger charge will also be entered on a material Inward slip and there is no exception for miscellaneous receipts, such as machinery, medical stores contingent stores or stores sent to a Factory on loan if such materials are handled by the Receipts Branch.
- (b) Other material, not handled at the outset by a Receipt Branch, such as material received by post, will be similarly entered on a Material Inward Slip on its being made over to the Storeholder's custody, if it is to come to stock or deposit ledger charge.
- (c) There is, therefore, an exemption for material from being entered on a Material Inward Slip only if both (i) the material is not handled by Receipts Branch and (ii) the material is not to come to stock or deposit ledger charge.

10.11.2 MIS Numbering and Dating :-

- (a) Material Inward Slip will be dated and numbered in the space provided therefor (in the top left hand corner) in a single series consisting of digits only, the use of more than one series running at any one time being prohibited. Although GM's are at liberty, should they wish to commence the series afresh at the commencement of each financial year, this need not be done and the series need only be started afresh when it has reached its defined end. In this connection a series will not be of more than five digits running from 1 to 99,999. The scheme of repeating only at the end of a series is recommended since under such a scheme, except for old MI Slip, they are defined by serial number alone without necessity for quoting date as well.
- (b) The date associated with the serial number and entered on the MI Slip will, without any exception other than that dealt with in Para (e) Sentence are the actual date of arrival of the material in the factory. This date will not be the date of making out the M.I Slip as that date is not the same as the date of arrival of the material.
- (c) Material Inward Slips will ordinarily will be made out, numbered and dated on the same day as the arrival of the material, it being borne in mind that this applies to the entry of a brief description, for example in some instances a description or note of packages, in any case where the entry of full particulars must await further examination. Only in absolutely unavoidable cases will the Material Inward Slip not be made out, numbered and dated as described above with at least a brief description or note of the consignment on the day of receipt of the material.
- (d) If there is any minor difficulty in keeping the serial numbers and the dates in the same sequence, the dates override the serial numbers, the rule being absolute that the date must represent the actual date of arrival of the material in the factory, where the exception mentioned does not operate.
- (e) When, Material, such as material by post, is not at the outset handled by Receipt Branch but because it is to come on stock or deposit ledger charge, is made over to the Storeholder, it will have a M.I Slip made out for it at that stage, the date of the M.I Slip being entered accordingly and without reference to actual date of arrival of the material in the Factory.

10.11.3 Number of copies to be prepared: -

- (a) The number of copies to be prepared will be according to local requirements.

- (b) Although the entries in columns 2,3,4 & 5 serial number and date and transportation particulars will be the same in all the copies prepared, it will not necessarily be the case that entries subsequently made in the form, on its front or on its reverse side, will appear on all the copies of the form in existence.
- (c) Among the copies prepared will be one which will be retained permanently by Receipts Branch and which will not at any stage leave that Branch. Whatever registers may be maintained in connection with receipts, such as register of railway wagons, or of railway receipts, the maintenance of a register of Material Inward Slips is prohibited, in view of the fact that the Receipts Branch will have permanently in their possession one copy of each M.I Slip prepared.
- (d) These Receipts Branch copies will, immediately on being made out, be pasted into a guard file. The M.I Slips in that file will be in serial number order, without reference to order of dates, if different. Blank numbers in the serial numbering will not be allowed to exist except for compelling reasons and in the case of blank numbers a sheet will appear in the file, in its appropriate place, bearing the number which is blank and an explanation of the circumstances.

10.11.4 Responsibility for entries: -

- (a) On initial preparation of the Material Inward Slip, It will be the responsibility of the Receipts Branch to make the appropriate entries in the spaces for :
 - i) Number as a M.I Slip and date of arrival of stores.
 - ii) Reference to Suppliers Invoice, bill, voucher etc. if known.
 - iii) Supplier or Consignor and particulars of Acceptance of Tender, Supply Order etc., so far as known.
 - iv) Transportation particulars in respect of whole consignment (i.e. Railway Receipts and/or Wagon No., Ship, Lorry No., M.C. Note No. of Packages, Weight ,Railway Charges, etc.) so far as known.
 - v) Nos. and dates of all M.I Slips pertaining to the above transportation particulars.
 - vi) Column 2:- At least a brief description or note of packages of consignment if the full description of the material or articles cannot at that stage be given.
 - vii) Column 3:- Unit in words If it is possible to make these entries at that stage.
 - viii) Column 4 :- Unit by code
 - xi) Column 5 :- Found on Receipt, if it is possible to enter this at that stage.
- (b) Whether or not other signatures or initials, with date, appear at this stage or subsequently in the space headed "Receipts Branch" there will be at this stage in that space, one such signature or initial in token of the M.I Slip having been prepared and serially numbered, even though further particulars of receipts have subsequently to be added to make it complete, the Storeholders will arrange for and designate one or more individuals to perform this definite function.
- (c) The GM and Accounts Officer may mutually arrange for any desirable variation, to meet local needs as to the parties responsible for making further entries in their various columns of the Material Inward Slip. In the absence of any such special arrangement the responsibilities will be as follows: -

The Storeholder will arrange that staff under his control makes an entry, in those cases where appropriate, in column 1: where appropriate number and dates of the M.I Slip as a Stock or other (e.g., Deposit or Nominal) Receipt Voucher; where appropriate, enter in the space provided the reference to any Discrepancy Voucher made out initially to adjust a discrepancy found on receipt; and to the extent possible, supply omissions in the particulars earlier entered in accordance with sub-Para (a). The Storeholder will further make arrangements that a Factory Inspection Authority makes the required entries in column 6 and 7 for quantities said to be accepted and/or rejected. If some other local authority other than a Factory Inspection Authority is concerned with inspection, his entries will be on the reverse of the form.
- (d) The order in which these various steps will be taken may vary from Factory to Factory being dependent upon local conditions, and further may vary for different categories of material received. The Storeholder will also make suitable arrangements for the disposal of those Material Inward Slip with which he is not further directly concerned by reason that the stores on them are not to come to the stock or deposit ledger.

- (e) The Accounts Officer will be responsible for causing entries to be made by his staff in column 8,9 and 11 and in the heading of column 11 should delete one or the other of "provisional" or "final" as description of the Total Value, it being understood that a value being described as final means that is final so far as is known at the time.
- (f) An entry of fundamental importance is that in column 10 for "Total quantity to be brought on charge". The arrangements for making the entry in this column will be the responsibility of the Storeholder. The principles governing the category of receipt: -
- (i) Direct Purchase - The quantity in column 10 will be the same as that entered in column 6 Accepted. In the case of a deficiency, the entry in column 5 should be the quantity found on receipt by the factory. The actual quantity accepted after inspection should be entered in column 6. The quantity in column 10 should be the total quantity as vouched minus the quantity found discrepant, both entries being linked up with the respective documents quoted on the top left of the M.I Slip.
 - (ii) Central Purchases with the contract specifying inspection at destination or at the Supplier's works by the GM or his representative. The arrangements here are the same as in the case of Direct Purchases. The quantity in column 10 will be the same as that entered in column 6 - Accepted.
 - (iii) Central Purchases with the contract specifying inspection by an independent Inspector and the Factory not seeking to alter the Inspector's sentence. The quantity in column 10 will be the quantity passed by the inspector and despatched by the supplier.
 - (iv) Central Purchases with the contracts specifying inspection by an independent inspector and the Inspector's sentence being questioned by the GM : In all such cases the decision whether to pursue the question should be taken normally by the GM Personally or, if delegated, will be delegated to an officer not lower than a Works Manager. In these cases Factory Inspection Authorities should enter in columns 6 & 7 the results of examination according to their judgement. The cases fall into two categories :
 - 1) The GM decides not to pursue the question of challenging the independent Inspector's sentence : The action is as in Sub-clause (iii) notwithstanding that different figures appear in columns 6 & 7.
 - 2) The GM deciding to challenge the independent Inspector's sentence : This should be done by making the appropriate reduction in payment to the contractor (even a reduction of the total amount due to him) in the prescribed form of receipt certificates for Central Purchases. In these cases any quantities in the consignment not affected by the dispute will be entered in column 10 but if the whole consignment is affected by the dispute, no entry will be made in column 10 of the Material Inward Slip, which will be kept in suspense until rejected stores are returned or disposed of, when it closes short as an M.I.Slip and Inspection Report only.
- (v) Receipts from other Ordnance Clothing Factories.
- The entries of quantities in column 10 will be governed entirely by the provisions in Section V, "Discrepancies" sub-section III, "Inter-Factory Transfers". In general, the reply of the consignor factory to the Discrepancy Report issued in cases of discrepancies will have to be awaited or, if no reply is received within one month, action taken on the assumption that a reply to the discrepancy report has been received disclaiming responsibility for the discrepancy. The exceptions are generally in cases where material as found on receipt has to be brought on charge immediately because it is required for immediate use. Where no documents from the consignor factory are available at the time of receipt of stores they will be brought on charge, as found (in accordance with already existing instructions) and any discrepancy later coming to light dealt with independently and without reference to the disposal and posting of the Material Inward Slip, if it is of the kind which has to be posted in the stock or deposit ledger.
- (vi) Receipts from Military Departments.
- The quantity to be entered in column 10 is the quantity (as well as the condition) as vouchered by the consignor, except in the case of stores which are to come on the deposit ledger when the condition will not necessarily be the same as vouchered by the consignor. Adjustment of discrepancies, to make the ledger show from the outset the actual position at the consignee factory, will be carried out under the ordinary rules thereof. If the consignors' documents are not available at the time of receipt of stores, they will be brought on charge as found and action in connection with any discrepancy later coming to light will be dealt with independently and without reference to the

disposal and position of the Material Inward Slip, if it is of the kind which has to be posted in the stock or deposit ledger.

- vii) Receipts from non-military Government Department and Public Bodies. The quantity (and condition) to be entered in column 10 will be that found on receipt. If in connection with discrepancies General Manager, after correspondence or negotiation, is eventually forced to accept the consignor's vouchering of material, the destination, is eventually forced to accept the consignor's vouchering of material, the discrepancies will be dealt with and adjusted as a transaction independent of and separate from disposal of the Material Inward Slip. That is to say, the disposal and posting of the Material Inward Slip is in no way delayed by final settlement of such disputes.

(vii) Receipts from Overseas. These fall into two classes:-

- (1) Where there is no evidence that the quantities and or condition of material found are different from those existing when the material was unloaded from a ship or aircraft and came into the hands of clearing agency. In such cases the quantity to be entered in column 10 is the quantity (and condition) as found on receipt. Reports of any discrepancies in relation to consignor's documents will be made in accordance with instructions as a matter separate from disposal of Material Inward Slip.
- (2) Where there is evidence that the quantities and or conditions of material found are different from those existing when the material was unloaded from a ship or aircraft and came into the hands of a clearing agency. In such a case the quantity (and condition) to be entered in column 10 will be the quantity which according to the evidence of documents was unloaded from the ship or aircraft. The discrepancy resulting will be dealt with as a matter separate from disposal of Material Inward Slips in accordance with the principle of sub-para. (vi) and (vii) above and in relation to whether the Shipping/Clearing Agency is a military or non-military Government department or a commercial firm.

10.11.5 Signature or initials.

- (a) All signature or initials will be dated. The insignificance of all the essential signatures or initials appearing on the M.I. Slip is as follows :-
 - i) In the space headed Receipts Branch, whatever other signature or initials may appear thereunder local arrangements will be one of an individual, from one or more detailed for the purpose in accordance with para 5(b), entered upon the form after it has been prepared, numbered and dated, in token that all the essential steps of preparation of the form have been completed.
 - ii) Inspection signature or counter signature. This will always be a signature, not initials of a member of the factory staff from one or more individuals nominated for the purpose in Factory Orders. It should be observed that he is signing the form for General Manager. The signature means that the individual is satisfied that all inspection action required to be taken has been taken that the entries on the form as to condition of material and quantities in columns 6 & 7 are in accordance with the results of that inspection action.
 - iii) In many cases the inspection action will have been completed before the material reaches the factory. In such cases the inspection countersignature means the individual signing is satisfied from examination of other documents that everything required in that regard has been done and again, as always, that entries on the M.I. Slip as to condition and quantities in columns 6 and 7 are in conformity. In some cases, local rules for particular categories of material may require a local examination even though a formal inspection has previously been done. In such cases the counter signature attests that the requirements of these local rules have been met; and if the local inspection give results different from the earlier formal inspection these different results may, nevertheless, be entered in columns 6 & 7 or as remarks regarding condition in column 2. But whether these different results are conclusive or whether, for instance they govern quantities to be entered in col. 10 depends on circumstances as explained elsewhere.
- (b) Where local rules require certain classes of receipts to be inspected at the Factory by T.D. Establishment, the T.D. Establishment will be requested to confine the whole of their entries to the reverse side of the M.I Slip form, all of which reverse side is available for local inspection entries including, possibly, lengthy details. The final results of T.D. Establishment inspection would, by factory staff, be entered on the front of the form in columns 6 & 7 and vouched by the Inspection Counter signature on the front of the form. Inspection personnel, and particularly almost invariably factory inspection personnel, should make their entries on the M.I Slip form in the Stores Receipt Branch wherever practicable, and arrangements for this should be made accordingly.

- (c) The reverse side of the M.I.Slip form, dealing with details of inspection results, need not necessarily be filled up on all the copies of the M.I.Slip form in use. In certain instances, a formal inspection having been carried out previously, this reverse side of the form will not be required for use at all.
- (d) With a view to possible saving of time in passing from Branch to Branch to be dealt with, GM should detail a member of the Stores Staff, not lower than a Storeholder, as one of those authorised to give an inspection countersignature, defining the class of receipts for which a Storeholder can so act. The class of receipts would be confined to that where both formal inspection has been carried out earlier and by local rule no further examination locally on receipt is needed and, in consequence, only a check of documents relating to earlier inspection is required. In cases of incoming stores which have not been previously inspected and are to be inspected by factories' own Inspection Staff, the signature should be of an officer not below the rank of a JWM. If the GM considers it necessary or desirable, on the basis of the value of the incoming stores, he may nominate Gazetted Officers of higher rank, as appropriate, at his desecration for the purpose.
- (e) The inspection countersignature cannot be placed on the form until inspection of the whole consignment has been completed.
- (f) Certificate of bringing on charge in Ledger :- The signature here (it will not be initials) if "for GM" and is the ordinary certifying signature required to appear on regular accounting vouchers of various kind. It will be subject to any general rules in force in that regard.
- (g) Godown keeper's signature or initials.
- These will attest the taking on charge by the godown keeper, or other person acting as godown keeper, and the appended date will be the actual date when the stores move into the godown keeper's custody, or the completion date for the process when on account of bulk of material the process is spread over more than one day. This signature or initial cannot be entered on the form, nor material be received by a godown keeper into his charge, until the inspection countersignature has been placed on the M.I Slip.
- (h) The quantity brought on charge and entered on a Bin Card by godown keeper will invariably be the actual quantity he receives which would be found entered on the M.I Slip in column- 6. This will not necessary always be the same as entered in column 10 on account of the special rules for dealing with discrepancies when posting the stock ledger.
- (i) The spaces against the three headings 'Priced by', 'Checked by' and 'Posted by' are available for the Accounts Officer in dealing with M.I Slip in his office.

10.12 MISCELLANEOUS PROVISIONS: -

10.12.1 Release of locally inspected material by instalments: - If on account of urgency of need for material it is necessary to release inspected material by instalments, the quantities released will in each instalment be entered separately in column 6 and the signature of the countersigning inspection authority placed against each such instalment quantity so entered. This will enable a godown keeper to take that quantity on charge in a Bin Card.

10.12.2 If the urgently required material has in practice to be issued direct from the Receipts Branch to Demanding Section, this issue will be made to the Section representative in the presence of the godown keeper concerned. A copy of the M.I Slip bearing the necessary entry and inspection countersignature permitting the release of material together with the necessary demand note for the issue will be made available to the godown keeper at that time for his perusal. The godown keeper will post in his Bin Card, the receipt and issue of the same quantity of material simultaneously.

10.12.3 A Godown keeper will in such cases post in bin cards instalment quantities from M.I. Slip in accordance with general orders governing posting instalment quantities from documents of any kind, e.g., from demand note, and at the time of posting will place his initials against the instalments quantity on the M.I. Slip. Demand Notes, in such cases, will be held up from being sent to the Account Branch for posting until the fully completed M.I. Slip can be sent for posting. Neither the countersigning inspecting authority nor the Storeholder's representative nor the Godown keeper will place their respective signatures in the usual places provided for them on the M.I. Slip until the inspection action is completed.

10.12.4 **Modification of description -**

If a local inspecting authority considers that material which otherwise would be rejected might be accepted with a modified description or nomenclature, e.g., material purporting to be "serviceable" is acceptable as "repairable" or, to be acceptable, requires its nomenclature to be modified or amended, he will confine his remarks on such points or proposals entirely to the reverse side of the

M.I. Slip form. The final settlement of whether such material shall be taken on charge involves questions of provision and rests not with inspection but with other authorities who will make the necessary entries on the front of the M.I. Slip form, in columns 6 & 7 for quantities and in column 2 for descriptions. Any addition by way of modification to the entries in column 2 regarding description would be attested by the signature or initials of the individual making it.

10.12.5 Examples of cases where, in connection with M.I. Slips which have previously been sent to the Accounts Branch for posting, supplementary quantities have subsequently to be brought on charge are-

- (i) There is a dispute about a portion of the quantities on a M.I. Slip (if the whole quantity is in dispute the M.I. Slip would not be sent to the Accounts Branch for posting until the dispute is resolved). Later, on settlement of the question, supplementary quantities may have to be brought on charge.
- (ii) As the material is received, consignor's documents are not available. Later, on receipt of such documents and as a result of accounting rules, it may be necessary to bring supplementary quantities on charge.

10.12.6 In such cases the supplementary quantities will be brought on charge on a voucher in form I.A.F.Z-209 or any other form of general voucher in use, satisfactorily linked or reference to the original M.I. Slip to which it relates, and bearing thereon a specific written order signed by a Competent Authority detailed by the GM, that the material is to be brought on charge by a Godown keeper on bin cards. The reason for the special order to be recorded in these cases is that the general order to Godown keepers is that they are not empowered to take stock or deposit material (from outside the factory) on to bin cards except on a Material Inward Slip form bearing the necessary authenticating signatures.

10.12.7 The rule will be that a Material Inward Slip which has once been passed to the Accounts Branch for posting cannot again be used for supplementary quantities and that in connection with such supplementary quantities no further Material Inward Slip can be made out if it does not relate to the actual movement of material into a factory.

10.12.8 For the purpose of these provisions the term "GM" will include the Officer-in-Charge of a factory, however, he may be designated, and the term "Godown keeper" will include any individual performing a Godown keeper's functions.

10.12.9 Serial numbers and date and stock or other voucher numbers and date will be entered under and not to the right hand side of the words "No." and "Date" printed on the M.I. Slip form.

10.12.10 Material Inward Slip will be the only document from which posting is to be made in a ledger in the case of material which is to come on stock or deposit ledger charge. In other cases, e.g. , machinery, etc. , a voucher on form I.A.F.Z. - 2096 or other form of general voucher is use, will be made out for posting in Block Register, etc. Apart from other consideration an adequate description or nomenclature in such cases is frequently lengthy and could not easily be dealt with except on an ordinary voucher form providing adequate space.

10.12.11 The footnote to the M.I. Slip form with regard to not entering on the form more than one item with its packages, will apply in its full rigidity only to material which is to come on stock and deposit ledger charge. In other cases such as machinery or medical stores, the entries for which on M.I. Slip usually relate to packages rather than to their detailed contents, the number of packages received at one time may be all entered together, as convenient, provided sufficient particulars to identify them individually are entered on M.I. Slips to facilitate their check with the Receipt Vouchers prepared in addition, for posting in Block Register, etc.

In a number of cases special terms and conditions regarding inspection and acceptance of stores are included by the DGS&D Organisation in the Acceptance of Tender. On receipt of stores in Factories and before undertaking inspection for final acceptance, Factory Works Inspection Officer should study the terms and conditions of the Acceptance of Tender, a copy of which should be attached by the Store holder to M.I. Slip drawing the attention of Works Inspection Officer to the respect of Local Purchase Supply Orders placed by the Factories direct.

10.12.12 As delay in inspection will ultimately result in loss to the state in most cases, inspection of all stores received in the Factories from any source should be carried out within 14 days or with the least possible delay.

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CHAPTER 11

PAYMENT OF BILLS

11.1 PAYMENT TERMS AND PAYING AUTHORITY

Payment terms and Paying Authorities are to be clearly laid down in each Contract. Standard payment terms as provided for in the General Conditions of contract contained in DGS&D - 68 (Revised) are, 95% against proof of despatch and balance 5% on receipt of the stores by the consignee in good condition and order. Advance payment (i.e. before commencement of supply), Spot Payment etc., may also have to be allowed in certain cases with the approval of the competent authority. Where the consignee is the inspecting officer and carries out inspection only at destination, there may be no necessity for any advance payment, and 100% payment will be made only on receipt and final acceptance

C of F&A (Fys) is the paying authority for most of the contracts concluded by the Ordnance Factories. Normally the designated officer of the CofF&A (Fys) i.e. the Local Accounts Office is the paying officer. Payment should be made within 21 days in respect of bills supported by the requisite auditable documents. Consolidated observations, if any should be forwarded within 10 working days by the paying authority to the CFA i.e. General Managers.

11.2 CENTRAL PURCHASE

For supplies made against D G S & D orders payment will be made by their P&AO, New Delhi, or his regional officers as stipulated in each contract. Against orders placed by the Dept. of Defence Supplies, DAD (HQ) New Delhi will be the Paying Authority. At present, DAD Cell in four-locations i.e., in Calcutta, Delhi, Mumbai and Chennai attached to respective PAO is functioning on behalf of the respective Controller. Delhi is under CofA(HQs) - New Delhi, Chennai is under CofA Bangalore, Mumbai is under CofA(Navy) Mumbai, and Calcutta is under CofA (Patna) against Disbursement Vouchers(DVs). Paid DVs along with bills received from the DAD Cell, the expenditure is allocated to respective consignee factory centrally by PCofA(Fys).

10.3 Payment for Service Rendered by DGS&D Against Central Purchase Orders ; According to Rule 126 of GFR, 1963, Departmental Charges at the rates prescribed by Govt. from time to time shall be levied for the services rendered by DGS&D in regard to purchase, inspection, shipping, clearing and handling of stores. The rates currently applicable for Departmental charges in regard to purchase and inspection of stores are as follows :-

11.2.1 Purchase :

- a. Departmental charges will be levied at the rate of 0.5% of the value of the contract or supply order placed against the DGS&D Rate Contract.
- b. DGS&D will have freedom and flexibility in determining the Departmental fees to be charges to the range of 0.25% to 2% for the Services to be rendered against the Ad-hoc procurement depending on the value, nature of item etc. to be procured.

11.2.2 Inspection :

- a. Departmental charges will be levied @ 0.5% of the value of contract or supply order placed against the DGS&D Rate Contract.
- b. The uniform rate of 0.5% of the value of the order represents consolidated inspection fee inclusive of TA/DA of Officers and Test Charges for confirmatory test .
- c. Where inspection of stores is entrusted to the Quality Assurance Wing of the DGS&D against S.Os./Contracts placed directly by the Departments/Agencies i.e. otherwise then services rendered will be charged at the uniform rate of 0.5%.
- d. Quality Assurance Wing will have freedom, flexibility in determining fee to be charged for inspection services rendered against non-departmental orders within a range of 0.25% to 2% of the value of the stores depending on complexity and nature of inspection involved.

11.2.3 Departmental charges are levied separately for services rendered for purchase of stores and for inspection of stores. Thus, in case where a purchase contract entered into by the DGS&D for the procurement of stores required by any of the Departments/Agencies but the inspection of the stores is the responsibility of the indenter, departmental charges for purchase of stores will only be levied and no charges will be levied for inspection of the stores.

11.3 DIRECT PURCHASE

- a) Against orders placed direct by OFB and the Factories, PCofA(Fys) or the LAO of the concerned Fys. will make payment as stipulated in the contract.
- b) As regards orders placed on Overseas Suppliers, payment will be made through Irrevocable Letters Of Credit against bill presented through the Contractor's Bankers duly supported by documents as stipulated in the Contract.
- c) Where orders for imported stores are based on F.O.B./C.I.F. basis all payments relating to clearance and handling at the Port of entry as well as customs duty are made by the concerned Embarkation Commandant who is reimbursed by the Regional CDA in which the Port of Embarkation is located and the expenditure is passed on to PofCA(Fys) by book adjustment, except for the consignment received at the Port of Calcutta in which case payment is made by cheque against the bill preferred by the Embarkation authorities.

11.4 PAYMENT TERMS

Payment terms are of great importance both for the purchaser and the supplier as the cost of finance plays a very important role in deciding the cost of an item or service being contracted for. Normally 95% of the contract amount is released against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 5% is released after the stores have been properly checked and accounted for. Some suppliers prefer 100% payment after delivery and accounting, which may be accepted. In many cases, suppliers request for allowing part supply part payment. Such requests can be considered by the CFA for acceptance on merit of individual cases.

11.5 PAYMENT UNDER STANDARD TERMS -- PREPARATION AND SUBMISSION OF BILL

Bills should be prepared in the standard bill form i.e. DGS&D -135 or IAFA-68 in quadruplicate. The original, duplicate and triplicate copies along with the supporting documents should be submitted to the Accounts Officer specified in the Contract. The triplicate copy should bear the following additional marking "NOT FOR PAYMENT -TO BE USED AS D.I. MEMO"

In the case of bills for "Advance 100% payment" in respect of consignment inspected and despatched, the quadruplicate copy of the bill will be sent to the consignee along with the copies no. 2&4 of inspection note and the Railway receipt etc. to enable the consignee to prepare the necessary receipt certificate. In all cases other than those of "Advance 100% payment" the quadruplicate copy of the bill will serve as the contractor's office copy.

NOTE Contractors are permitted to use their own cyclostyled or printed copies of prescribed bill form provided they are exact copies.

11.6 SUPPORTING DOCUMENTS TO ACCOMPANY BILL - ADVANCE - 90% / 95% / 98% BILLS

- (a) The "Accounts office Copy No. 1" of the Inspection Note duly signed by the inspector.

Note: In case the consignment despatched piecemeal for want of transport facilities, copy no.1 of the Inspection Note for the full quantity inspected will be attached to the advance 90% /95% /98% payment bill relating to the first consignment. These will also be accompanied by a letter written by the contractor, intimating that bills for subsequent supplies giving reference to the number and date of the bill with which the inspection note was forwarded, will be submitted as each consignment is despatched.

- (b) Counterfoil of the Military Credit Note (authority), if any, in connection with the stores for which payment is claimed.
- (c) The cash receipt form Railway or the Inland Steamer company when freight, though payable by the purchaser under the terms of contract, has been paid by the contractor.

- (d) The provisional certificate from the consignee in case of local delivery or despatch by road

NOTE: The cash receipt from railway / inland steamer company is only required to support the contractor's claim for refund of freight paid by him and not as evidence of despatch of store. For the latter purpose the number and date of railway receipt or the Inland Steamer Company Receipt, bill of landing, consignment note or Postal receipt and the number and date of letter with which such documents is forwarded to the consignee as quoted on the bill or the counterfoil of the Military Credit Note received with the bill is accepted as sufficient proof. In the case of despatch by sea/Air one copy of the bill of lading or consignment note should be attached to the bill.

- (e) In the case of stores inspected abroad, the copy of the inspection certificate received by the contractor from abroad.

11.6.1 Balance 10% /5% /2% Bills

The "Accounts Office copy no. 2" and the 'Additional copy no. 5' of Inspection Note with both the Inspection Certificate and receipt portion duly completed and signed by the inspector and consignee respectively.

11.6.2 Final 100% Bills

- (a) The "Accounts copy no 1" and "Accounts office copy no. 2" and, one additional copy no5 of the inspection note with the inspection certificate and the receipt certificate thereon duly completed on all the three copies by the inspector and the consignee respectively.
- (b) The counterfoil of the Military Credit Note, if any, used in connection with the stores for which payment is claimed.
- (c) The cash receipt from the Railways or the purchaser under the terms of the contract, has been paid by the contractor.
- (d) In the case of stores inspected abroad, the copy of the inspection certificate received by the contractor from abroad.

NOTE:

- i) All copies of inspection note and continuation sheet must be legible.
- ii) Inspection notes and Continuation Sheets other than those indented for the A.O.s can be signed in copying pencil by placing carbon paper under each sheet provided the signature came out legible. Copies of Inspection Notes intended for the A.O.s should be signed individually in ink.
- (iii) First and second copy of Inspection Notes are meant for Accounts Office against which payment is made by the concerned Accounts Officer. The word Accounts Officer in first copy and Accounts Office copy no-2 i.e. Second copy should be endorsed by means of a rubber stamp and the endorsement attested with full signature in ink.
- (iv) The consignee may prepare the receipt certificate of the Inspection Notes either by typing, by carbon process or by indelible pencil but these must be signed individually in ink.

11.7 PAYMENT OF CONTRACTOR'S BILL

Payments to contractors are made by a cheque. This is issued on treasury or a branch of the Reserve Bank of India or the State Bank of India transacting Govt. business.

The amount of contractor's bills for supplies can be paid to their Bank if bills are receipted by the contractor by signature under the words "Received Payment" and endorsed by them under a separate signature in favour of the Bank. In addition an irrevocable power of Attorney is to be followed and the Standard form in which the power of Attorney should be executed are contained in DGS&D Office Order Nos. 11 dated 04.02.1996 and 73 dated 11.07.1967.

Arrangement should also be made for payment through e-payment where facility exists.

11.7.1 Payment of intermediary and final bills in cases of delay in supplies

- (i) In absence of amendments to contracts extending delivery period may be admitted in case of intermediate bills supported by Inspection Notes but final bill for which no extension of delivery period has been granted

will be returned to the contractor. It will be for the contractor to get extension of DP and to resubmit the bill. Copy of the letter to the contractor returning the bill should be endorsed to the purchase section.

- (ii) In all contracts except those in which it has been specifically provided that 21 days grace period will not apply where the stores have actually been tendered for inspection either within the original delivery period stipulated in the contract, or within the grace period of 21 days thereafter, or within the extended delivery period, provided that the total period of extension is less than 90 days from the original delivery period, but the supplier is unable to despatch the store within such period and nevertheless complete the despatch within 90 days from the expiry of original stipulated delivery period (excluding the grace period) payment of 80% / 10% / 5% / 2% bill will ,however, be admitted for payment when the delivery period has been regularised by the competent authority.
- (iii) In case of supply orders against DGS&D rate contracts providing for variation in freight , insurance etc., the balance 5% bill will be paid only after final amendment issued by the purchase officer unless otherwise permitted by him in special cases.

11.7.2 Reducing Delay in Payment of Contractors Bills

One of the potent causes of delay in payment of the final claim of the contractor is non availability of receipt Inspection Notes and Receipt Certificates in time. Inspection notes and Receipt Certificates are required to be submitted if otherwise in order, without any avoidable delay.

Supply orders are required to be forwarded to the paying authorities well in advance for audit and payment.

Delay in supplies, if any, to be regularised.

11.7.3 Other factors which may delay payment

- (i) Absence of an authenticated copy of the Acceptance of Tender or Supply Order or amendment letter when a bill is received by the concerned Accounts Office.
- (ii) Copy of Acceptance of Tender/ Supply Order/ amendment letter will be forwarded to the accounts office within four days from the date of Acceptance of Tender from the purchase officer.

11.8 FINALISATION OF PRICE VARIATION CLAIMS.

In respect of contracts providing for price variation, care should be taken to finalise price before final payment is made, after obtaining necessary data and documents in support of claims for escalation, if any. Where no such claims are submitted by the Suppliers, it would need to be examined whether there has been downward trend in the cost which form the basis of variation as per the formula incorporated in the contract such as price of input material like steel, non-ferrous metals etc. At any rate undertaking should be obtained from the contractor to the following effect in case it become necessary to make final payment before they have submitted required data/documents related to price variation clause.

“It is certified that there has been no decrease in the price of Input materials and in the event of any decrease of price of input material during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate “.

Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is therefore the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever the same occurs are fully availed of.

11.9 INSTRUCTIONS ISSUED BY O.F.B. IN CONNECTION WITH FINAL PAYMENT

- (i) All contractors should be addressed for furnishing information as per Form No.MM-34 (Annexure - 32) before bills for final balance payments are made.

N.B. It will be seen that the format does not cover purchaser’s claim on account of Price variation, if any, or claims on any other Account. This format is, therefore, to be used when all Govt. claims on the contractor, if any, has either been selected or taken note of and necessary action taken.

- (ii) Consignee’s certificate regarding receipt of goods in full and loss etc. on account of delay in supply should be obtained in Form No.MM-35 before final payment is made or D/P regularized.

- (iii) A no demand certificate should be obtained from the contractor in form No. MM-37, before closing any case.

11.10 SPECIAL TERMS OF PAYMENT

General Managers have been given powers to authorise special terms of payment such as spot payment and advance payment to SAIL IOC etc.

11.10.1 Advance payment (before stores are already inspected and Despatched)

As per the current policy of the Govt. no advance should be offered in the TE and the first stand of a procurement officer should be of no advance. However, in exceptional cases of contract for manufacturing of equipment, system or that for a project with long execution time, advance up to a **maximum of 15%** of contract value may be approved by the departments against **valid BG** from a scheduled bank. However, in some cases, stage payment at pre- defined stages of contract completion may be allotted by the CFA. As per CVC Guidelines, mobilisation advance should be interest bearing. However, in MofD contracts, due to operational requirement, urgency etc., it may not be possible to obtain such terms from the supplier. In such cases, necessary record of circumstances and facts may be kept to that effect.

Advance payments should be avoided as far as possible. Only in exceptional cases of contract for manufacturing equipment, system or that for a project with long execution time, advance upto a maximum of 15% of contract value may be approved with prior approval of MOD against valid Bank Guarantee from schedule bank.

The RFP's would not indicate the fact regarding payment of advance. The first position of CNC should be of No Advance. Later, depending on the situation and the benefits passed on by vendor to the Govt. the advance can be indicated at 10% in the first instance and if this is not acceptable, then can be finalized at 15% by the purchaser. CNC's should agree for advance only when it is found that the consequent discounts and other advantages to state would be passed on by the vendor in lieu of getting advance. Advance of more than 15% can be approved only by the MOD at the level of Defence Secretary and Secretary (Defence/Finance).

(Ref: Para 7.10 of DPM-2005)

11.10.2 Spot Payment

- (i) Provision of spot payment should be approved in TPC.
- (ii) The General Managers will prefer a bill on behalf of the Contractor duly supported by the related supply order.
- (iii) The Accounts Officer will hand over the cheque in payment of the bill to the G.M./Fy. Authorities after audit of the supply/purchase orders.
- (iv) The cheque will be handed over by the Factory authorities to the Contractor on the spot after inspection and delivery of stores for which payment has been claimed.
- (v) The Factory Management will obtain a bill from the Contractor duly receipted for the amount of the bill indicating usual particulars e.g. S.O. No., description of stores, unit of quantity, total quantity delivered, receipt vouchers, I.Notes within 15 days from the date of payment and forward the same to Accounts Office.

11.11 PAYMENT THROUGH BANK

Request for payment through bank where despatch documents are transmitted through them should not be entertained. If such a mode of payment becomes unavoidable, the following conditions should be stipulated.

- (i) The Contractor shall be liable for banking and all other incidental charges.
- (ii) The Contractor shall also be liable for demurrage etc. if incurred due to delay in transmission of R/R etc. to the consignee.

11.12 DRILL FOLLOWED FOR PAYMENT OF CONTRACTOR'S BILLS AT FYS.

The drill generally followed by the Fy. Management and the Accounts Office in dealing with the Contractor's bills for payment of stores supplied is generally as under:-

<p>1. Bills for suppliers received and accepted under Local Purchase will be submitted by the suppliers on Form No. IAFA-68 in duplicate supported by the original copy of S.O</p>	<p>The Bill duly countersigned by the authorised officer are received in the Accounts Office. Bills are entered in the bill register to watch prompt disposal.</p>
<p>2. If the Supplies are made in piecemeal the original copy of S.O. will be returned by the supplier along with the last bill and in that case, the Officer authorised to certify the bills for payment will make the following endorsement in the bill "Supply not completed .Contractor's copy of S.O. (Original) will be forwarded along with the last bill."</p>	<p>The bills should be entered in the S.O Register showing the No. and date of the bills, Rt. Vr. No. , etc.</p>
<p>3. S.O. No. and date against which the stores have been supplied, and the Rt. Vr. No. and date against which the stores have been. brought on charge stores , will be quoted on the bills</p>	<p>The bills are then checked with relevant Accounts copy of the S.O. in respect of quantity, rate and terms of delivery Details of payment involved will also be checked. The amount passed for payment are entered in the relevant column of the S.O. Register</p>
<p>4. The bills together with the original copy of S.O. (where supply has been completed) and Inspection Note bearing the Rt. Vr. will be forwarded to the LAO for Audit and Payment are after scrutiny of the following points.</p>	<p>Bills are sent to Material/Ledger section for credit verification of stores. Bills on receipt from Material/Ledger section passed for Payment and cheques are issued to the contractor with intimation to the General Manager.</p>
<ol style="list-style-type: none"> 1. Bill copies are marked " Original and Duplicate" 2. Bills have been duly receipted and signed by the Supplier. 3. Total Amount claimed is correct and is written in figures as well as in words. 4. Correction of amounts , if any, attested under full signature and date. 5. Bills are signed in ink. 6. Revenue stamps are affixed on all original copies of Bills. 7. Name of the Treasury is indicated. 8. Extension of Delivery Period, if any, or acceptance of excess supply, is sanctioned by competent authority and endorsed on the bills 9. Vernacular signatures are transliterated. 	<p>The amount passed for payment is also recorded in Contractor's Ledger in the Income Tax Register.</p>
<p>6.Factory Management are not authorised to increase the amount claimed even if they are due to clerical error . In such cases either bills will be returned to the supplier for resubmission or the amounts claimed will be passed for payment and the contractor directed to submit a supplementary Bill for the balance due.</p> <p>Retrenchment of an amount may be made from the bills where necessary and the balance will be passed for payment and supplier will be informed accordingly</p>	<p>In auditing the bills, the following points are seen:</p> <ol style="list-style-type: none"> 1. Bills will not be passed for payment unless the relevant S.O has been post audited 2. The bills are in prescribed form and in originals 3. They have been duly receipted and signed in full by the suppliers and that vernacular signatures are transliterated 4. The details work upto the total and the totals are in words as well as in figures 5. There is no erasing and that any alteration in the totals are attested

	<p>by the officer concerned of the factory</p> <p>6. The bills are signed in ink. Bills having rubber stamp signature are to be rejected</p> <p>7. Revenue stamp is affixed to bills where required</p>
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The following documents are accepted as a proof of despatch, are received by the factory for collection of stores :

1. Railway receipt where stores are despatched by rail,
1. Postal receipt where stores are despatched by Registered Parcel/Post.

11.13 EXCISE DUTY AND SALES TAX

As per M of D 4.0 No. F27/(i)/60/80/D(O) dt. 16.11.80 the management should render the Necessary certificate regarding correctness of SALES TAX AND EXCISE DUTY.

11.14 BILL REGISTER.

It will be maintained by the factory showing the position of supplies and Payment of bills in Respect of Local Purchase Supply Orders.(In respect of central purchase orders showing the position of Supplies)

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CHAPTER 12

SETTLEMENT OF DISPUTES/CLAIMS ARISING OUT OF THE CONTRACTS THROUGH ARBITRATION/COURT-PROCEDURE

12.1 SETTLEMENT OF DISPUTES THROUGH SOLE ARBITRATOR :

Clause – 24 of the General Conditions of Contract provides that in the event of any question, dispute of difference arising under the conditions of or in connection with the contract with factories (except as to matters the decision of which is specially provided for) the same shall be referred to the sole arbitration to be appointed by Director General, Ordnance Factories.

The Arbitrator so appointed shall be a Government Servant who had not dealt with the matters to which the agreement relates and in course of his duties had not expressed views on all or any of the matters in dispute or differences. The award of the arbitrator shall be final and binding on the parties to the contract. Further the arbitration proceedings would be subject to the provisions of the Arbitration and Reconciliation Act, 1996 and the rules there under.

With a view to obtaining the consent of the contractor to the arbitration clause as mentioned above the contractor to give his acceptance/or rejection to the said clause at the time of submission his quotation. It is stipulated that an omission to answer specifically in this regard will be deemed as an acceptance of the clause.

Where the contractor has answered or is deemed to have answered the question specified above, in the affirmative, the words, "Including clause-24 thereof" are to be added, at the appropriate place, in the clause relating to the Conditions of Contract in the schedule to the Acceptance of Tender. Where the contractor has not accepted the arbitration clause, the words, "excluding clause-24 thereof" are to be inserted in the Acceptance of Tender. Once the contractor has accepted Arbitration clause-24 of the General Conditions of Contract, any dispute/claim arising out of the contract by either side becomes adjudicable by the Sole Arbitrator to be appointed by the Director General, Ordnance Factories.

Occasion may arise where in respect of a contract, the contractor had earlier not agreed to the Sole Arbitration Clause but later agrees to the settlement of the disputes(s) arising out of the contract through arbitration by signing an agreement to refer the dispute to the Sole Arbitration by an officer appointed by the DGOF. Before the agreement is executed the factory will undertake an exercise, in consultation with the Legal Adviser to determine whether the case is fit for reference to arbitration. If the view arrived at is to refer the dispute to arbitration, administrative approval of the competent authority will be obtained. After such an approval is obtained the concerned GM will be competent to sign the agreement irrespective of the value of the contract.

12.2 SETTLEMENT OF DISPUTES/CLAIMS THROUGH ARBITRATION IN THE CASE OF CONTRACTS ENTERED INTO WITH PUBLIC SECTOR UNDERTAKINGS:

The above provisions are not to be applied in the case of disputes/claims arising out of contracts entered into with public sector undertakings of the Central Government. As per the instructions issued by the Department of Public Enterprises, disputes regarding commercial and other contracts between the Government Department and a Public Sector Enterprises (excluding those relating to income tax, customs and central excise) are to be referred to permanent arbitration machinery set up in the Department of Public Enterprises.

As the arbitration machinery is designed to be financially self supporting the disputants are required to share equally the cost of the service rendered by the machinery and would be intimated to them.

In case the Department of Public Enterprises fails to settle the dispute/claim, the matter may be referred to the Cabinet Secretariat through Department of Defence Production in line with the instructions issued by the Cabinet Secretariat vide their Office Memorandum No. 53/3/91-Cab dated 31.12.91 for settlement of disputes. Further it has to be ensured that no litigation involving such disputes is taken up in a court or tribunal without the matter having been first examined by the above constituted Committee and the Committee's clearance for litigation is obtained.

The Committee consists of ;

1. Cabinet Secretary
1. Secretary, Department of Industrial Development
- 3 Secretary, Department of Public Enterprises
2. Secretary, Department of Legal Affairs
3. Finance Secretary
4. Secretary of the concerned Ministry/Department.

The concerned Ministry/Department should refer the cases of dispute with the Public Sector Undertaking to the Cabinet Secretariat with a self-contained note as per Annexure _____ for placing before the above constituted Committee for decision.

Accordingly, in so far as contracts entered into with Public Sector Enterprises are concerned a suitable clause should be included in the Acceptance of Tender that in the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the permanent arbitration machinery set up in the Department of Public Enterprises and that if the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

12.3 SETTLEMENT OF DISPUTES THROUGH COURT OF LAW OF COMPETENT JURISDICTION :

Where a contractor has not agreed to Sole Arbitration Clause-24 of the General Conditions of Contract, the dispute/claims arising out of the contract entered into with him will be subject to the jurisdiction of the competent court of law as per the provisions of Clause 20 of the General Conditions of Contract (Form DGS&D68). In the Acceptance of Tender under the heading "Jurisdiction" below the entry relating to conditions of contract, the following should be inserted

"This contract is subject to jurisdiction of Courts at _____ only". The name of the place from which A/T is issued should be inserted in the blank space.

12.4 APPOINTMENT OF ARBITRATOR-PROCEDURE REGARDING CONSENT OF OTHER PARTY NOT REQUIRED FOR APPOINTMENT OF ARBITRATOR:

In cases where the parties have agreed to settlement of disputes/claims arising out of Ordnance Factory contracts through arbitration and to the appointment of arbitrator in a particular manner, the consent of other party would not be necessary for appointment of arbitrator and for reference of the dispute to him, when the aggrieved party asks concerned authority to do so.

12.5 PROCEDURE LEADING TO THE APPOINTMENT OF THE ARBITRATOR WHEN THE CONTRACTOR SEEKS TO REFER THE DISPUTE TO ARBITRATION:

On receipt of a request from the contractor to refer the dispute to arbitration, the factory will verify that the arbitration clause is included in the contract. On such verification, the factory will prepare a self contained note giving the points put forward by the contractor and the points of the purchaser in reply thereto and refer this note to the Legal Adviser for advice whether the purchaser's stand is tenable and whether the case is fit to be referred to arbitration. It should be ensured that all doubtful points requiring a ruling are clearly brought out by the Purchase Section in the self contained note. If the advice of the Legal Adviser is in the affirmative, the case will be put up along with the advice of the Legal Adviser to the Arbitration Cell (of OFB) for referring the dispute to arbitration. All relevant papers including a copy of Supply Order shall be forwarded to Arbitration Cell (of OFB).

The Arbitration Cell (of OFB) thereupon will submit the file to DGOF for appointment of Arbitrator and arrange to issue a letter appointing the Arbitrator with copy to both the parties involved in the contract.

12.6 PROCEDURE LEADING TO THE APPOINTMENT OF ARBITRATOR WHEN IT IS PROPOSED TO REFER DISPUTE ON BEHALF OF THE PURCHASER ;

In the case of Government claims where the Ordnance Factory contemplates taking recourse to arbitration, the factory should first verify the financial standing of the party and the prospect of recovery of the amount claimed, where the amount to be recovered is less than Rs. 5,000/-. A certificate will be given by the factory after that they are satisfied that recovery is possible. In respect of claims over Rs. 5,000/- no verification of the financial standing of the party need be made. In cases where the amount to be recovered is less than Rs. 5,000/- and the firms are registered with Ordnance Factory, the financial scrutiny may be carried out with reference to the registration records only. Claims of this magnitude from unregistered firms and in the case of those registered firms where no conclusion can be formed with reference to the registration records, full scrutiny should be done as laid down below.

- (1) Report from the Bankers who originally reported on the financial status of the firm
- (2) Report from the Income Tax Officer whether they are prompt in paying income tax if not, whether they are in arrears.
- (3) Report from the Wealth Tax Officer regarding payment of wealth tax by its Directors.
- (4) Report from the Registrar of Companies as to the balance sheets showing Profit and Loss Account of the concern.
- (5) Report from the Registrar of Partnership firms regarding the names and addresses of the partners if the firm is partnership concern.
- (6) Details about attachable assets/financial condition of the firm from the Deputy Commissioner/Collector of the District concerned.

After the financial standing of the party has been done, where required, a complete summary of the case will be prepared and referred to the Legal Adviser for opinion as to whether or not the Government has got a tenable and strong case fit for reference to arbitration. If the Legal Adviser advises that the case is fit for reference to arbitration, the factory should for the case to Arbitration Cell (of OFB) for appointment of Arbitrator.

If the contractor has not complied with the Demand Notice served on him by the purchaser and/or has disputed the purchaser's claim or recovery he may be served with a fresh Demand Notice to deposit the Government dues along with interest within 15 days from the date of issue of the Notice.

Thereafter the file will be referred to the Arbitration Cell (of OFB) to take necessary steps for appointing an arbitrator on behalf of the Government.

12.7 REFERENCE OF DISPUTES TO ARBITRATION ON THE DIRECTION OF COURTS

The Ordnance Factory contracts are usually governed by the standard arbitration clause. On a request received from the contractor, effort should be made to ensure the appointment of an arbitrator and not to compel the firm to go to the Court unless; there is any objection to it. In certain cases, the firms file petitions in courts for directions to the Union of India for reference of disputes to arbitration in terms of the Arbitration Clause. On receipt of such an order of the Court, the factory will examine the case and obtain the administrative approval of the competent authority.

The value of the contract shall be taken into account for deciding as to the officer competent to accord such approval.

Immediately after obtaining administrative approval as above the factory will send the file to Arbitration (of OFB) for appointment of Arbitrator as per the procedure.

The reference to particulars of the suit filed by the firms and the order of the Court in terms of which disputes are being referred to arbitration shall be indicated in the file.

12.8 PREPARATION, EXAMINATION AND FINALISATION OF PLEADINGS TO BE FILED BEFORE THE ARBITRATORS :

The concerned factory will specify the documents in support of the claims preferred by them. It will also be the responsibility of the concerned factory to collect the particulars from Accounts Officer, the concerned QA officer in respect of any items necessary for formulating the claim on behalf of the Union of India or any other purchaser shown in the contract. It will also be the responsibility of the concerned factory to give the list of officers who have dealt with the contract during the relevant period.

In the cases in which the Government is the respondent, a copy of the claim statement, as and when received from the claimant contractor, will be forwarded by the Arbitrator to the concerned factory. The concerned factory has to admit or deny categorically all the allegations made in the firm's claim statement and should also give explanatory notes about the stand and should also give explanatory notes about the stand taken by the factory giving reference to the advice of the Legal adviser which might have been obtained earlier. The concerned factory will also examine the copies of the documents, filed on behalf of the claimant firms and will also give explanatory notes, whether documents, the copies whereof have been filed by the claimant firm, are available in the purchase files and whether they are true and correct copies of the original available with the factory.

If, there are some mistakes in the copies filed by the claimant firm, the same should also be pointed out. The factory will also consult the Accounts office, the QA officer if some particular item referred to in the claim statement or some particular item necessary for substantiating the Government's counter claim, is required to be ascertained from the said offices.

In cases where Government counsels are engaged, the detailed para-wise comments offered by the factory or the self contained statement of facts offered by the factory will be submitted before the Government Counsel so appointed and the said Counsel will be requested to prepare the claim/counter statement of claim.

If the Government Counsel engaged for conduct of the case, requires prior consultation with the conversant officer of the factory to enable him to prepare or settle the claim/counter claim, the concerned factory shall depute the conversant officer for such consultation. The officer so deputed shall record on the file the date, time and duration of the discussions held with the Government Counsels to enable verification of the bills of the Counsels.

After the draft claim/counter statement of claim is settled by the officer the same will be fair typed as many copies as may be required in each case. The fair typed copies/counter statement of claim will thereafter be signed by the factory Officer dealing with the contract after verification of the factual position and swearing in of affidavits, where required, by presenting themselves before the Oath Commissioner. The pleadings shall then be signed and filed by the Officer/Government counsel, conducting the case.

List of documents referred to in the statement/counter statement of claim/replication/rejoinder as also in the advice of the Legal Adviser to support the claims of Government shall be prepared and finally settled with the approval of the officer/counsel who is to conduct the case.

It will be the responsibility of the factory to arrange for the presence of witness to give evidence on behalf of the Government where so desired by the Government Counsel. The factory will be completely responsible for watching the progress of

each case, for production of evidence, and shall render all assistance to the Government counsel as he may require and to see to the successful conduct of the cases.

12.9 EXAMINATION OF AWARDS/DECREES AND ACTION THEREAFTER :

Arbitration awards may be classified as :

- (a) Declaratory Awards : This is an award which either dismisses claim made but awards no sum of money whether by way of cost or otherwise or only declares an interpretation of the contract. In the case of such an award, the factory will take steps promptly to cause the award to be filed in the competent court to make it a rule unless it is advised by the Legal Adviser and a suit relating to the dispute referred to arbitration has become barred by time.
- (b) Other Awards : These are awards which direct payment of a sum of money by one party to other. If the award is wholly in favour of the purchaser, action should be taken for recovery of the awarded amount and the Demand Note as in for "A" at annexure-53 should be issued.

12.10 SPEAKING AWARDS :

The speaking awards made by an Arbitrator contain reasons for admission or rejection of claims. In terms of clause-24 of Conditions of Contract, DGS&D-68 (Revised), if the value of the claim in a reference exceeds Rs. 1 lakh the arbitrator shall give reasoned award

12.11 NON-SPEAKING AWARDS :

Non-speaking awards do not contain reasons for admission or rejection of claims.

When the arbitrator/the court has delivered the award, the factory will arrange to obtain copies of the award.

Government Counsels conducting the cases, would examine the awards very carefully and after the detailed study pin point any unusual features, defects, infirmity or weaknesses and refer to the factory for obtaining the approval of the competent authority for acceptance or otherwise of such awards.

In cases where the sole arbitrator makes a non-speaking award directing the Government to pay a certain sum to the party in full and final settlement of all the claims and counter claims of all the parties against each other, the examination of every cases as to why the Government did not get its full claim before the arbitrator would involve labour which would not be commensurate with the results achieved as the award is a non-speaking award.

In respect of Arbitration cases covered under the new Act, 1996 request for any correction, interpretation or additional award can be made under section 33 of the Act within 30 days from receipt of the award unless another period of time has been agreed upon by the parties.

12.12 PROCEDURE OF FOLLOW-UP ACTION

AWARD IN FAVOUR OF THE GOVERNMENT:

Immediately on receipt of the award or the decree as the case may be by the factory, it will initiate action to obtain the decision of the competent authority as to the acceptance or otherwise on behalf of the Government of the award or the decree. Reference to the Legal adviser would not be necessary where;

- (i) the Arbitrators/court has allowed the claim of the Union of India to the full extent;
- (ii) the Arbitrator/court has dismissed the claim of the contractor against the Union of India and the Union of India preferred no claim.

If the award is fully in favour of the Union of India, the question of challenging the same does not arise and the file need not be sent to the Legal Adviser unless advised or any question of Law is still required.

An Arbitrator has to make an award within 4 months of the date of which he enters upon reference or within such time as is extended by the parties through mutual consent. Where an award is made after the time allowed as referred to above, an application shall also be made under section 28 of the Arbitration Act for the extension of time for making the award. Such an application for Extension of time for making the award can also be made along with the application under section 14 and 17 of the Arbitration Act for making the award a rule of the court.

In respect of cases, coming under Arbitration Act 1996 an application for setting aside an award is to be made under section 34 of the Act within 3 months from the date on which the party making that application have received the arbitral award or,

if a request has been made under section 33 of the new Act, from the date on which that request had been disposed of by the Arbitral Tribunal.

The factory concerned who shall thereupon serve a demand notice for recovery of the awarded amount from the contractor as per annexure-53. The factory shall at the same time explore the possibility of effecting recovery in full or part of the awarded amount from the pending bills of the firm and report the result to the Operating Division. In case payment is not made within 30 days of the issue of the demand notice the factory shall forthwith institute investigations through appropriate civil and police authorities to find out financial assets of the judgements debtors and also ascertain the immoveable properties and other assets held by them and intimate the same to the Operating Division along with certificate that recovery through normal channels could not be possible so that immediately after award is converted into a decree, execution proceedings may be initiated for getting an order of the court for attachment of the properties in question in satisfaction of the decree. It must be noted that complete details and location of all such properties are to be given in the execution petition itself to enable the court to pass the requisite order of attachment.

AWARD NOT IN FAVOUR OF THE GOVERNMENT

Where the award is against Government or partly in favour and partly against the Government as for example where it directs the Government to pay a sum lesser than the sum claimed by the Contractor it is not necessary to cause the award to be filed in court, if the Government accepts the award and other party accepts payment thereof in full and final settlement of all claims forming the subject matter of reference in pursuance of an offer made in accordance with the procedure laid down.

The factory shall, immediately after obtaining the approval of the competent authority to accept the award communicate to the contractor in form "B" at annexure-54 the fact of such acceptance and offer payment in terms of the award. If the contractor communicates acceptance of the award within specified time, payment so made will bar the contractor from using again in respect of the same dispute vide decision of the Supreme Court reported in Kashinath Shah and Narsing Shah AIR 1961 SC 1077.

It may be clarified that a letter of consent from the firm can serve the purpose and in cases where an amount has to be paid to the firm by the Union of India or by the firm to the Union of India, for, in such cases discharge is obtained by payment of the amount by either of the parties in pursuance of the award. In cases where there is simply a declaratory award, it is always advisable to have the award made a rule of court. In the latter category of cases it would not be possible to urge that the letter of consent from the firm operates as a discharge.

12.13 PROCEDURE FOR MAKING PROVISIONAL PAYMENT OF CHARGED EXPENDITURE.

The provisional payments in respect of decretal amount awarded by Courts should not be released without specific allotment of funds under charged expenditure for making payments. As soon as a copy of the judgement of Court is received, immediate action may be initiated by the factory to get allotment of funds under the head Charged Expenditure. Such proposal should be sent to Finance/Budget section (of OFB) through the concerned Operating Division along with

- (1) A copy of the Judgement/Award on the basis of which payment has been made.
- (1) Precise amount needed to satisfy the Judgement/Award. In case the amount could not be precisely calculated, tentative amount indicating the variable parameters should be intimated for allotment of funds.

In order to avoid any delay the factory should ensure that immediately after the allotment of funds by OFB/Finance the payment is released on a provisional basis and the case submitted to OFB/Finance for ex-post facto sanction along with the following documents:

- a) A copy of self – contained statement of case.
- a) A copy of account statement/calculation should duly vetted by LAO.
- b) Details of payment.

- (2) Amount for which M of D sanction has to be obtained.
- (2) Date of payment.
- (3) Code Head of booking.
- (4) Financial year in which the payment has been made.
- (5) Other relevant documents if any.

To ensure sufficient allotment of funds for such payments factories should anticipate the requirement of funds under charged expenditure based on the pending Count/Arbitration cases and project their requirements for the next year along with the FE, Budget Estimate submitted during the previous year as well as periodical projections in the current year (PR/PRE/RE/MA).

Annexures

ALANGOS