

CHAPTER - 1

ORGANISATION - OBJECTIVE & FUNCTION

1.1 Objective

Department of Atomic Energy spends considerable amount of its budget for purchasing various type of goods to construct, operate and maintain various projects and schemes and for R&D activities under its administrative control. It is imperative that these purchases are made following a uniform, transparent, systematic, efficient and cost effective procedure in accordance with the relevant rules and regulations of the Government. Department of Atomic Energy had been delegated powers for procurement of goods under the Delegation of Financial Powers (DAE) Rules 1978, which has to be exercised in conformity with the orders and guidelines issued by competent authorities covering financial, vigilance, security, safety, and other regulatory aspects. Without purporting to be a comprehensive compendium of all statutory provisions, rules, regulations, orders and guidelines on the subject of public procurement, this manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

1.1.1 The important and significant area to a large extent of public buying has been covered in this Manual. A situation may, however crop up rarely in a purchase case for which no solution may be readily available in this Manual. In such a situation, the Units/DPS may seek advice and guidance from the Department/Legal Adviser, DAE.

1.1.2 In the Department of Atomic Energy, Directorate of Purchase & Stores is entrusted with the responsibility of procurement of stores for R&D Organisations, Industrial Facilities and Service Organisations whose expenditure are met from the Consolidated Fund of India.

1.2 Department of Atomic Energy

1.2.1 Department of Atomic Energy is a broad based multi-disciplinary organisation engaged in the development of nuclear power technology, application of radiation technology in the field of agriculture, medicine, industry and basic research. DAE's main motto is the production of safe and economical nuclear power, using uranium and thorium resources. Towards this end, it is involved in developing in stages, pressurized heavy water reactors, fast breeder reactors and advanced thorium reactors with associated fuel cycle system. DAE comprises five Research Centres, three Industrial Organisations, five Public Sector Undertakings and three Service Organisations. It has two boards for promoting and funding extra-mural research in nuclear and allied field and mathematics. It also supports seven institutes of international repute engaged in research in basic sciences, astronomy, astrophysics, cancer research and education, etc. and a society that provides educational facilities to the children of DAE employees.

1.2.2 DAE programmes are defined under six key pointers to facilitate better visibility to the

deliverables arising out of programmes being implemented. The six key drivers are as follows :-

Nuclear Power Programme Stage I

Higher Share for Nuclear Power:
Competitive Capacity Addition
Sustain and Improve Capacity Utilisation
Move towards Financing Capability through Internal Resource generation
Sustained Excellence in Safety Performance

Nuclear Power Programme Stage II

Commercial Demonstration of Fast Breeder Technology:
Early setting up of Prototype Fast Breeder Reactor (PFBR) and associated Fuel Cycle Plants
Advanced Fuel Cycle with Higher Breeding gain

Nuclear Power Programme Stage III

Technology Demonstration for Large Scale Thorium Utilisation:
AHWR (Advanced Heavy Water Reactor)
Technology Road Map on Shaping the Third Stage

Non-Power Applications

Deployment Over Large Scale:
Desalination of Water
Nuclear Agriculture
Radiation Processing of Food, Industrial and Medical Products
Health Care and other Industrial Applications

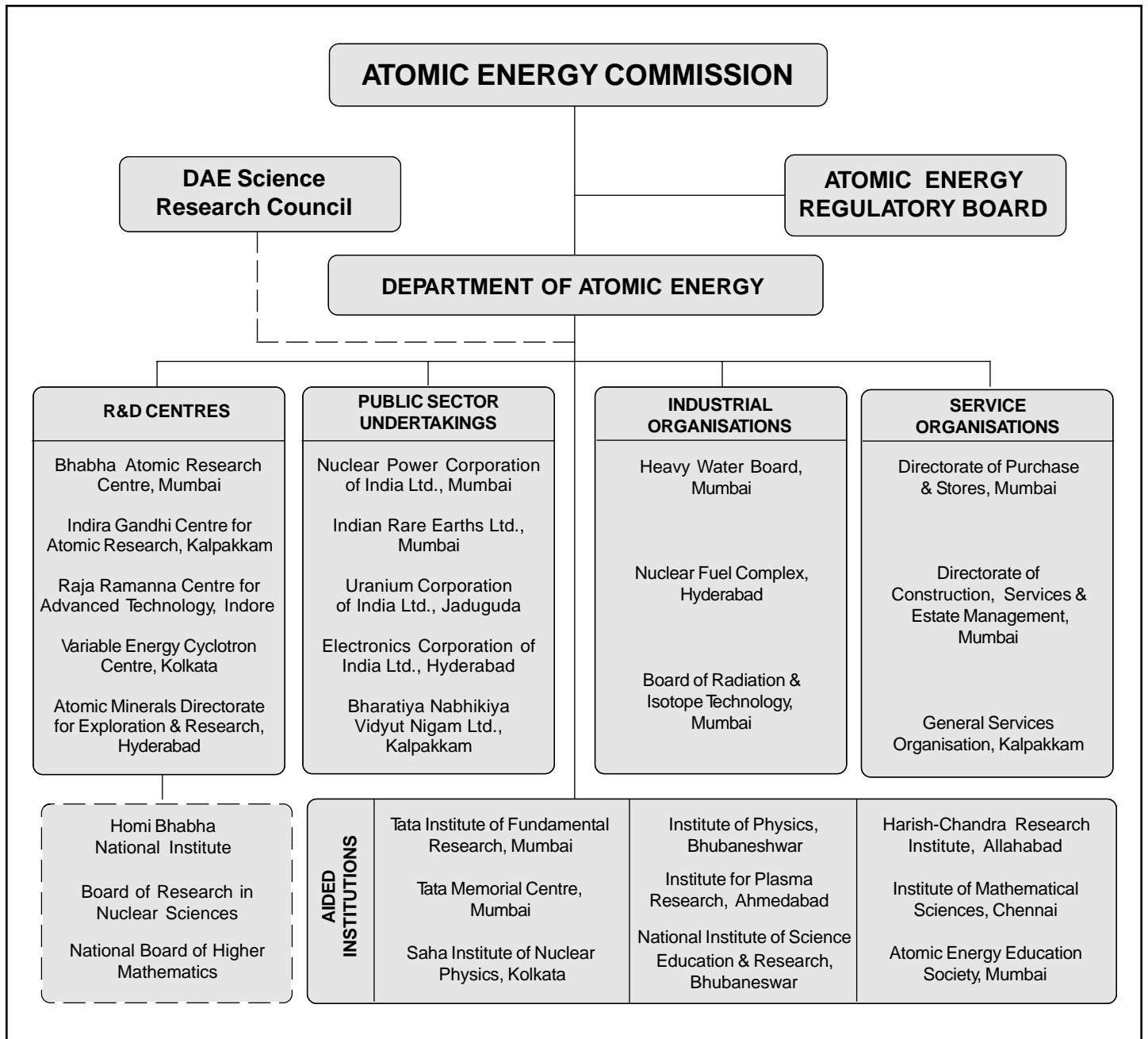
Research and Development

Broad Based R&D in Nuclear Sciences and Technologies involving Scientific Groups within DAE and outside including Universities.

Research Education Linkage

Mutual Strengthening of Education and Research in Nuclear Sciences and Technologies and Allied Disciplines.

1.3 The Organisation



1.4 Exemption of Procurement through DGS&D

The equipments/materials/instruments/components/ spares and all other stores required for construction, operation and maintenance of the projects of the above mentioned organisations are of highly specialized nature with stringent quality requirements. The vital necessity of implementation of these projects with planned schedule has made DAE to set up its own procurement wing called Directorate of Purchase and Stores (DPS) after obtaining exemption from making use of the Central Purchase Organisation (Directorate General of Supplies & Disposals).

1.5 Directorate of Purchase & Stores

1.5.1 Directorate of Purchase & Stores is headed by a Senior Scientist/Engineer who is designated as Director, Purchase & Stores and the Regional Units are headed by Scientists/Engineers who are designated as Regional Directors. Director, Purchase & Stores is declared as Head of the Department and is responsible for procurement and stores functions of the Department.

1.5.2 Directorate of Purchase & Stores is entrusted with the responsibility of procurement of different types of items for various Units of Department of Atomic Energy including operational plants and project construction activities of Industrial Units like HWB, NFC, BRIT, the variety of items required for Research & Development Units like BARC, IGCAR, RRCAT, VECC and the material requirements of the mining activities of AMD. In addition, it takes care of the Stores requirements of Service Organisations like General Services Organisation and Directorate of Construction Services & Estate Management including the requirements of various Hospitals (medicines, consumables and capital equipments) functioning under DAE. The entire purchase activity is carried out by following the government purchase procedures and rules & regulations framed for such procurements.

1.5.3 In the light of the above, DPS procurement activity should not be viewed in the normal context of procurement of common user items but should be considered as the exclusivity of the Department in its endeavour to achieve the larger end goals of the Department i.e. attaining self sufficiency in the nuclear field. In addition to procurement, receipt, transport, accounting, proper storage and issue of material as and when required by the Units, DPS is also looking after the disposal activities of scrap and surplus/unserviceable/obsolete materials. The Purchase & Stores functioning of all the Units of DAE whose expenditure is met from the Consolidated Fund of India is taken care by DPS.

1.5.4 In order to speed up the procurement activity and take timely decisions, the purchase, stores and disposal function of NFC, IGCAR & RRCAT have been decentralized with effect from 1st August, 1994 vide DAE O.M. No. 10/9/8/84-SS/569-570-571 dated 28th July, 1994 and the Heads of the Department of these Units have been declared as Ex-officio Director, P&S and certain powers of Director, P&S have been delegated to them relating to purchase, stores and disposal activities of these Units. Chief General Manager, HWP (Manuguru) will exercise all the powers of the Regional Director, HRPU in respect of all the purchase requirements of Heavy Water Plant (Manuguru) and the Regional Purchase Unit (Manuguru), Secunderabad will exercise all the powers and functions of the HRPU in so-far-as the purchase requirements of HWP(M) are concerned. The Regional Directors have dual reporting. They report to Director,

P&S in relation to application of rules & procedures etc. and report to respective Unit Head for day-to-day functioning for procurement and other activities. The administrative function of personnel working in these units also continue to be under the control of Director, P&S.

1.5.5 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'. The competent authority approving the expenditure must ensure financial propriety and probity, transparency and fair play as well as the objective to optimize resources. The competent authority or the competent committee is accountable for all decisions taken by them while approving any measure involving government funds. This accountability is unconditional and absolute.

1.6 The Role of DPS & Indentor

1.6.1 In DGS&D, procurement, evaluation of bids, finalization of contracts and inspection are their responsibility whereas in case of DPS evaluation of tenders, recommendation for placement of purchase order, technical follow up during manufacturing and inspection are the responsibility of the concerned Unit raising the indent. DPS is a Service Organisation which takes care of procurement, transportation, accounting, safe custody and issue of the materials. Thus in DAE, materials management functions are shared by DPS and the Unit concerned.

1.6.2 Role of DPS

1. Timely purchase of specified quality stores required for the above mentioned Units of DAE both indigenous and import at reasonable cost in a transparent manner by giving fair and equitable treatment to suppliers and promotion of competition in public procurement.
2. Transportation of stores to the respective Projects/Units site.
3. Receipt and accounting of stores.
4. Proper storage of the goods.
5. Issue of stores as and when required by the Projects/Units.
6. Channelizing imports to comply with customs regulations and avail concessional rate of customs duty wherever applicable.
7. Timely clearance of imported stores after completing all the required formalities with carrier/customs/ports/airports authorities, etc.
8. Appointment and monitoring of Consolidation Agents for collection and safe transportation of materials by air from different overseas destinations to India.
9. In case of sea consignments coordination with the Ministry of Shipping & Surface Transport for arranging shipment through Govt. of India freight forwarders and safe transportation.

10. Arranging timely warehouse to warehouse marine insurance towards transit risks during transportation.
11. Issue of free issue material to the suppliers with proper safety of govt. material as per the terms of the purchase order.
12. Obtaining warranty and procedural follow up for rectification of defects, including export of the defective/damaged equipment/parts after completing all the customs formalities including claiming draw back wherever necessary.
13. Receipt and monitoring of bank guarantees/insurance policies.
14. Registration of vendors (manufacturers/stockists/authorised agents / distributors / Indian agents of foreign manufacturers).
15. Coordination with the user and the quality assurance wing of the Unit for timely inspection and acceptance of the material.
16. Timely payment to the suppliers.
17. Developing vendor base of reliable suppliers.
18. Development of vendors for manufacturing goods as import substitute.
19. Collection, segregation and timely disposal of scraps/surplus materials/obsolete and unserviceable items.

1.6.3 Role of Indentor

1. Raising of indent with all relevant details with the approval of the competent authority.
2. Timely evaluation of quotations and submission of recommendations with the approval of the competent authority & Committee.
3. Follow up with the supplier for monitoring the progress of work.
4. If the progress is not as per the milestones indicated or the progress is not on the expected lines, intimation to DPS.
5. In case of free issue materials issued by the Department, in addition to monitoring the progress of work, the proper storage, maintenance and usage of the FIM by the supplier is to be monitored and in the end verify and certify the free issue material accounting submitted by the firm.
6. Timely inspection of the material and issue of shipping release.
7. After receipt of the material, final inspection and issue of acceptance report to Stores.

8. Certify satisfactory performance of item during warranty period. In case defect is found during the warranty period technical discussion and follow up with the supplier to sort out the problem. Inform DPS about the action taken in this regard.
9. Close coordination with Purchase, Stores & Accounts for timely completion of contract in all respects.
10. Provide performance report on the supplier to DPS whenever required.

1.6.4 DPS Council

A body called DPS Council is functioning under the Chairmanship of Director, P&S with senior Officers of DPS including Regional Directors as its members. The Council is an Advisory Committee to Director, P&S. Its functions are :-

1. To consider, review and decide all matters of policy and procedures and implementation thereof, concerning the smooth and efficient functioning of the Directorate of Purchase and Stores.
2. To consider, review and recommend all administrative policy matters concerning recruitment of personnel, their promotions and transfers.
3. Staff matters.
4. To consider any other matter which may be brought before it by a Member of the Council and to make recommendations to Director, P&S.

1.7 Organisational Set-Up of DPS [See chart on following page]

1.7.1 Purchase Units

1.7.1.1 The Purchase Units under DPS are functioning at nine (9) places in different regions.

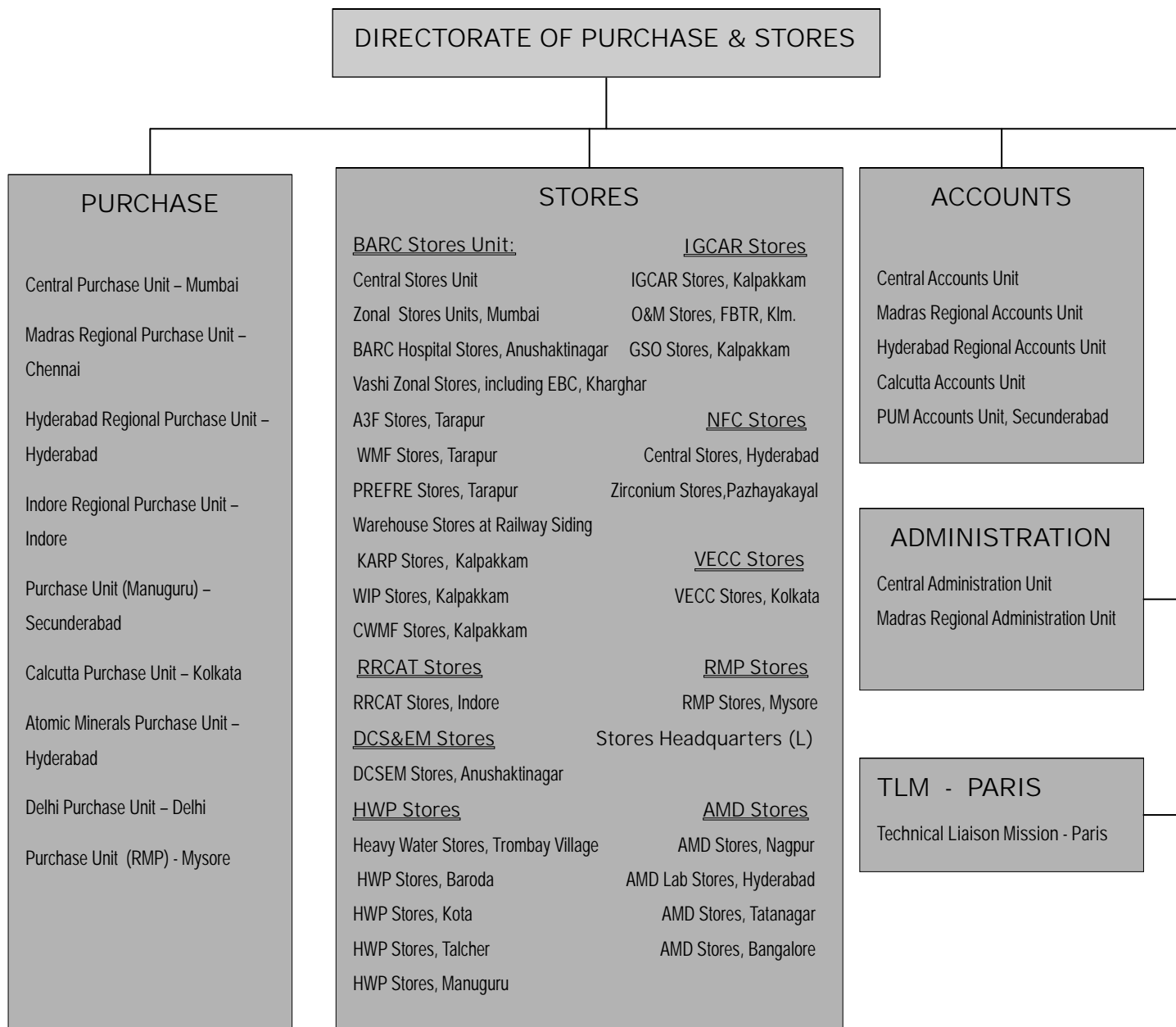
The details are as follow:-

(1) Central Purchase Unit, Mumbai, (2) Hyderabad Regional Purchase Unit, Hyderabad (3) Purchase Unit (Manuguru) at Secunderabad (for HWP, Manuguru) (4) Madras Regional Purchase Unit, Chennai (5) Indore Regional Purchase Unit, Indore (6) Calcutta Purchase Unit, Kolkata (7) Delhi Purchase Unit, Delhi (8) Atomic Minerals Purchase Unit, Hyderabad (9) Purchase Unit at RMP, Mysore.

1.7.1.2 In addition to the above, the following Stores Officer/Asstt. Stores Officers have also been delegated powers for procurement of stores with the assistance of Purchase Assistant/Junior Purchase Assistant posted in the Units:-

(1) Stores Officer, HWP, Kota (2) Asstt. Stores Officer, HWP, Baroda (3) Asstt.

1.7 Organisational Set-Up of DPS



Stores Officer, HWP, Tuticorin (4) Asstt. Stores Officer, HWP, Talcher (5) Asstt. Stores Officer, Zirconium Plant, NFC, Pazhayakayal.

1.7.1.3 Central Purchase Unit

The Central Purchase Unit handles purchases on behalf of all the Projects/Units mentioned above located not only in and around Mumbai but also for other Projects/Units located outside Mumbai where the estimated cost of the indent exceeds the purchasing power delegated to the respective Purchase Units other than three Regional Purchase Units. CPU handles all overseas procurements of the Units except where the powers have been delegated (NFC, IGCAR, RRCAT, VECC). Large scale purchases of variety of items are being handled by Central Purchase Unit. With a view to ensure equitable distribution of work and speedy handling of purchases, different Purchase Sections have been formed in CPU on the principle that items of similar nature are handled by one Section. In addition import & customs clearance, transport & clearance, central despatch, vendor registration, receipt, custody and opening of tenders, work relating to Stores & Equipment Committee (S&EC)/ Stores Purchase Committee (SPC), Management Information Services (MIS) and Post Audit functions are being handled by separate Sections. The purchase functions of CPU are looked after by Joint Director & Dy. Directors.

1.7.1.4 A Regional Director heads the Hyderabad Regional Purchase Unit and HRPU is handling all the purchases both indigenous and import for NFC, Hyderabad and Zirconium Plant, Pazhayakayal irrespective of value.

1.7.1.5 Madras Regional Purchase Unit handles all purchases both indigenous and import for IGCAR, GSO, Kalpakkam, BARC facilities located at Kalpakkam and HWP, Tuticorin. This Unit is headed by a Regional Director.

1.7.1.6 Indore Regional Purchase Unit headed by a Regional Director handles all the purchases for RRCAT both indigenous and import irrespective of value.

1.7.1.7 Purchase Unit (Manuguru) at Secunderabad functions under the control of Manager (Purchase) and is handling purchases of indigenous items required for HWP (Manuguru).

1.7.1.8 Atomic Mineral Purchase Unit, Hyderabad handles procurement of indigenous items required for AMD Units at Hyderabad, Bangalore, Visakhapatnam, Jamshedpur, Trivandrum, Shillong and Nagpur. AMPU is headed by Officer-in-Charge, Materials Management.

1.7.1.9 Delhi Purchase Unit is headed by an Assistant Purchase Officer and looks after the purchase requirements of AMD, Delhi, Jaipur, and BARC Units in and around Delhi. Assistant Purchase Officer, DRPU will report to Dy. Director, P&S (I).

1.7.1.10 Calcutta Purchase Unit is being looked after by a Purchase Officer and is handling the activities of procurement of both indigenous and imported items required for VECC, Kolkata and HWP, Talcher. As per the present delegated power, CRPU is procuring indigenous materials upto a value of Rs. 10.00 lakhs each and imported materials upto a value of Rs. 30.00 lakhs each. All indents beyond this value are being processed at CPU, Mumbai. CRPU can handle the indents beyond the value delegated to the Unit with the concurrence of IFA, DPS and approval of Director, P&S in case they are in a position to handle these indents on case to case basis. Purchase

Officer, CRPU will report to Joint Director, P&S.

1.7.1.11 Purchase Unit at RMP, Mysore is under the charge of an Assistant Purchase Officer and is empowered to handle purchases of all indigenous items upto a value of Rs. 3.00 lakhs each.

1.7.1.12 Assistant Stores Officer, HWP, Tuticorin, Assistant Stores Officer, HWP, Talcher and Assistant Stores Officer, Zirconium Plant, NFC, Pazhayakayal handle indents whose estimated value is not exceeding Rs. 50,000/- each. Stores Officer, HWP, Kota and Assistant Stores Officer, HWP, Baroda will process the indents whose estimated value is upto Rs. 1.00 lakh each.

1.7.2 Stores Units

1.7.2.1 Deputy Director, P&S, Central Stores Unit and other Stores Officers/Asstt. Stores Officers attached to the respective Stores Units are taking care of receipt, accounting, proper storage, issue of stores, issue of FIM and its accounting, procurement, maintenance and issue of common stock items, collection, storage and disposal of scrap, surplus and unserviceable materials.

1.7.2.2 Deputy Director, P&S, Central Stores Unit is responsible for all the stores activities and is reporting to Director, P&S.

1.7.3 Finance & Accounts Unit

1.7.3.1 DPS Accounts Unit is headed by Internal Financial Adviser who carries out the function of the Financial Adviser to the Director, P&S and also looks after the finance and accounting activities of DPS. One of its Accounts Officers is functioning as Pay & Accounts Officer, DPS, Mumbai. Pre-audit of all purchase orders beyond the value of Rs. 20,000/- is carried out by Accounts before release of purchase orders to ensure that the contracts concluded satisfy all the procedures, rules, regulations and guidelines and cannons of financial propriety is adhered to. The major function of DPS Accounts is to ensure timely settlement of suppliers' bills. It also takes care of the establishment payments including personal claims of the staff of DPS. It also maintains DDR balances including the provident fund balances, account of new pension fund and issues PPOs (Pension Payment Orders) pertaining to the officials of DPS.

1.7.3.2 Madras Regional Accounts Unit is headed by Deputy Controller of Accounts who reports to JC (F&A), IGCAR. Assistant Accounts Officer, DPS functioning from Hyderabad Regional Accounts Unit reports to JC (F&A), NFC and the Assistant Accounts Officer, DPS functioning from Calcutta Accounts Unit reports to DCA, VECC for day-to-day functional requirements. Senior Accounts Officer/Accounts Officer, City Office, Secuderabad reports to DCA, HWP, Manuguru. However they report to IFA/DPS for general administrative purpose and IFA/DPS co-ordinates with the Accounts Heads of the respective Units for smooth function.

1.7.3.3 The accounting functions of Indore Regional Purchase Unit is taken care by the Accounts Wing of RRCAT. DPS provides clerical assistance for carrying out the job. The accounting functions of AMPU is taken care by the Accounts Wing of AMD.

1.7.4 Administration Unit

1.7.4.1 Central Administration Unit is headed by an Administrative Officer. He assists Dire-

ctor, Purchase & Stores to carry out his administrative responsibility. The Central Administration Unit is responsible for personnel management, establishment work, recruitment, promotion and staff welfare, etc.

1.7.4.2 The Madras Regional Administration Unit is reporting to the Regional Director, MRPU and is looking after the day-to-day administrative requirements of DPS personnel stationed at Chennai, Kalpakkam & Tuticorin and maintains the service books of these personnel.

1.7.5 Technical Liaison Mission, Paris

1.7.5.1 The Directorate of Purchase and Stores has a Liaison Mission functioning from Paris. The Technical Liaison Mission is headed by a Senior Scientist/Engineer. This Unit reports directly to the Director, Purchase & Stores.

1.7.5.2 TLM, Paris takes care of:-

- 1) tapping new sources for supply of specialized / sophisticated equipments & components,
- 2) assisting the projects/units of DAE in matters connected with conclusion of agency agreements for consultancy, know-how agreement, obtaining clarifications/information etc.,
- 3) expediting/progressing of the supplies based on the orders placed on foreign manufacturers by DPS Units,
- 4) witnessing/carrying out inspection of imported equipment and components wherever considered necessary, and
- 5) ascertaining information/details, etc. relating to technical capability, financial standing and other connected details about the manufacturers/suppliers situated abroad.

1.7.6 Stores Liaison Cell at DPS Headquarters

1.7.6.1 The Stores Liaison Cell functions under the charge of a Stores Officer. This Cell is entrusted with the responsibility of (a) Stock Verification of Inventory of all the Stores Units of DAE by a team of stock verifiers (b) Compilation of statistical data of all the Stores Units, proposal for manpower requirement, etc. (c) Liaisoning movement of heavy water between various Units of DAE (d) Scrutiny and clearance of files received from all the Stores Units (except Central Stores Unit, BARC) of DAE (e) Up-keep of DPS Office at Mumbai, and (f) Operation and Maintenance of DPS vehicles.

1.7.6.2 The Stores Officer-in-charge (SO-HQ (L)) periodically visits the various Stores Units and submits report to Director, P&S about the functioning of the Stores Units and suggestion for improvement wherever required.

CHAPTER - 2

GOVERNMENT PURCHASE POLICY AND GENERAL GUIDELINES

2.1 Procurement Objective

The main objectives of public buying are:

- 1) Procurement of quality stores of specified quantity.
- 2) Procurement of stores at the reasonable price on competitive bidding.
- 3) To ensure safe transportation of material to the required site.
- 4) Procurement of stores at the required time.

2.2 Purchase Policy

The Purchase Policy adopted in DAE Procurement is as per the guidelines of General Financial Rules (GFR) and special emphasis is given to:

1. Encourage and develop the capacity and capability of the Indian manufacturers for design, engineering, prototype, manufacturing, testing, installation and commissioning of products that have not been made previously, unusual requirement in respect of the specification or for difficult condition of application and use, manufacturing of item for which there is little precedent in treatment and fabrication required for development of nuclear technology and to attain self sufficiency in the nuclear field.
2. Development of indigenous production as import substitution.
3. Identification of dependable sources for meeting the requirements of various Units of DAE.
4. Ensure quality of the product and timely supply.
5. Arrange safe transportation of material to various sites.
6. Proper storage and issue of material to different users as and when required.

2.3 Preferences

The Govt. of India has issued administrative instructions in furtherance of the policy on

Purchase and Price Preference and procedure of procurement as applicable to each of the preferred sector. The preferences considered are as under:-

- 1) Product Reservation
- 2) Price Preference
- 3) Purchase Preference

2.4 Product Reservation

2.4.1 Purchase of Khadi items Procurement from KVIC

2.4.1.1 All items of hand spun and hand woven textiles (khadi items) are reserved for exclusive purchase from KVIC. List of all such khadi items is given in Annexure - 1. The purchase of khadi items from KVIC should be made on single tender basis at the rate quoted by them without a separate verification regarding their reasonableness. The Commission quotes rates which are fixed by a Committee known as the Certification Committee and the rates so fixed are reviewed by the Cost Accounts Branch of the Ministry of Finance.

2.4.1.2 Indian Standard specifications are laid down for khadi and the items to be purchased from the KVIC are required to conform to these specifications. There is no provision for verification of capacity before covering the demand on KVIC who will distribute the item/quantity ordered on them among the affiliated units according to their capacity.

2.4.2 Purchase of Handloom Textile Items Including Barrack Blankets - Procurement from KVIC/ACASH

2.4.2.1 All items of handloom textiles are reserved for exclusive purchase from KVIC and/or notified Units through the Association of Corporation and Apex Societies of Handloom (ACASH) and Womens Development Organisation.

2.4.2.2 The handloom textile items shall be purchased from KVIC to the extent they can supply and the balance from the Handloom Units of ACASH to the extent these Units can make supplies.

2.4.2.3 For the left over quantity, if any, purchases can be made from other sources.

2.4.2.4 Purchase of handloom textile items is to be made both from KVIC and ACASH on single tender basis at the prices quoted by them without independent verification as to the reasonableness. In the case of KVIC, as mentioned above the rates quoted are fixed by a certification committee and the rates so fixed are reviewed by the Cost Accounts Branch of the Ministry of Finance. In the case of ACASH the rates are fixed by Ministry of Textiles by associating a representative of the Chief Cost Accounts Officer of the Department of Expenditure, Ministry of Finance.

2.4.2.5 Normal inspection and other procedure shall apply for procurement through KVIC/ACASH. Testing arrangements will be provided by KVIC/ACASH or by their notified units and where the same are not available testing charges for testing outside at approved laboratory shall be borne by KVIC/ACASH/their Units.

2.4.2.6 KVIC/ACASH is treated on par with SSI Units registered with DGS&D and NSIC. Both are exempted from payment of Security Deposit. They will however have to bear the normal responsibility stipulated under the terms and conditions of the contract and fulfill all the contractual obligations on behalf of the Units for which they quote.

2.4.2.7 However, these facilities are not applicable to State KVI Boards if they quote directly claiming to be a KVIC Unit.

2.4.2.8 List of items reserved for purchase from KVIC/ACASH in accordance with the procedure outlined above is given in Annexure 2.

2.4.2.9 Purchase of balance quantity of items beyond the capacity of KVIC/ACASH will be made by inviting sealed tenders through advertised tender enquiry or limited tender enquiry as the case may be.

2.4.3 Items Reserved for Procurement from SSI

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

2.4.3.2 There is a provision for review of the list at periodical intervals by Standing Review Committee set up under the Chairmanship of Secretary (Supply) with Development Commissioner (SSI) as Member Secretary. These items will be identified by definite specification.

2.4.3.3 Procurement of the above items will be made by inviting sealed tenders through advertised tender enquiry or limited tender enquiry as the case may be. The tender enquiry document should clearly indicate that the purchase will be made from suppliers falling in the category of KVIC/ACASH and Small Scale Units registered with National Small Industries Corporation. In the process of procurement, other things being equal, the purchase preference would be in favour of KVIC/ACASH/SSI in that order.

2.4.3.4 In respect of items not falling under reserved categories, PSUs and large scale private industries will also be invited to participate.

2.5 Price Preference

2.5.1 As per Government of India, Ministry of Small Scale Industries, Office of the Development Commissioner (SSI), Small Industries Development Organisation letter no. 22(1)/2000-EP&M dated 22.8.2001 addressed to the Secretaries of all Ministries/Department of Govt. of India, SSI Units registered with NSIC are eligible for -

- (1) issue of tender sets free of cost
- (2) exemption from payment of earnest money

- (3) waiver of security deposit to the monetary limit for which the Unit is registered
- (4) price preference upto 15% over the quotation of large scale units and 5% over the offer of Public Sector Undertakings.

2.5.2 The basic principle behind the policy of price preference to Small Scale Industry Units is that such a preference is considered necessary in those cases where the SSI Units need protection and cannot stand on their own in competition with large scale sector. The price preference to be accorded to SSI units therefore should be on a tender to tender basis keeping in view the basic consideration of conforming to specification, quality, delivery, capacity, etc. The price preference should be granted judiciously and where necessary, we can call for detailed break up of cost of production where prices quoted are substantially higher than the last purchase price and have reasons to believe that higher price is being quoted merely to avail of price preference.

2.5.3 If a Small Scale Unit has in the previous years successfully supplied goods without availing of the benefit of price preference or with price preference which is substantially lower than the maximum preference admissible, it would be justified in making further enquiries as to how the cost of production of small scale unit has substantially gone up justifying price preference or a higher price preference. At the same time, it may be noted that even though the small scale unit might have succeeded in securing an order in competition with large scale unit at a point of time without price preference does not necessarily mean that it is in a position to compete with a large scale unit later also. Therefore each case of price preference will be examined by itself.

2.5.4 The question of granting price preference will not arise in the following cases:-

- 1) Where competition exists among the small scale units or where the items are exclusively reserved for purchase from SSI Unit.
- 2) Where the tenders are received from both SSI unit and large scale unit and lowest offer is from SSI unit and the capacity is more than adequate to meet the demand in hand.

2.5.5 Small scale units when they quote in consortium under NSIC/SSIDC/State Leather Development Corporation/State Govt. Handicraft Development Corporation, where the NSIC/State Development Corporation themselves quote on behalf of some SSI Unit, their offer will be considered as an offer from SSI Unit registered with DGS&D and NSIC. The NSIC/State Development Corporation will shoulder the normal responsibilities applicable under the terms and conditions of the contract and fulfill all the contractual obligations on behalf of the units for which they quote. These facilities will not apply to the procurement of the undermentioned items:-

- (1) Drugs
- (2) Medical & Electro-medical equipment
- (3) Items where technical competence, capacity and manufacturing facilities are required to be verified before placement of order.

An SSI Unit will not get any price preference over another SSI Unit.

2.5.6 Industrial Cooperative Apex Units

2.5.6.1 The Cooperative Societies and Industrial Cooperatives marketing the products of cottage and small scale industrial units and the Associations of such Cooperatives at the district, regional and state level as also the central marketing associations of industrial cooperatives i.e. apex unit if they satisfy the definition of small scale industrial unit, will be considered as such for the purpose of registration and will be entitled to price preference. Other things being equal, cooperative societies should be given preference over other small scale units.

2.5.6.2 In the case of industrial cooperatives, capital assets are fixed assets of the apex unit (the central marketing association of the industrial cooperatives) and do not cover investment of its constituent units.

2.5.6.3 The Ministry of Finance, Department of Expenditure vide their Memorandum No. 1/12/E11(A)/94 dated 29.7.2005 has clarified that the special dispensation from the process of inviting tenders/quotations provided to NCCF/Kendriya Bhandar in DOPT Welfare Division's OMs dated 14.7.1981 and 11.9.1994 under Chapter 8 of the Old GFR no longer holds good and that purchase/procurement of goods by Government of India Officers will now be strictly guided by the provisions of GFR 2005.

2.6 Purchase Preference

2.6.1 Purchase Preference for Public Sector Undertakings (PSUs)

2.6.1.1 As per the current policies of the government, purchase preference shall be granted to PSUs when they compete with large scale units. Adhoc purchase preference in favour of PSUs would be applicable as per the following guidelines:-

- 1) Where the quoted price of PSUs is not within the 10% of the lowest applicable price, such offers may be rejected without any further consideration.
- 2) Where the quoted price is within 10% of the lowest acceptable price, other things being equal, purchase preference may be granted to the lowest acceptable price.

2.6.1.2 The above purchase preference will be extended to the contracts of the value of Rs. 5 crores and above but not exceeding Rs. 100 crores. If civil works are included as part of the contract for supply of goods and/or if the contract is a turn key contract, such contracts will also be covered by the Purchase Preference Policy subject to the condition that the total value of the contract not exceeding Rs. 100 crores. The Purchase preference will apply only to Central Public Sector Enterprises (CPSE) and their subsidiaries (where PSE owns 51% of the above share holding) but not to a joint venture owned by the PSE and a Private sector partner.

2.6.1.3 A minimum value addition of 20% by the CPSE/subsidiary companies by way of manufacturing and of services is a prerequisite for availing of Purchase preference. The provision relating to Purchase preference should be specified in the notice inviting tenders for Rs. 5 crore and above but not exceeding Rs. 100 crores.

2.6.1.4 PSE should be subject to the same qualification process as any other bidder. If the PSE

does not meet the minimum qualification, it should be subject to disqualification. However, in suitable cases, the Purchaser may relax the condition of net worth from the list of minimum qualification.

2.6.1.5 If the PSE which has had the benefit of Purchase Preference Policy fails to perform, it should also be subject to payment of liquidated damages or any other penalty included in the contract.

2.6.1.6 The Purchase Preference Policy expired on 31st March 2008 and further extension is awaited.

2.6.1.7 In case of Rate Contracts, the scheme of Purchase preference would not be applicable where the estimated drawals are less than Rs. 5 crores. The RCs so concluded with the PSUs should incorporate a suitable clause to the effect that since the RC has been awarded in terms of the Purchase preference scheme, the RCs with them would be valid only for individual supply order exceeding Rs. 5 crores. Further, the supply order should be placed prior to 31/03/2008.

2.6.1.8 In cases where there is a conflict between the incentive to be given to the small scale sector and that to be given to the PSUs, the interest of the former will prevail over that of the latter. In other words, where the acceptable offer of a small scale unit is lower or equal to that of the PSE, or even within the range of price preference upto 5% over the PSU (the price preference to be considered only where it is admissible according to the existing policy and should not exceed 15% over the lowest offer of the large scale private unit), contract would be placed on SSI unit in preference to a PS Unit.

2.6.1.9 PSU would not be entitled to any Purchase preference when it quotes as an Agent of an Indian or Foreign Manufacturer. However, where a PSU is selling goods or services of another PSU, it would be allowed the benefit of Purchase preference. In cases where the products of a PSU have been offered by a private sector as a sole selling/authorized agent, the private sector will not be eligible for purchase preference.

2.6.1.10 The above policy of Purchase Preferences is not applicable to State government PSUs.

2.6.1.11 Excepting for Purchase preference to be considered as above, in all other matters such as capacity, specifications, delivery, payment terms etc., the PSUs would be treated at par with the private sector and will be bound by all commercial obligations as per the standard terms and conditions of DPS contract.

2.6.1.12 If the performance of the PSUs is not satisfactory, the same should be brought to the notice of the Ministries/Department controlling the Undertaking. Further, they need not be given Purchase preference for a period of 3 years. This ban of Purchase preference to that PSU will be counted from the last default/unsatisfactory performance and also for the entire range of production of the Undertaking.

2.6.1.13 Before considering any such preferences to Small Scale Sectors, Public Sectors, etc., the Purchase Organisation should check the latest directives in this regard for necessary action.

2.7 General Conditions Governing the Purchase

2.7.1 Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

2.7.2 Public Procurement should conform to the Yardsticks as follows:-

- 1) The specification in terms of quality, type etc. as also quantity of goods to be procured should be clearly spelt out keeping in view the specific needs of the procuring Project/Organisation. The specifications so worked out should meet the basic needs of the Project/Organisation without including superfluous and non-essential features which may result in unwarranted expenditure. The specification should be broad based and efforts should be made to use standard specifications which are widely known to the industry to the extent possible.
- 2) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying cost and also deterioration in the quality of the material.
- 3) Offers should be invited following a fair, transparent and reasonable procedure.
- 4) The procuring authority should be satisfied that the selected offer adequately meets the requirement in all aspects.
- 5) The procuring authority should satisfy itself that the prices of the selected offer are reasonable and consistent with the quality required.
- 6) At each stage of procurement, the concerned approving authority must place on record in precise terms the consideration which weighed with it while taking the procurement decision.

2.7.3 As per the compulsory enlistment scheme of the Department of Expenditure, Ministry of Finance, it is compulsory for the Indian Agents who desire to quote directly on behalf of the foreign principals to get themselves enlisted with the Central Purchase Organisation (DGS&D). However, such enlistment is not equivalent to registration of suppliers.

2.7.4 DGS&D shall conclude rate contracts with the registered suppliers, for goods and items of standard types, which are identified as common user items and are needed on recurring basis by various Central Government Ministries/Departments. DGS&D will furnish and update all relevant details of the rate contracts in its website. The Ministries/Departments shall follow those rate contracts to the maximum extent possible.

2.7.5 In case a Ministry/Department directly procures rate contracted goods from the suppliers, the price to be paid for such goods shall not exceed those stipulated in the rate contract and other salient terms and conditions of the purchase order should be in line with those specified in the rate contract. The Ministries/Departments shall make its own arrangement for inspection and testing of such goods wherever required.

2.7.6 A demand for goods should not be divided into small quantities to make piecemeal purchases to avoid the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.

2.7.7 All government purchases should be made in a transparent, competitive and fair manner to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence.

2.7.8 The text of the bidding documents should be user-friendly, self contained, comprehensive, unambiguous and relevant to the objective of the purchase. The terminology used in common parlance in the industry should be preferred.

2.7.8.1 All essential information, which a bidder needs for sending a responsive bid, should be clearly spelt out in the bidding document in simple language. All the terms, conditions, stipulations and information are to be incorporated in the bidding documents in the appropriate Sections as shown below:-

Section A - Invitation to Tender & Instructions to Bidders.

Section B - General Conditions of Contract.

Section C - Schedule of requirements.

Section D - Specifications and allied technical details.

Section E - Price Schedule (to be utilised by the bidders for quoting their prices).

Section F - Other Standard Formats, if any, to be utilized by the Purchaser and the Bidders.

2.7.9 The bidding document should contain, inter alia (a) the criteria for eligibility and qualification to be met by the bidders such as minimum level of experience, past performance, technical capabilities, manufacturing facilities and financial position, ownership or any legal restriction etc. (b) eligibility criteria for goods indicating any legal restriction or conditions about the origin of goods, etc., which may require to be met by successful bidder (c) the procedure as well as date, time and place for sending the bid (d) date, time and place of opening of the bid (e) terms of delivery (f) special terms affecting performance, if any.

2.7.10 The specifications of the required goods should be framed giving sufficient details in such a manner that it is not too elaborate or restrictive as to deter potential tenderers or increase the cost of the purchase or too sketchy to leave scope for sub-standard supply. The specifications must meet the essential requirements of the user department. Efforts should be made to use standard specifications, which are widely known to the Industry.

2.7.11 Restriction on who is qualified to tender should conform to extant government policies and be judiciously chosen so as not to stifle competition amongst potential tenderers.

2.7.12 Suitable provision should be kept in the bidding document to enable a bidder to question the bidding condition, bidding process, and/or rejection of their bid.

2.7.13 Suitable provision for settlement of dispute, if any, emanating from the resultant contract should be kept in the bidding document.

2.7.14 The bidding document should indicate clearly that the resultant contract will be interpreted under the Indian laws.

2.7.15 The bidder should be given reasonable time to send the bids.

2.7.16 It should specify that tenderers have to specifically state in their offer whether they intend to ask for the duties/taxes as extra over and above the prices being quoted. In the absence of any such stipulation it is to be assumed that the prices quoted include these elements and no claim for the same will be entertained after closing of tender.

2.7.17 The bids should be opened in public and authorized representatives of the bidders should be permitted to attend the bid opening.

2.7.18 To safeguard against a bidder's withdrawing or altering his bid during the bid validity period EMD is to be obtained from the bidders except those who are registered with NSIC, DGS&D & DPS. The bidders should furnish the bid security along with their bids. Amount of bid security is 2% of the value of the goods to be procured. The bid security should be submitted in the form of demand draft payable in favour of the concerned Accounts Officer. Tenderers are not permitted to alter or modify their tenders after expiry of the deadline for submission of tenders till the date of validity of the tenders and if they do so, their earnest money will be forfeited. Bid security of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract.

2.7.19 Pre-bid Conference: In case of turnkey contract or contract of special nature for procurement of sophisticated and costly equipment, a suitable provision is to be kept in the bidding document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details of the plant, equipment and machinery projected in the bidding document. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of bid opening date.

2.7.20 Criteria for determining responsiveness of bid, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive lowest bidder should be clearly indicated in the bidding document.

2.7.21 Bids received should be evaluated in terms of the conditions already incorporated in the bidding document. No new condition which was not incorporated in the bidding document should be brought in for evaluation of the bids. Determination of bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.

2.7.22 Bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids.

2.7.23 Negotiation with the bidders after bid opening must be discouraged. However, where it is necessary, due to certain unavoidable circumstances, negotiation can be done only with the lowest evaluated responsive bidder with the approval of the competent authority.

2.7.24 In the Rate Contract system as well as where it is proposed to enter into parallel contracts (to ensure continuity and uninterrupted supply), negotiation as well as counter offering of rates can be considered with more than one firm with the approval of the competent authority.

2.7.25 Contract should ordinarily be awarded to the lowest evaluated bidder whose bid is being found to be responsive and who is eligible and qualified to perform the contract satisfactorily as per the terms and conditions incorporated in the bidding document. However, where the lowest acceptable bidder against the requirement is not in a position to supply, the full quantity required, the remaining quantity, as far as possible be ordered from the next higher responsive bidder at the rate offered by the lowest responsive bidder.

2.7.26 The names of the successful bidders awarded the contracts should normally be published in the Department's website.

2.7.27 DPS should ensure conclusion of contract within the original validity of the tenders. Extension of validity must be discouraged and resorted to only in absolutely unavoidable, exceptional circumstances with the approval of the competent authority after duly recording the reasons for such extensions..

2.7.28 To ensure due performance of the contract, security deposit is to be obtained from the successful bidder awarded the contract. Security Deposit is to be obtained from every successful bidder irrespective of its registration status, etc. Security Deposit should normally be for an amount of 10% of the contract value. Security Deposit may be furnished in the form of account payee demand draft/bank guarantee from SBI or any one of the nationalised banks or private banks ICICI or HDFC or AXIS or IDBI in an acceptable form safeguarding the purchaser's interest in all respects. Security Deposit should remain valid for a period of 60 days from the date of completion of all contractual obligations of the supplier.

2.7.29 When competent authority approve to replace an existing old item with a new and better version, the department may trade the existing old item while purchasing the new one. For this purpose a suitable clause is to be incorporated in the bidding document so that the prospective and interested bidders formulate their bids accordingly. Depending on the value and conditions of the old item to be traded, the time as well as the mode of handing over the old item to the successful bidder should be decided and relevant details in this regard suitably incorporated in the bidding document. Further, suitable provision should also be kept in the bidding document to enable the purchaser either to trade or not to trade the item while purchasing the new one.

2.7.30 Save in exceptional circumstances, no work of any kind should be commenced without prior execution of contract documents. Even in cases where a formal written contract is not made, there should be at least a letter of intent containing the agreement as to the price.

2.7.31 All contracts shall be made by an authority empowered to do so by or under the orders of the President in terms of Article 299 (1) of the Constitution of India.

2.7.32 All the contracts and assurances of property made in the exercise of executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should follow the designation appended below the signature of the officer

authorised in this behalf. The powers of various authorities, the conditions under which such powers should be exercised are laid down in the Delegation of Financial Powers (DAE) Rules 1978.

2.7.33 The terms of the contract must be precise and definite and there must be no room for ambiguity or misconstruction thereon.

2.7.34 No contract involving an uncertain or indefinite liability or any conditions of an unusual character should be entered into without the previous consent of the Member Finance.

2.7.35 Subject to adequate prior scrutiny of terms, general or special, if any, standard forms of contracts should be adopted wherever possible.

2.7.36 In cases where the standard forms of contracts are not used, legal and financial advice should be taken in drafting the contracts and before they are finally entered into. The terms of the contract once entered into, should not be materially varied without the previous consent of the competent authority to enter into contract so varied. No payments to contractor by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates may be authorized without the previous approval of the competent authority.

2.7.37 No relaxation of specification agreed upon in a contract or relaxation of the terms of an agreement entered into by government should be made without proper examination of the financial effects involved in such relaxation. The interest of the Public Exchequer should be taken due care of, before agreeing to any relaxation of agreement or contract. Such relaxation should be done only with the approval of the Department.

2.7.38 In selecting the tender to be accepted, the financial status of the individuals or the firms tendering must be taken into consideration in addition to all other relevant factors.

2.7.39 Before entering into a contract all pros and cons should be considered and enforceability of the contractual document in a court of law should be ensured. Effective administrative machinery should also be set up to keep a vigil on the performance of the contractor. Provision must be made in the contracts for safeguarding government property entrusted to a contractor and also the recovery of hire charges, if any, therefor.

2.7.40 When a contract is likely to endure for a long period, or where the contract provides for a clear schedule for the fulfillment of the various stages of the contract, it should include a provision for unconditional power of revocation or cancellation at the discretion of the Government at any time on the expiry of reasonable notice to that effect. The period of notice should not normally be longer than 6 months.

2.7.41 All contracts will have a provision for recovery of liquidated damages for delays/ defaults on the part of the contractor, unless there are any special instructions issued by the competent authority.

2.7.42 A warranty clause should be incorporated in every contract requiring the supplier, to without charge, repair or rectify defective goods or to replace such goods with similar goods free from defect. Any goods repaired or replaced by the supplier shall be delivered at the buyer's premises without cost to the buyer.

2.7.43 Replacement of defective parts/entire equipment during the warranty period should be at the Purchaser's Site without any additional cost to the Purchaser. However, in the case of imported materials, directly procured by the Department from overseas suppliers, the warranty replacement will be on free of cost upto the Port of destination (irrespective of the fact whether the original equipment was procured on FOB/CIF basis) and the local taxes and duties, if any, and the clearing charges, etc. will be to Purchaser's account. This condition should be included in the NIT in respect of imported stores.

2.7.44 All contracts for supply of goods should reserve a right of government to reject goods which do not conform to the specifications.

2.7.45 Any stores supplied after the expiry of the delivery period, without valid extension, will lie at the buyer's premises solely at the risk and cost of the supplier.

2.7.46 Issue of Departmental material should be avoided as far as possible. Where it is decided to supply material departmentally, a schedule of items and quantity with issue rates of such material as are required to execute the contract should form an essential part of the contract.

2.7.47 In contract where government property is entrusted to a contractor, either for use on payment of hire charges or for doing further work on such property, specific provision for safeguarding government property (including insurance cover) and for recovery of hire charges regularly should be included in the contract.

2.7.48 Provision should be made in the contract for periodical physical verification of the number and the physical condition of the item at the contractor's premises. Results of such verification should be recorded and appropriate penal action taken where necessary.

2.7.49 A provision must be made in the contract for accounting of free issue materials issued to the contractor by the Department. The contract should also have a provision for maximum percentage of wastage admissible taking into account the nature of work involved. The wastage should not exceed this percentage. The balance free issue material along with scrap to be returned to the Purchaser along with proper accounting of the material.

2.7.50 Lump Sum Contract: Lump sum contract should not be entered into except in cases of absolute necessity. Where lump sum contract becomes unavoidable, full justification should be recorded. The contracting authority should ensure that conditions in the lump sum contract adequately safeguard and protect interests of the government.

2.7.51 Cost Plus Contract: Cost plus contract should ordinarily be avoided. Where such contract becomes unavoidable, full justification should be recorded before entering into a contract. Where supply or special work covered by such cost plus contracts have to continue for a longer duration, efforts should be made to convert future contracts on a firm price basis after allowing a reasonable period to the supplier to stabilize their production/execution method and processes.

EXPLANATION: A cost plus contract means a contract in which the price payable for supplies or services under the contract is determined on the basis of actual cost of production of the supplies or services concerned plus profit either at a fixed rate per unit or at a fixed percentage on the actual cost of production.

2.7.52 Contract should include provision for payment of all applicable taxes by the supplier.

2.7.53 All contracts for purchase involving import of materials from abroad should as a rule provide for purchases on FOB basis. Similarly, all sales contracts involving transportation of materials from India to other countries should be entered into on CIF basis. Provided that a departure from the above may be with the prior concurrence of the Ministry of Surface Transport.

2.7.54 In the case of advertised tender enquiry or limited tender enquiry, late bids should not be considered.

2.7.55 Depending on the cost and nature of the goods to be purchased, it may also be necessary to enter into maintenance contracts of suitable period either with the supplier of the goods or with any other competent firms. Such maintenance contracts are especially needed for sophisticated and costly equipment and machinery. This contract can be concluded only after the warranty period and during the warranty period it is the responsibility of the supplier to maintain the equipment without any additional cost to the department.

2.7.56 Ordinarily, payment for services rendered or supplies made should be released only after the services have been rendered or supplies made. However it may become necessary to make advance payment in the following cases:-

- 1) Advance payment demanded by the firm for maintenance contract for servicing of equipments.
- 2) Advance payment demanded by firm against fabrication contract/turn key contracts, etc. such advance payments should not exceed 30% of the contract value to private firm and 40% of the contract value to a PSU of State or Central Govt. In case of maintenance contract the amount should not exceed the amount payable for six months under the contract. Departments of Central Govt. may relax, in consultation with their financial adviser concerned, the ceiling including the percentage laid down for advance payment mentioned above. While making the advance payment as above, adequate safeguards in the form of bank guarantee, etc. should be obtained from the firm. Depending on the terms of delivery incorporated in a contract, part payment to the suppliers may be released after they despatch the goods from their premises in terms of the contract. Ministry of Finance (Bureau of Public Enterprise's) Office Memorandum No. BPE/1(4)/ADV(P)/69 dated 3.11.1972 addressed to all Ministries of Govt. of India indicates that there is no need for insisting the bank guarantee in respect of advances paid by Public Sector Enterprises or Government Departments to another Public Sector Enterprises as there is no risk of the advance being lost. A copy of the above OM is placed as Annexure -3.

2.7.57 Normally, no extension of the scheduled delivery or completion dates should be granted except where events constituting force majeure, as provided in the contract have occurred or the terms and conditions include such a provision for other reasons. In case of seeking extension, the contractor should furnish justification for seeking such extension. Extensions may be allowed through formal amendments to the contract taking into account the provisions for levy of liquidated damage for the extended period.

2.7.58 Any change to the contract should be in the form of an amendment to the contract.

2.7.59 Price Variation Clause: Price Variation Clause can be provided only in long term contracts where the delivery period exceeds beyond 18 months. In short term contracts, firm and fixed prices should be provided for. Where a price variation clause is provided, the price agreed upon should specify the base level, viz. the month and year to the price to which it is linked to enable variations being calculated with reference to the price levels prevailing in that month and year.

2.7.59.1 A formula for calculation of the price variation that has taken place between the base level and the scheduled delivery period should be included in this clause. The variations are to be calculated by using indices published by governments or chamber of commerce periodically.

2.7.59.2 The price variation clause should also specify cut off dates for material and labour (if the price variation clause is for these two components) as these inputs taper off well before the scheduled delivery dates.

2.7.59.3 The price variation clause (PVC) should provide a ceiling on price variation. It could be a percentage per annum or an overall ceiling or both. The price variation clause should also have a provision in the contract for benefit of any reduction in the price in terms of the price variation clause being passed on to the Purchaser.

2.7.59.4 This clause should also stipulate a minimum percentage of variation on contract price above which price variation would be admissible.

2.7.59.5 Where advance or stage payments are made, there should be a further stipulation that no price variation will be admissible on such portions of the price after release of such payments. Where deliveries are accepted beyond the scheduled delivery date, subject to a levy of liquidated damage, as provided in the contract, the LD will be applicable on the price as varied by the operation of the PVC.

2.7.59.6 No PVC would be admissible beyond the original scheduled delivery dates for default on the part of the supplier. PVC may be allowed beyond the original scheduled delivery dates, by specific alteration of the date, through an amendment to the contract in case of force majeure or defaults by government. Where contracts offer import (subject to customs duty and foreign exchange fluctuation) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated along with the selling rate of foreign exchange element taken into account in the calculation of price of the imported item. The mode of calculation of variation in duties and taxes and foreign exchange rates and the documents to be produced in support of claims for such variation should also be stipulated in the contract.

2.7.59.7 The clause should also contain the mode and terms of payment of the price variation admissible.

2.7.60 In respect of high value orders as called for in the NIT, the tenderer should indicate in the tender quantum of resources (manpower, machinery, raw materials, finance, etc.) the firm is

committing exclusively for this work from the total resources available with the firm to ensure completion of work within the agreed schedule.

2.7.61 The firm should also commit the time schedule for completing the intermediate milestones to be completed within the total committed delivery schedule.

2.7.61.1 In case the committed resources are not deployed or the milestones have not been completed within the schedule time and the Purchaser is of the opinion that due to the above slippage the Contractor may not complete the work in time, the Purchaser reserves the right to short close/terminate the Contract and take alternate action at the supplier's risk & cost.

2.7.62 In respect of high value or specific nature of equipment/instrument/system

- 1) The supplier should commit in the tender assured supply of information on product/technological improvement/ modification/ upgrades.
- 2) Assured obsolescence management and life time purchases.
- 3) An illustrated spares price catalogue with base price and pricing mechanism for long term.

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

- 1) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.
- 2) In 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.
- 3) For standardization of machinery or spare parts to be compatible to the existing sets of equipments (on the advise of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm.

2.7.63.1 Proprietary article certificate in the following form is to be provided in the indent duly approved by the competent authority:-

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

- 3) Approval of the competent authority.

2.7.63.2 The name of the successful tenderer to whom the supply contract is awarded should be appropriately notified by the purchase organization for the information of the general public, including display at notice board, web site etc.

2.7.63.3 In order to reduce delays, DPS should prescribe appropriate time frame for each stage of procurement. Delineate the responsibility of different officials and agencies involved in the purchase process and delegate, wherever necessary, appropriate purchase powers to the lower functionaries with due approval of the competent authority.

ANNEXURE - 1

LIST OF KHADI ITEMS RESERVED FOR EXCLUSIVE PURCHASE FROM KVIC

1. Dosuti
2. Pagri Cloth
3. Bunting Cloth
4. Dangri Cloth
5. Sheeting Cloth
6. Bed Sheets
7. Dusters
8. Towels
9. Sarees
10. Dhotis (unbleached)
11. Pillow Cases
12. Readymade Garments (shorts)
13. Blouses
14. Skirts

ANNEXURE - 2

LIST OF ITEMS NOTIFIED FOR PURCHASE FROM HANDLOOM SECTION

COTTON HANDLOOM ITEMS

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Angavastram	7216-1974
Bandage Cloth	863-1969
Bed Durries	1450-1991
Bed Sheets	745-1990
Blankets, grey or coloured	746-1955
Bleeding Madras, Loomstate	1937-1961
Buckam Cloth	1102-1968
Bunting Cloth, dyed	747-1982
Calico, bleached or dyed	1241-1958
Cambric bleached	1098-1957
Cellular shirting, handloom cotton	1101-1981
Cloth for plaster of paris bandages and cut bandages	6237-1971
Coating, handloom cloth	1243-1981
Colour fastness of handloom cotton textiles, requirements	6906-1982
Crepe	1100-1978
Dhoties	748-1974
Dosuti Grey, scoured, bleached or dyed	756-1984
Dress Material, bleached dyed printed Striped or checked	1095-1991
Drills	1451-1979
Dungri Cloth	749-1978
Dusters	859-1978
Floor Durries	1450-1972
Gada Cloth	1094-1976
Gause, absorbent, non-sterilized, handloom cotton	758-1975
Handkerchiefs	1939-1975
Holland Cloth, unscoured	1096-1957
Honeycomb towels and towelling cloth	854-1991
Jaconet cloth, grey, dressed	861-1982
Light Sheeting, grey	864-1956
Lining cloth, dyed	1099-1957
Lint, absorbent, bleached	757-1971
Longcloth, Bleached or Dyed	1244-1958
Lungies	750-1976
Madras Check	1247-1958
Madras Hankerchiefs, Handloom cotton	1093-1981
Malmal, bleached	755-1984
Mazri Cloth (Loomstate)	751-1984

Mix saris	8039-1976
Mootus, stripped or checked	1814-1961
Mosquito netting	1097-1979
Muslin, bleached	752-1984
Nainsook, bleached or dyed	1240-1958
Napkins, bleached, stripped, checked or dyed	857-1956
Poplin, bleached or dyed	1556-1960
Pungri, cloth, bleached or dyed	753-1983
Pyjamma cloth, grey, with stripes	1245-1958
Sarees	748-1990
School Uniforms Fabric	8797-1978
Shirting	1242-1975
Sponge cloth, grey, striped and checked	860-1956
Table cloth and napkins, handloom cotton	858-1981
Ticking cloth, grey, striped	862-1956
Turkish towels and toweling cloth handloom cotton	854-1981
Twills	1579-1979

SILK - HANDLOOM

Bush Shirt cloth, Loomstate	1686-1960
Dhotis, loomstate	1583-1960
Kora (loomstate) cloth	1687-1960
Shirting, loomstate	1584-1960

WOOL - HANDLOOM

Blanketing cloth	895-1991
Blanket, scarlet	2901-1964
Blankets, natural grey, brown	892-1980
Blankets, ordinary, plain or check	893-1957
Blankets, shoddy (double faced)	2157-1962
Blankets, shoddy (single faced)	2481-1963
Blankets, brick red	894-1980
Bunting cloth, worsted, heavy	899-1957
Bunting cloth, worsted, light	890-1957
Cloth, collar, white	2715-1964
Kamblies, loomstate	896-1957
Lohis, worsted	1268-1958
Melton (shoddy) cloth	2173-1962
Sege	1266-1958
Shirting, worsted	891-1957
Pile Fabrics	2714-1964

The following items shall be procured on the basis of samples approved by purchase/mutually agreed specification:

1. Khes
2. Bed Cover
3. Counter Pane
4. Furnishing
5. Chaddar
6. Durries/Jamakkalam
7. Bastha Cloth
8. Lowreed pick cloth
9. Silk Sarees
10. Shawls, Mufflers, Pankhis

ANNEXURE - 3

**Copy of Ministry of Finance (Bureau of Public Enterprises's) Office
Memorandum No. BPE/1(6)/Adv(P)/69 dated 3.11.1972
addressed to all Ministries, Government of India, etc.**

OFFICE MEMORANDUM

Sub: Furnishing of bank guarantee in respect of transactions between the public sector enterprises or between a public sector enterprise and a Govt. Department.

1. The question of furnishing bank guarantees in respect of transactions between the public sector enterprises or between a public sector enterprises and a Government Department has been engaging the attention of the Government for some use. To some cases bank guarantees are insisted by other public sector enterprises or Governments in respect of the following:

1. to cover the advances paid against the order as a measure of security
2. in lieu of security deposit for the fulfillment of the contract, and
3. performance guarantee for the satisfactory performance of equipment or the contract.

The question of furnishing such bank guarantee has been gone into in detail and it has been decided that:

1. there is no need for insisting the bank guarantee in respect of advances paid by public sector enterprises or Government Department to another public sector enterprise as there is no risk of the advance being lost;
 2. Since the transactions between two public sector enterprises or between public sector enterprises and the Government department are of commercial nature, it would not be appropriate to exempt the public undertakings from the contract. In fact, such guarantees show the earnestness of the public sector enterprises for the fulfillment of the contract and in such cases the normal commercial principles should be followed;
 3. It is necessary that proper bank guarantees are furnished by public sector enterprises for the satisfactory performance of the equipment and or contract, as the case may be. This would ensure prompt action for rectification in case of deficiencies noticed in the execution of the contract or defective performance of the equipment.
2. In this connection it may also be mentioned that furnishing of these guarantees would

not involve any blockage of such resources on the part of the enterprises as they can obtain a bond from L.I.C on the basis of which the bank will issue a counter-guarantee. In order to facilitate the issuance of bond by LIC, Government has agreed that LIC would have a pari-passu charge on the fixed assets of the company vis-à-vis the Government.

3. The Ministry of Industrial Development, etc. is requested to bring the contents of the above O.M. to the notice of the public sector enterprises under their administrative control.

Sd/-
(A.N. Banerji)
Additional Secretary & Director General

CHAPTER - 3

ESSENTIAL CONDITIONS OF CONTRACTING

3.1 Acts Governing Purchase Transactions

3.1.1 The statutory provisions governing Purchase transactions are as per the following Acts:

- 1) The Indian Contract Act 1872
- 2) Indian Sale of Goods Act 1930
- 3) Arbitration & Conciliation Act 1996
- 4) Indian Stamp Act

3.1.2 There is no separate law governing public buying and the same law governs contracts entered into by Government, which are applicable to private contracts. However, comprehensive rules and directives in this regard are available in the General Financial Rules(GFR),2005,especially chapter 6; Delegation of Financial Powers (DAE) Rules,1978; Government orders regarding price preference and other facilities available to Small Scale Industries, Handloom Sector, Cottage Industries and purchase preference to the Central Public Sector Undertakings etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in Public Procurement. These provide the regulatory framework for the public procurement system. Section 2(h) of the Indian Contract Act 1872 (9 of 1872) defines a Contract as “an agreement enforceable by law”. Some of the provisions of the Acts are brought out below:-

3.2 Definitions Contract Clauses

3.2.1 **Purchaser:** In respect of procurement by Govt. of India, Ministry/Department, 'Purchaser' shall mean the President of India or his successors or assigns, acting through the authority issuing purchase orders.

3.2.2 **Seller:** 'Seller' shall mean, firm or company with whom or with which the order for the supply of goods is placed and shall be deemed to include the Seller's successors (approved by the Purchaser), representative, heirs, executors and administrators unless excluded by the Contract.

3.2.3 **Parties:** Just as an obligation requires two or more persons, there cannot be an agreement unless there are two or more parties.

3.2.4 **Goods:** The term 'Goods' includes all articles, material, commodities, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant etc. purchased or otherwise acquired for the use of government but excludes books, publication, periodicals etc. for a Library.

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

3.2.6 **Acceptance:** When a person to whom the offer is made signifies his assent thereto, the offer is said to be accepted. An offer when accepted becomes a promise.

3.2.7 **Identity of Mind:** Two parties should agree about the subject matter at the same time and in the same sense.

3.2.8 **Mutual Communication:** Law does not take note of mental states except as expressed in language. Therefore, two minds, which are agreed, must communicate with each other and unless there is such communication there can be, in law, no agreement.

3.2.9 **Promisor:** The person making the proposal is called the Promisor.

3.2.10 **Promisee:** The person accepting the proposal is called the Promisee.

3.2.11 **Promise:** The proposal or offer when accepted becomes a promise.

3.2.12 **Consideration:** 'Consideration' means a reasonable equivalent or other valuable benefit passed on by the Promisor to the Promisee or by the Transferor to the Transferee; when the word 'Consideration' is qualified by the word 'Adequate', it makes consideration stronger so as to make it sufficient and valuable having regard to the facts, circumstances and necessities of the case.

3.2.13 **Agreement:** Every promise and every set of promises forming the consideration for each other is an Agreement.

3.2.14 **Contract:** An Agreement, enforceable by a Court of Law, becomes a Contract if made

1. By parties competent to contract.
2. With free consent of the parties concerned.
3. For lawful consideration with lawful object.
4. And are not expressly declared to be void.

3.2.15 Parties Competent To Contract

1. The person should have attained majority.
2. The person should be of sound mind.
3. Law to which he is subject should not have debarred the person.

In other words, minors, persons of unsound mind and insolvent persons are not competent to enter into contract.

3.2.16 Free Consent of the Parties

The contract should be entered into by both the parties by free consent and not by coercion, undue influence, fraud, misrepresentation or mistake.

3.2.17 Category of Contracts

3.2.17.1 Contracts could be broadly divided into three categories:

(1) Valid contract (2) Voidable contract (3) Void contract

3.2.17.2 Valid contracts are the contracts, which are in accordance with the law of the land and could be enforced through the process of law. Voidable contracts are the contracts, which are void at the option of one of the party to the contract. Void contracts are the contracts, which are void from the very beginning and are not enforceable through the process of law.

3.2.18 Mistake of Law and Mistake of Fact

3.2.18.1 Mistake may be of two kinds i.e. 'mistake of law' and 'mistake of fact'.

3.2.18.2 'Mistake of Fact': Demarcation of 'mistake of law' and 'mistake of fact' is determined based on the interpretation of an agreement.

3.2.18.3 'Mistake of Fact' could be a sufficient ground of avoidance in law of the contract. In a case where both the parties to the agreement under a mistake as a matter of fact essential to the agreement, the agreement is void. Therefore, what is important is that contract could be a void contract in case there is a 'mistake of fact'. Sometimes 'mistake of law' also makes a contract void.

3.2.19 Lawful Consideration/Lawful Object

There must be a lawful consideration/lawful object for a valid contract. The consideration or object of an Agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy.

3.2.20 Consent of Parties

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

1. When the misunderstanding relates to the identity of the other party to the Agreement
2. When it relates to the nature or terms of the transaction.
3. When it relates to the subject matter of the Agreement.

3.2.21 Offer & Acceptance should be Identical

3.2.21.1 In order to have a valid contract, the terms of the tender or tender as revised and modified and the acceptance should be identical/same. If the terms of offer and acceptance are in

variance, the acceptance becomes a counter offer and there is no concluded contract.

3.2.21.2 It should, therefore, be ensured that the terms incorporated in the acceptance are the same as that of the offer/tender and none of the terms of the offer/tender are changed or left out. In case there is difference in terms between the tender and acceptance, clarification should be obtained before such tender is accepted. If it is considered that a counter offer should be made, such counter offer should be carefully drafted and it will become a valid contract on acceptance by the offerer. In DPS, this is being done by issue of a Letter of Intent or by issue of a Purchase Order. DPS also insist the Supplier to return the Acknowledgement Card sent along with the purchase order duly signed by the authorized signatory in total acceptance of the order as per terms and conditions stipulated therein.

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

3.2.22 Communication of an Offer / Proposal

The communication of an offer/proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the Invitation to Tender for submission of the tender/offer. DPS is not bound to consider an offer which is received beyond the stipulated time.

3.2.23 Communication of Acceptance

3.2.23.1 The communication of an Acceptance is complete as against the Proposer or Offerer when it is put in the course of transmission to him (Seller) so as to be out of the power of Acceptor. The medium of communication in DPS Contracts is generally by post and the Acceptance is, therefore, complete as soon as it is posted. As long as the communication is sent to the correct address by Registered Post Acknowledgement due, there might be no possibility of dispute regarding the date of communication of Acceptance.

3.2.23.2 The communication of Acceptance is complete as against the Acceptor (Buyer) when it comes of the knowledge of the Proposer/Offerer (Tenderer).

3.2.23.3 Performance of the conditions of a proposal or the acceptance of any consideration for the reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

3.2.23.4 A period is invariably fixed in tender forms upto which the offers are to be kept valid for acceptance. A proposal or offer (tender) stands revoked by lapse of time indicated in such offer for its acceptance (unless it is accepted within the stipulated time). In case it is not possible to decide the tender within the period of validity of the offer, the consent of the tendering firm should be obtained to keep the offer open for further required period. In case no time is prescribed in the offer, the tender lapses after reasonable time if no communication is sent for acceptance.

3.2.24 Revocation of an Offer/Proposal

3.2.24.1 A proposal may be revoked at any time before the communication of its acceptance is complete as against the acceptor, but not afterwards. A proposal is revoked:

- 1) By communication of notice of revocation by the proposer to the other party,
- 2) By lapse of time prescribed in such proposal for its acceptance or if no time is so prescribed, by a lapse of a reasonable time, without communication of acceptance,
- 3) By the failure of the acceptor to fulfill a condition precedent to the acceptance,
- 4) By the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

3.2.24.2 In case of withdrawal of an offer within the validity of the offer, the Purchaser has a right to forfeit the earnest money deposited by the tendering firm.

3.2.24.3 The tenderer can revise or modify the offer only before the specified due date & time of the submission of tender.

3.2.25 Revocation of Acceptance

An Acceptance can be withdrawn before such Acceptance comes to the knowledge of the tenderer. A revocation of acceptance by fax or email which reaches the tenderer before the Letter of Acceptance reaches the Tenderer will be a valid revocation.

3.2.26 Contract with the Individual

Individuals normally tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper Power of Attorney authorizing such person should be insisted on. In case, a tender is submitted in the business name, and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as Proprietor or by his duly authorised attorney.

3.2.27 Contract with Partnership

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

3.2.28 Contracts with Limited Companies

Companies or Association of individuals registered under the Company's Act in which the liability of the members comprising of the Association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration is an artificial legal person, which has an existence quite distinct and separate from the members or

shareholders comprising the same. A company is not empowered to enter into a contract with purposes not covered by its Memorandum of Association; any such Agreement, in excess of the powers entered into by the company is void and cannot be enforced. Therefore, in case of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by inspection of the memorandum from the Office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to represent the company. Where tenders are signed by persons other than Directors or authorised managing agents, it must be necessary to examine if the person signing the tender is authorised by the company to enter into a contract on its behalf.

3.2.29 Corporation Other Than Limited Companies

Association of individuals incorporated under the statutes such as Trade Union Act, Cooperative Society Act, Society Registration Act are also artificial persons in the eyes of law and are entitled to enter into contracts as are authorised by their Memorandum of Association. If any contract is to be entered into with any one or such Corporations or Associations, the capacity of such Associations to enter into contract should be verified and also the competence of the person coming forward to represent the said Association.

3.2.30 Changes in Terms & Conditions of a Concluded Contract

Any change in the terms and conditions of a contract already concluded cannot be made without the consent of both the parties to the contract (i.e. Buyer & Seller).

3.2.31 Discharge of Contract

3.2.31.1 By Completion

A contract is treated as complete when the parties are freed from the obligation of the contract by due performance of the terms of the contract.

3.2.31.2 By Mutual Agreement

If neither party has performed the contract, no consideration is required for the discharge of the contract. If a party has performed a part of the contract and has undergone expenses in arranging to fulfill the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.

3.2.31.3 By Breach

In case a party to a contract fails to comply with any of the stipulations in the contract, which are the root of the transaction or destroy the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with a performance and entitles him to a right of action for damages and to enforce the remedy for such breach provided in the contract itself. A breach of contract can however be waived.

3.2.32 Refusal to Perform

If the supplier refuses to perform the contract or repudiate the contract during the

validity of the contract, the Purchaser may at their option treat the repudiation/refusal as an immediate breach putting an end to the contract for future. In such a case, the Purchaser has a right to claim for damages.

3.2.33 Reciprocal Promises

If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

3.2.34 Damages

Where a party suffers by breach of contract, he is entitled to all events to claim damages therefor. Such damages are (a) ordinary or general damages (b) special damages (c) exemplary damages (d) nominal damages (e) penalty and liquidated damages.

3.2.34.1 Ordinary Damages

Ordinary damages arise as a natural consequence of breach of contract and damages remotely connected with the breach of contract. This principle is contained in Section 73 of Indian Contract Act. In accordance with the said Section where a contract has been broken, the party, which suffers by such breach, is entitled to receive by compensation for any damages caused to him, which naturally arose in the usual course of things from such breach. However such compensation is not to be given for any remote and indirect loss or damages sustained by reason of breach.

3.2.34.2 Special Damages

These damages are the damages suffered from the breach of contract under special circumstances. Special damages have to be specifically pleaded at and particular facts shall have to be pleaded specifically while claiming special damages. Relevant clause in the agreement should also be incorporated at the time of entering into a contract to claim special damages.

3.2.34.3 Exemplary Damages

Exemplary damages are not awarded in ordinary case of breach of contract. However a specific provision may exist in the contract under which an aggrieved party to the contract could definitely claim such damages.

3.2.34.4 Nominal Damages

Nominal damages are claimed when no loss has been caused to a person not responsible for the breach and are payable by the party responsible for the breach of contract based on general principle of equity.

3.2.34.5 Penalty & Liquidated Damages

Parties to the contract may agree to fix at the time of entering into a contract itself, the damages that would be payable in case of breach where the contract so provides, such

damages are known as liquidated damages or ascertained damages. This concept is incorporated under Section 74 of the Indian Contract Act. This said Section provides that when the contract has been broken, if a sum is named in the contract as the amount to be paid in case of breach, the party complaining of breach, is entitled, irrespective of the fact whether actual damages or loss is proved to have been caused or not, to receive from the party who is responsible for such breach. Usually such provision has been incorporated in major contracts.

3.2.35 Remedy in case of Breach

As far as compensation for losses or damages caused by breach of contract contained in Section 73 are concerned, the following conditions have to be fulfilled: -

- 1) There is a breach of contract by one.
- 2) That the other party has suffered losses as a result of such breach.
- 3) The damages to be assessed have occurred in the usual course of event from such breach.
- 4) The parties knew at the time of entering into contract that in such a breach they should pay damages to the other party who has suffered by the said breach.
- 5) Those such damages payable are not being assessed based on any remote or indirect loss.
- 6) Quantifying such loss needs to be analysed and examined whether the party has taken steps or means to remedy or minimise the damages that has occurred.

3.2.36 Compensation for Breach of Contract where Penalty Stipulated for under Section 74

3.2.36.1 When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be the penalty stipulated for.

3.2.36.2 A penalty is a sum of money which is disproportionate to the damage which could have been anticipated from breach of contract and which is agreed upon in order to enforce performance of the main purpose of the contract. Liquidated damages, on the other hand, are the fixed or agreed sum of money, which the parties have agreed that sum shall be paid as damages for such breach of contract. There is a feeling that penalty and LD are identical and synonymous but that is wrong notion. There is a distinction between penalty and liquidated damages. The actual description of the sums or payment is of little importance. The real difference of penalty from liquidated damages is that the penalty is penal in nature whereas liquidated damages are not. The essence of the liquidated damages is a genuine covenanted pre-estimate of damage. Penalty is the payment of money as penal whereas liquidated damages are the genuine, pre-estimated damages fixed at the time of entering into the contract.

3.2.36.3 The principles laid down in Section 74 of the Act entitles a person to get damages as reasonable compensation not exceeding the amount specified in the contract. In accordance with the principle contained in Section 74, a party cannot get the full amount mentioned in the contract as a matter of absolute right or as a matter of course. However, if the party so proves that the damages have been suffered to the extent of the full amount or that the court considers, even without any proof, that the full amount is a reasonable compensation, the court can award the full amount. One thing is, however, clear that the party is entitled to get some amount, subject to the condition that such amount should not exceed the money so fixed in the contract. This is irrespective of the fact whether the actual loss or damage is proved to have been suffered or not.

3.2.36.4 Under Section 74 where a definite figure is specified, the claimant who has suffered damages can get a reasonable compensation, which is less than the figure of penalty. In most of the construction contracts, losses are on account of breach and always measured in terms of money, therefore, it becomes imperative on the part of the owner to prove the fact of having suffered losses. In the absence of any proof, it is the duty of the court to ascertain and conclude the reasonable compensation, which could be paid to the innocent person who is not responsible for breach of the contract.

3.2.37 Stamping of Contract

3.2.37.1 Under Article 5 of the Indian Stamp Act, an Agreement or Memorandum of Agreement for or relating to the sale of goods or merchandise (not being bought or sold through a broker) is exempt from payment of Stamp duty.

3.2.37.2 The Stamp Act also provides that no stamp duty shall be chargeable in respect of any instrument executed by or behalf of or in favour of the Government, where but for such exemption; Government will be liable to pay the duty chargeable in respect of such instrument.

3.3 Authority for Execution of Contract by Government of India Department

The Officers in the Purchase Unit of DPS are authorised by the President of India in exercise of the powers conferred by clause (I) of Article 299 of the Constitution of India to make contracts for supply, services on behalf of Department of Atomic Energy.

3.4 Contract on Behalf of Central Government

3.4.1 Article 299 of the Constitution stipulates that all contracts made in the exercise of the executive power of the Union shall be expressed to be made by the President and all such contracts and assurances of property made in exercise of that power shall be executed on behalf of the President of India by such person and in such manner as he may direct or authorises.

3.4.2 The contract on behalf of the President, should, therefore, state in express terms that they are made 'For and on behalf of the President of India' by such officers who are authorised to enter into contract on behalf of the President of India.

3.4.3 These provisions are mandatory. If these are not complied with, the contract is not binding on or enforceable against the Government, though a suit may lie against the officer who

made the contract in his personal capacity. Such contract also not enforceable by the government and the government cannot sue the other party on the basis of the defective contract.

3.4.4 By virtue of the provisions of Article 299 (2) of the Constitution, the officials making or executing such contracts on behalf of the President are exempted from personal liability for acts done or purported to be done in the exercise of their official duty. There cannot be an oral contract binding the government and all contracts with government must be in writing and all terms must be specifically provided therein.

CHAPTER - 4

SALE OF GOODS ACT

4.1 Introduction

4.1.1 The Sale of Goods Act, 1930 is a vital act, which governs the relationship of a seller and a buyer and of the goods to be sold/purchased or agreed to be sold/agreed to be purchased. “Goods” as defined in Section 2 (7) of the Act, which means “every kind of movable property other than actionable claim and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale”.

4.1.2 Actionable claim means a bet or claim for money which a person may have against another and which may be recovered by a suit under a contract of sale.

4.1.3 The contract is between the seller and the buyer. A sale is then a bilateral contract. A 'sale' involves the existence of two persons called as 'the seller' and 'the buyer'. 'Seller' means a person who sells or agrees to sell goods and 'buyer' is a person who buys or agrees to buy goods.

4.2 Essential Elements of a Contract of Sale of Goods

4.2.1 Goods may be classified under two categories:-

- 1) Existing goods i.e. ready and identifiable goods.
- 2) Future or contingent goods.

4.2.2 Future goods are those which may be manufactured or produced or acquired by the seller after making the contract of sale. The contingent goods are those acquisition of which by the seller depends upon a contingency.

4.2.3 A contract for sale of existing goods involving immediate transfer of property of the goods to the buyer for a price is called 'contract of sale'. The sale of future goods where transfer of ownership is to take place at a future time or subject to some conditions to be fulfilled later on gives rise to 'agreement to sale'

4.2.4 Movable goods are supplied by the seller to the buyer against payment. An exchange of goods for goods is not a sale.

4.2.5 A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both or for the delivery or payment by instalments or that delivery or

payment or both shall be postponed. The parties may agree upon any terms concerning the time, place and mode of delivery.

4.2.6 A contract for sale of goods must satisfy all the essential elements necessary for formation of a valid contract as discussed in connection with the contract Act.

4.3 Condition and Warranty

4.3.1 The terms in a contract of sale may be divided into two categories viz. condition and warranty.

4.3.2 Condition is a term which is essential to the main purpose of a contract.

4.3.3 Warranty is only a collateral term. It is subsidiary to the main purpose of the contract.

4.3.4 The breach of the condition gives the aggrieved party a right to repudiate a contract. It also creates a right to get damages.

4.3.5 The breach of warranty entitles the aggrieved party to claim damages only.

4.3.6 A breach of condition may under certain circumstances be treated as warranty but a warranty cannot become a condition.

4.3.7 Implied Condition

4.3.7.1 Condition as to title. There is an implied condition on the part of the seller that he has acquired a right to sell the goods involved in the transaction and that, in the case of an agreement to sell; he will have a right to sell the goods at the time when the property is to pass.

4.3.7.2 Sale by description: Where there is a contract for sale of goods by description there is an implied condition that the goods shall conform to description.

4.3.7.3 Sale by sample: When goods are to be supplied according to an agreed sample, the following conditions are implied:-

4.3.7.3.1 The bulk shall conform to sample with regard to quality

- 1) The buyer shall have a reasonable opportunity to compare goods with the sample.
- 2) The goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of sample.

4.3.7.4 The term 'merchantable' imply that the article is in such quality and in such condition that a reasonable man, acting reasonably, would after full examination accept it under the circumstances of the case in performance of his offer to buy that article, whether he buys for his own use or to sell again.

4.3.7.5 When goods are sold by sample as well as by description the goods shall agree both with the sample and the description.

4.3.7.6 There is no condition that the goods shall be fit for any particular purpose or regarding any particular quality of the goods, but if the buyer makes known to the seller the purpose and he also makes it known that he relies on the skill and the judgement of the seller and if the goods are of description which it is in the course of seller's business to supply, the law implies that the goods shall be reasonably fit for this purpose.

4.3.7.7 Where the goods are sold under the patent or trade names, there is no implied condition regarding its fitness for any particular performance. If the buyer has examined the goods purchased by description from a regular dealer, there is no implied condition as regards the defects which such examination ought to have revealed. This approach is based on the principle of 'caveat emptor', which literally means 'buyer beware'. It is for the buyer to ensure that at the time of purchase the goods shall conform to his requirement.

4.3.7.8 The buyer must get quite possession. This is an extension of the principle mentioned earlier that the buyer must have a clear right to sell the goods involved in the transaction.

4.3.7.9 The goods must be free from encumbrances. There is an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party not declared or known to the buyer before or at the time when the contract is made.

4.3.7.10 Fitness of goods required for a purpose may be warranty by usage of trade. A warranty as to fitness for a particular purpose may annex to a contract of sale by a custom or usage of trade.

4.4 Delivery

4.4.1 The term delivery covering the time, manner and place are generally spelt out in the contract. However, certain general principles are enunciated below:-

4.4.2 There are three modes of delivery (a) actual delivery (b) symbolical delivery (c) constructive delivery.

4.4.3 Actual delivery occurs when the goods themselves are delivered, i.e. When the goods are physically handed over to the buyer or to his agent. Delivery of a part of goods in progress of the delivery of the whole has the same effect for the purpose of passing the property in such goods, as a delivery of the whole, but delivery of part of the goods with an intention of severing from the whole, does not amount to delivery of the remainder.

4.4.4 The buyer is not bound to accept delivery by instalments unless specifically agreed upon. The agreement for instalment delivery involves the following terms of agreement:-

- 1) The goods shall be delivered in specified number of instalments.
- 2) The agreed quantity of each instalment may be equal or different.
- 3) Non-delivery or defective delivery of one or more instalment is a breach of contract by the seller.
- 4) Refusal to take delivery or failure to pay for one or more instalment is a breach of contract by the buyer.

4.4.5 There may be two kinds of agreements in this regard:

1. The breach may be treated as a repudiation of contract.
2. Each breach will be treated as separate. Only compensation and not repudiation will arise from the breach in this case.

4.4.6 Delivery of goods to a carrier for transmission to a buyer is prima-facie deemed to be delivered to the buyer. When goods are handed over to the carrier, they hand over a receipt to the seller. The receipt of carrier is called 'document of title of goods'. During transportation the documentation of title may be in favour of buyer/agent/seller/banker/self, etc. This has to be transferred in favour of purchaser. Such transfer is done by way of endorsement on the 'document of title'. Transfer of documents is a symbolic delivery of goods to the purchaser. It carries with it full ownership of goods.

4.4.7 In case of constructive delivery, the essence of delivery is putting the buyer in such a position with reference to the subject matter as would enable him to exercise control over it excluding others from enjoyment. In this mode, there is a change in the legal character of the possession without any change in the actual or visible custody.

4.4.8 The buyer has the right to examine the goods for the purpose of ascertaining whether they are in conformity with the contract.

4.4.9 The buyer is deemed to have accepted the goods when he intimates the seller that he has accepted them or when the goods are delivered to him, he behaves in a manner that indicates acceptance.

4.4.10 Unless otherwise agreed, when the goods delivered are rejected by the buyer, he is not bound to return them to the seller. It is sufficient if the buyer intimates to the seller that he refuses to accept them.

4.5 Title of Goods

If sale by non-owners without authority, the true owner has protection as much as the buyer on such goods. The buyer cannot acquire a better title than the seller. However, a person who is not the owner of the goods may dispose of the goods under the following conditions:-

- 1) With the authority or consent of the owner.
- 2) Subject to provision of any law.
- 3) Sale by mercantile agent.
- 4) Sale by co-owner.

4.6 Rights of Unpaid Seller

4.6.1 The buyer must pay the price of the goods according to the terms of the contract. If the buyer wrongfully refuses to accept he must pay compensation to the seller.

4.6.2 When the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not do so within a reasonable time, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for reasonable charge for the care and custody of the goods.

4.6.3 The seller or the buyer may recover interest or special damages in any case where by law interest or special damages may be recovered.

4.7 Effect of Tax

Where in a contract there is no stipulation for payment of taxes or other statutory levies or there were no such levies on the article in question at the time of his purchase/sale or where the contract is for sale/purchase of goods on which tax has been paid and subsequently statutory levy on the sale or purchase of goods is imposed, increased, decreased, remitted, the seller may add to the price the amount of levy made or increased and the buyer may deduct the amount of levy decreased or remitted. The aforesaid provision will not apply if a contrary intention appears on the terms of the contract.

4.8 Repudiation of the Contract before Due Date

Where one party to a contract of sale repudiates a contract before the date of delivery, the other party may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as the contract rescinded or sue for damages on account of breach.

CHAPTER - 5

SOURCE REGISTRATION

5.1 Introduction

5.1.1 Reputed and reliable vendors are intangible assets to Purchase Organizations. Efficiency of purchase functions mainly depends upon the right selection of source of supply. This will not only ensure price advantage, quality products and delivery in right time but also reduce lot of avoidable repetitive activities in the form of less number of failures in supplies and rejection of materials. Proper source knowledge and identification of reliable suppliers capable of meeting the product of quality required to the stringent specifications of nuclear field, are vital function for ensuring procurement of quality goods.

5.1.2 The registration procedure involves thorough evaluation of the suppliers seeking registration by technical experts of the Department. This registration after evaluating the technical/financial capabilities of the firms help the users to take faster decision while evaluating the tenders and avoid the need for inspection of the firms with regard to infrastructure and technical competence on case to case basis. Transparency, providing equal opportunity and ensuring fair play are also important requirements in any procurement process. It is also essential that the credentials of the firms applying for registration with DAE, including their financial status, the technical competency, manufacturing and quality control facilities, the business ethics and their market standing are thoroughly scrutinized before registering them as an approved source of supply. Hence the selection and registration of firms, their performance appraisal and classification must be clearly spelt out and properly disseminated. Thus there are two basic criteria to be fulfilled by the supplier to receive a Government Contract- Eligibility Criteria and Qualification Criteria.

5.2 Registration of Firms

5.2.1 Directorate of Purchase and Stores is expected to regularly identify suitable sources of supply and periodically update the vendors list. DPS vide Office Order No. DPS/HQ/09/2001 dated 1st June, 2001, decentralized the work relating to registration of suppliers and powers have been delegated to Three (3) Regional Purchase Units to register suppliers after conducting factory/shop evaluation based on the documents submitted by those suppliers seeking registration. At present registration of vendors is being done by DPS, Mumbai and by the Three (3) Regional Purchase Units.

5.2.2 In the process of enlisting the sources of supply the potential suppliers can be identified from

- 1) Indian Trade Journal
- 2) Newspaper advertisements

- 3) Internet/websites
- 4) Trade Shows/Technical Exhibitions
- 5) Catalogues/brochures/samples, etc.
- 6) Yellow Pages

5.2.3 This gives a list of possible sources which can be trimmed down. The short-listed vendors can be invited to apply for registration subject to their fulfilling all the requirements for registration.

5.2.4 Since DPS has an all India based Purchase Units, it is relevant that the details of the suppliers who have been selected for registration as approved vendors are brought to the notice of other Regional Purchase Units and Headquarters for their comments, if any, by giving suitable time for response. If no adverse comments are received against selected suppliers, they can be registered by issuing necessary registration certificates. Copies of such certificates should be endorsed to all the Purchase Units and Headquarters. This will ensure proper scrutiny of vendors whose performance is observed to be not up to the mark by any of the Regional Purchase Units/Headquarters and that unscrupulous suppliers would not get registered with DPS.

5.3 Eligibility for Registration

5.3.1 Firms who are in the business of manufacturing, stocking or marketing of stores and subject to fulfilling certain conditions detailed below shall be eligible for DPS registration.

5.3.2 Where such registration is granted based on manufacturing or marketing arrangements, it shall be the responsibility of the registering unit to keep such agreements renewed at all times to keep the registration valid for the period for which the registration has been granted.

5.3.3 Firms, against whom punitive action has been taken, shall not be eligible for re-registration for a period of two years or as prescribed. Registration requests may not be entertained from such firms, stake holders who have any interest in deregistered/banned firms.

5.4 Categories for Registration

5.4.1 The following categories of firms will be considered for registration for supply of indigenous items:

- 1) Manufacturer
- 2) Assemblers
- 3) Converters
- 4) Sole Selling Agents/Authorized Agents/Distributors
- 5) Stockist for indigenous stores

5.4.2 Manufacturer

5.4.2.1 Indigenous firms having factory(s) of their own and technically certified by the inspecting authority of DAE that they have competence of producing material of the required quality for the nuclear field.

5.4.2.2 In certain cases the manufacturing firms may not own the factory but utilizes the factory of some other firms on lease or other arrangements for manufacture/fabrication of the stores for which the registration is sought. In such cases, the firm seeking registration should have entered into a valid agreement to formalize such arrangements with the firm owning the factory. This arrangement should be valid at least for a period of three years at the time of application. At times the manufacturing firm owning a factory and manufacturing the goods by themselves may entrust a part of the work to some sub-contractors. In such cases there should be a valid agreement or other arrangements with the sub-contractors. This agreement should be valid for a minimum period of three (3) years from the date of applying for registration.

5.4.2.3 The inspecting authority should inspect the sub-contractors' works also and ensure that the sub-contractors are having proper site/premises, plant & machinery, other infrastructure facilities and technical manpower, etc. and are capable of producing the quality goods needed for nuclear industry.

5.4.2.4 The registration certificates granted to the firms should contain the details of the name of the lessor/sub-contractor, the type of arrangement the firm has with the lessor/sub-contractor and that in case the lease or other arrangements in respect of the factory(s)/sub-contract agreement is terminated, the firm's registration shall stand terminated with effect from the date when the arrangement is terminated.

5.4.2.5 The manufacturers shall normally be considered for registration for a maximum period of 3 years.

5.4.3 Assembler

5.4.3.1 This category of suppliers normally buys the major items from the market and carries out the assembling work such as, air-conditioning plants, etc.

5.4.3.2 This type of vendors may also be considered for registration for a maximum period of 3 years.

5.4.4 Converters

5.4.4.1 This category of suppliers does value addition to their products by their own technical facilities. Example: x-ray films, computer stationery, teleprinter rolls, etc.

5.4.4.2 This type of vendors may be considered for registration for a maximum period of 3 years.

5.4.5 Sole Selling Agents/Authorised Agents/Distributors of Indian Manufacturers

5.4.5.1 The above category of suppliers supplying stores of reputed manufacturers, whose

products have been technically acceptable, can be considered for registration subject to their furnishing the certificate from the manufacturer appointing them as their sole selling agents/authorized agents/distributors, which should be valid at least for a period of 3 years from the date of application for registration. At the time of granting of registration, the name of the manufacturer, the details of the products, validity of the agency period, etc. should be clearly indicated in the registration certificate. In case the validity of the agency is terminated/expired, the firm's registration shall stand terminated with effect from the date when the arrangement is terminated.

5.4.5.2 This type of vendors may also be considered for registration for a maximum period of 3 years.

5.4.6 Stockist

Stockists of indigenous items are to be considered for registration in exceptional circumstances where sufficient number of registered manufacturers/sole selling agents/authorized agents/distributors for particular products required by the Department are not available. Before considering the stockists for registration, the quality of the product held and supplied by the stockist, the quantum of stock held by him and the market standing, etc. has to be examined in detail. Generally, stockist wherever required can be kept in the mailing list of DPS initially and after examining their performance with reference to quality, quantity, timely supply, number of orders secured, executed and the value of the orders, etc., the firm may be considered for registration. They may be considered for registration for a maximum period of 2 years.

5.4.7 Foreign Manufacturers & their accredited Agents in India

Foreign manufacturing firms and their accredited agents in India are registered for a maximum period of 3 years or for the period for which their Indian Agent's agreement is valid. This foreign manufacturing firm can also be registered without Indian Agent if they have necessary arrangement for after sales service where required in India. In case of any clarifications/doubts, the services of TLM, Paris or the Indian Embassy in the country of the manufacture can be made use of and the registration can be considered after obtaining the details from TLM, Paris/Indian Embassy.

5.4.8 Stockists of Imported Stores

5.4.8.1 Stockists of imported stores are registered for such items for which there is need on regular basis. Firms in this category are required to be accredited by the foreign manufacturers and to be holding stocks of the items regularly.

5.4.8.2 Such registration can be considered for a maximum period of 2 years.

5.4.9 Suppliers of Imported Stores

5.4.9.1 Against DPS public tenders number of firms are offering products of overseas suppliers in Indian rupee. They are neither accredited agents of the foreign manufacturer nor regular stockists of their products. However they have delivered number of items and executed the contracts placed on them successfully. This category of suppliers can be considered for registration only in exceptional circumstances based on their past performance. Before they are

considered for registration, their past performance relating to supply of quality products, timely supply, after sales service, their technical capability for arranging timely installation and commissioning, warranty service and post warranty maintenance for satisfactory performance of the equipment /material/components supplied during the life of the machine, etc. to be taken into account. They can be considered for registration taking into account the above factors and the value of registration should not normally exceed the average value for which the firm secured orders from the Department and successfully executed during the last 3 years. Before registering these suppliers, views of the users from the Unit may also be obtained and taken into consideration for registration.

5.4.9.2 This type of vendors may be considered for registration for a maximum period of 2 years.

5.4.9.3 Where large value orders have been successfully executed in the past, and the firm is a reputed mega vendor such as L&T, WIL, Godrej, etc. the approving authority can dispense with shop evaluation and register these vendors as approved suppliers based on their application for registration.

5.4.9.4 When on capacity verification of an unregistered manufacturer or during technical evaluation of a file some of the suppliers meeting the technical requirements of nuclear standard are suitable for registration with DPS, they shall be invited to get themselves registered with DPS. Their application with necessary documentation shall be processed and if found fit the registration to be granted.

5.4.10 Monetary Limit

Monetary limit shall be fixed as 25% (twenty five percent) of the average annual turnover during the preceding 3 years in respect of category of firms manufacturers / assemblers / converters / sole selling agents / authorized agents / distributors. Only those firms whose average annual turn over is Rs. 20 lakhs or more shall be considered for registration. This will result in a minimum monetary limit of Rs. 5 lakhs.

5.5 Authorities competent to grant Registration

5.5.1 Joint Director, P&S, Directorate of Purchase and Stores and Regional Directors stationed at Chennai, Hyderabad & Indore have been delegated powers and are competent to approve registration of the firms. Director P&S is designated as Appellate Authority in the Department. The Appellate Authority shall be at least one level above the registering Authority or as designated by the Department.

5.5.2 In cases where the firm is not considered capable and registration can not be granted, concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the Appellate authority. Where request for re-verification and review is made by the firm, along with any fee as prescribed and within the period prescribed review shall be undertaken. Request for re-verification after expiry of the said period would be treated as fresh application and processing fee, if any prescribed, charged accordingly.

5.6 Application Form

Application form for registration, Form No. DPS/P/5 & DPS/P/5A can be obtained by paying the prescribed fee from the Pay & Accounts Officers of the respective Units of DPS from where the forms are being sold. The details of the firm, category, details of the products, details of bankers, details of the orders secured from various Government organizations, etc. are called for in the application form. The cost of application form and processing fee, if any, payable shall be as prescribed from time to time by the competent authority. The application form can be downloaded from DPS website www.dpsdae.gov.in and the same can be submitted along with the prescribed fee and all other relevant documents for consideration for registration.

5.7 Documents to be furnished along with the Application Form

5.7.1 The following documents as applicable based on the firm's category are to be furnished:

5.7.2 Manufacturing firm

- 1) Photo copy of certificate of incorporation and a copy of Memorandum and Articles of Association (Public Limited Companies).
- 2) Copy of valid NSIC/DGS&D registration certificate, if any.
- 3) Photo copy of certificate to show that the firm is registered under the Factories Act.
- 4) A copy of partnership deed and extracts from Registrar of Firms in Form-A (Partnership Firms).
- 5) Copies of ownership documents in respect of firm's factory and plant and machineries installed therein (in respect of manufacturers).
- 6) Together with copies of legal agreement in case of utilization of factory of others/sub-contractors.
- 7) Copies of last three years annual reports containing the firm's profit and loss account and the balance sheet.
- 8) A general Power of Attorney together with a copy of the resolution of the Board of Directors (in the case of companies) when the application is signed by a person other than the Proprietor, Partners, Managing Director/Director as the case may be. (The general power of attorney should authorize the constituted attorney to sign for and on behalf of the firm concerned and bind the firm in all contractual obligations with an authority to refer the disputes arising out of contracts, if any placed by DPS or its Regional Units to arbitration under the provisions of the Indian Arbitration Act 1996. Copy of the power of attorney duly attested by Notary Public/First Class Magistrate should be furnished along with the application).

- 9) Affidavit regarding banning in Form A (DGS&D 219A).
- 10) Performance Statement in Form B (DGS&D 43).
- 11) Permanent Registration with Director of Industry of the State if the firm is a SSI Unit or acknowledgement of the memorandum submitted to SIA of Ministry of Industry in case of non-SSI Unit.
- 12) Copies of registration certificates issued by other Govt. Departments/ Undertakings.
- 13) Photo copy of Income Tax Permanent Account Number.
- 14) A copy of registration certificate for registration with tax authorities like excise/service tax/sales tax/VAT, etc.
- 15) A list of Govt./Semi-Govt. Departments with whom the firm is having regular dealings together with their full address and reference number, if any.
- 16) Money receipt issued by the Pay & Accounts Officer when the application form was purchased or demand draft if downloaded the application form from website.
- 17) Manufacturing unit to furnish full information of technical know-how, manufacturing facility, quality assurance facility, technical and skilled manpower available, items and standard specifications to which registration is sought, copies of licences of statutory authority and type test certificate as applicable, etc.

5.7.3 Sole selling agent/Authorized agent/Distributor

- 1) Photo copy of certificate of incorporation and a copy of Memorandum and Articles of Association (Public Limited Companies).
- 2) A copy of partnership deed and extracts from Registrar of Firms in Form-A (Partnership Firms).
- 3) Copies of last three years annual reports containing the firm's profit and loss account and the balance sheet.
- 4) A general Power of Attorney together with a copy of the resolution of the Board of Directors (in the case of companies) when the application is signed by a person other than the Proprietor, Partners, Managing Director/Director as the case may be. (The general power of attorney should authorize the constituted attorney to sign for and on behalf of the firm concerned and bind the firm in all contractual obligations with an authority to refer the disputes arising out of contracts, if any placed by DPS or its Regional Units to arbitration under the provisions of the Indian Arbitration Act 1996. Copy of the power of attorney duly attested by Notary Public/First Class Magistrate should be furnished along with the application).

- 5) Affidavit regarding banning in Form A (DGS&D 219A).
- 6) Performance Statement in Form B (DGS&D 43).
- 7) Shop/Establishment Certificate.
- 8) Copies of registration certificates issued by other Govt. Departments/ Undertakings.
- 9) Photo copy of Income Tax Permanent Account Number.
- 10) A copy of registration certificate for registration with tax authorities like excise/service tax/VAT/sales tax, etc.
- 11) A list of Govt./Semi-Govt. Departments with whom the firm is having regular dealings together with their full address and reference number, if any.
- 12) Money receipt issued by the Pay & Accounts Officer when the application form was purchased.
- 13) Photocopy of valid Agency or Distribution agreement.

5.7.3.1 In addition to the above, the following certificates are to be furnished:-

- 1) A certificate from manufacturer that he will accept the responsibility for satisfactory execution of the orders placed on the authorized agent/sole selling agent/distributor.
- 2) Manufacturer will provide requisite inspection and testing facility wherever required.
- 3) The price quoted by the sole selling agent/authorized agent/distributor will not exceed that which the manufacturer would have quoted.
- 4) The material supplied has been manufactured by them and the stores supplied would bear the trade mark of the manufacturer.
- 5) The sole selling agent/authorized agent/distributor to certify that they are responsible for all the contractual obligations including quality aspects/replacement of parts/items and warranty/guarantee obligations.
- 6) The sole selling agent/authorized agent/distributor will be responsible for providing after sale service wherever necessary.

5.7.4 Foreign Supplier

- 1) In respect of foreign firms one set of catalogue, price list, etc. of the products being manufactured.

- 2) A capacity report from any of the Inspection Agency recognized by the Govt. of the Country of the Manufacturer.
- 3) In case of any doubt/clarification needed in respect of foreign firms, reference can be made to TLM, Paris/Indian Embassy in the country seeking their help and registration can be considered based on the information received from TLM, Paris/Indian Embassy.
- 4) Indian Agents of foreign manufacturers shall furnish agency agreement with the foreign manufacturer giving details of agency commission and confirmation of acceptance of payment in Indian rupee. They should also furnish similar certificates as per para no. 5.7.3.
- 5) Copy of the registration details with DGS&D regarding compulsory enlistment under the scheme of Ministry of Finance.
- 6) The availability or otherwise of after sale service facility in India and details thereof. These details shall be incorporated in the registration letter issued to the foreign manufacturer/their Indian Agent.

5.8 Registration of Sister Concerns

Individual registration shall not be granted to sister concerns. In case any firm does have a sister concern, this fact needs to be intimated by the firm while applying for registration and the name of the sister concern shall be indicated in the body of the registration certificate itself to avoid the firm and the sister concern participating in the same tender.

5.9 Compulsory Enlistment of Indian Agents of Foreign Principals

5.9.1 It is compulsory for all Indian Agents of Foreign Principals desirous of directly taking part in government purchases to get themselves enlisted with DGS&D as per directive of Department of Expenditure, Ministry of Finance. The enlistment will be granted on furnishing of details indicated in application form. Eg. Details of agency commission, acceptance of payment of commission in rupees in India and availability of after sale service and spares etc. in India duly certified by foreign principals. A copy of the agency agreement should also be furnished. Such enlistment shall be granted for a period of 3 years provided the agency agreement is valid during this period.

5.9.2 The compulsory enlistment of Indian Agents under the scheme of Ministry of Finance is simpler and differs from registration of Indian Agents with DGS&D.

5.9.3 The registration of the foreign manufacturer is not a must for enlisting the Indian Agent under this scheme. No inspection report in respect of the foreign manufacturer/principal is necessary.

5.9.4 The enlistment under the scheme is not equivalent to the registration with DGS&D. Such

firms do not enjoy the same status as that of DGS&D registered suppliers. A note to this effect is given in the enlistment letter to the firm.

5.10 Signing of Application Form

5.10.1 Proprietorship Firms:

5.10.1.1 The application should be signed by the Proprietor.

5.10.2 Partnership Firms:

5.10.2.1 The application should be signed by all the Partners.

5.10.3 Limited Companies:

5.10.3.1 The application should be signed by the Managing Director or any of the Directors of the firm duly authorized. If it is signed by a person holding power of attorney on behalf of the authorized signatory, a copy of the power of attorney duly attested by a Notary Public/First Class Magistrate to be furnished.

5.11 Processing of Application

5.11.1 The processing of application for Registration should be as follows:

- 1) The Registration Unit of the DPS/Regional Purchase Units will scrutinize the applications received to ensure that the form is complete in all respects and is not ambiguous or evasive and it contains all the relevant supporting documents as per the requirement. In case some more additional information is needed or the information furnished is ambiguous or evasive the details shall be called for immediately. This should not be done in piecemeal and all the requirements to be called for at one go.
- 2) It shall be verified from the records of DPS that the firm is in our mailing list and orders have been placed on that firm directly during the last three years. In such cases the details of orders executed such as the number of orders secured, its value, timely delivery, quality of the product delivered, after sale service, performance of stores supplied in the long run, etc. have to be collected and analyzed. A performance report may also be called for directly from the concerned users.
- 3) Factory/shop evaluation has to be carried out with the help of technical experts in the field from the Unit along with DPS personnel and their reports play a vital role in deciding the registration of the firm. The technical experts who are carrying out the inspection should satisfy themselves to the correctness of all the information furnished in the application and the supporting documents relating to technical and financial aspects. The DPS personnel should verify with the original documents relating to Articles of Association and Memorandum, Partnership Deed, factory premises lease agreement if any,

PAN certificate, NSIC/DGS&D registration, taxes and duties registration, shop/establishment certificate, agency or distributorship agreement, orders secured from Govt./Semi-Govt. Departments, etc. The technical experts should confirm that the quality of end product meets the stringent nuclear grade specifications. In addition to this he should also examine and report the total area of the shop/factory site, details of the qualified workers, technocrats, plant and machinery, infrastructure facility, workmanship, quality control, facilities for testing, manufacturing capacity, financial capability, orders secured, orders successfully executed, annual turn over, total production capacity, out of this how much can be taken for assured supply to the Department after considering their commitment to other suppliers, accessibility, attitude, etc. In respect of shop evaluation, the normal stock holding, whether the products sold are from the original manufacturer, genuineness of the product, quality of the products held in stock, annual turn over, details of their regular customers, whether they are registered with any government departments and any supply made to them, their capacity to execute the order at a time, etc. to be examined.

- 4) A report shall be called for from the bank with whom the firm is operating an account regarding financial standing of the firm. However, if no report is received within a period of ten weeks after reference to the bank and issue of reminders, the financial aspect can be considered based on the audited balance sheet of the firm.
- 5) To get a better picture of the performance capability of the firm it would be beneficial to see the turn over based on annual balance sheet showing profit and loss account of the firm during the preceding three years of registration.

5.11.2 In case of application for registration for stores where test reports from a laboratory is also required (eg. Oil, paints, varnish, cement, etc.), the applicant will have to furnish a report in original after testing their product at their expense from a reputed laboratory acceptable to the registering authority.

5.11.3 The inspection authority after detailed inspection of the factory/shop will furnish his recommendation regarding registration of the firm along with his inspection report.

5.11.4 The registration of foreign firms and their Indian agents should be processed together. However, foreign manufacturers can be considered for registration without their Indian agent for such items where there is no after sale service is required.

5.11.5 All foreign firms applying for registration for the first time or for additional items of stores are required to submit an application with an inspection report from an inspection agency recognized by the government of their country or by the respective Merchant Chamber of Commerce and Industry. The report should provide for confirmatory details regarding workshops (total area of the shop & site, number of workers and staff employed). It should also deal with such question as workmanship, plant & machinery available, the product range, facilities for testing, etc. together with inspection agencies/chamber recommendation on the item which the firm wish to be registered. DPS can consider forwarding all the relevant documents to TLM, Paris and obtain their recommendation especially for the firms in Europe or contact the Indian Embassy in the country from where the foreign supplier applied for registration and obtains the details before a decision is taken for registration.

5.11.6 On receipt of reports, recommendation and other relevant details mentioned above, the Registration Section will process the file for the approval of the competent authority based on the information available with them. The registration certificate will be issued after approval of the competent authority.

5.12 Changes in the Name of a Firm and/or their Office Address

Request for change in the name of the firm and/or address should be addressed to the authority who has granted the firm the original registration, enclosing the original registration certificate duly supported by documentary evidence for the change. In normal course, such changes shall be allowed simply on verification of documentary evidence.

5.13 Change in Constitution or Location of the Firm's Manufacturing Works

In the event of any change in the constitution of the firm or in the location of their manufacturing works, the registration with DPS shall lapse. The firm should surrender the original registration certificate in such cases and apply for registration afresh.

5.14 Source Development

5.14.1 There are some specific and stringent requirement for nuclear supplies for which vendor may not be readily available. Certain items or parts that have not previously been made, intricacies of special design, unusual requirements in the specifications or difficult condition of application and use and utilization of new or unfamiliar material for which there is little precedent in treatment and fabrication are some of the factors that may lead to a situation for which no established supply source stands ready to take up the work. Some times potential suppliers are unwilling or not interested to take such nature of job due to preoccupation or due to the risk involved or due to the return is not commensurate with the investment of time and money involved.

5.14.2 In such cases the volume of business in the country may not be very high while technical competency required will be very high. In such circumstances, DPS should develop some vendors who are capable of manufacturing such equipment either with their own design and development or with design support given by the Department. All the inputs with the quality requirements are to be explained to the vendors in advance to enable them to understand and execute the work. In such circumstances the Department should keep their option open to conclude cost plus contracts, to have flexible price variation clause, price adjustments towards modifications during the execution of the contract, liberal advance payment against security, changes in the stringent specifications if necessary to the extent possible to accommodate, modification in the delivery schedule if necessary, issue of free issue material required by the firm wherever necessary, etc. Technical assistance in setting up the process on an efficiency basis which will result in satisfactory product can be considered. Granting advance payment for procurement of high cost equipment and tooling required for manufacture of critical items can also be considered which can be absorbed by the volume of business that develops.

5.14.3 As the electricity production using nuclear energy is gaining momentum and

correspondingly the back end fuel cycle activities are also likely to grow, the vendors can be assured of steady flow of guaranteed orders over a period of time at a satisfactory price level.

5.14.4 Further in order to increase the competitiveness and to avoid too much dependence on limited suppliers more and more vendors are to be encouraged to participate in the nuclear supplies.

5.14.5 It should be remembered that source selection, development and performance rating for right source of supply is a continuous activity and not one time job.

5.14.6 Central Facility for uploading of details of the firms registered with Headquarters and the Regional Purchase Units can be created on DPS website. Provision shall be made for uploading of the details of the vendors registered by each Unit then and there. This will serve as an online common data base of registered suppliers for DPS.

5.15 Vendor Evaluation

5.15.1 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:-

- (1) **Quality:**
Quality has to be assessed from the inspector's report as well as feed back from the actual users. The feed back should also include the timely response of the firm for repair/replacement of the parts of the equipment.
- (2) **Delivery:**
Delivery compliance has to be assessed from the delivery data against purchase orders placed on the suppliers. The purchaser, from DPS computer records could generate the percentage of orders that met the original delivery date as per contract and that which did not.
- (3) **Price:**
Price competitiveness of the vendors 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 computers.
- (4) **Response:**
The response analysis of the vendors would be indicated in terms of number of quotes submitted against the number of tender enquiries sent to them. Computer generated data for quotes received, as percentage of tender enquiries sent would be one of the valid criteria for response analysis.
- (5) **Product support:**
Product support record of a manufacturer may be determined on the basis of response to enquiries for spare parts and maintenance services for the equipment originally supplied by them.

5.16 Removal of Firms from the Approved Source of Supply

5.16.1 The registration granted to a firm for a particular period may be cancelled with the approval of the authority who has approved the registration in the following circumstances:

- 1) They fail to abide by the terms and conditions under which the registration has been granted.
- 2) Makes any false declaration to DAE or any other Department.
- 3) Supply stores of inferior quality.
- 4) Failed to execute a contract or failed to execute it satisfactorily.
- 5) Where the required technical staff or equipment is no longer available or there is change in the production line.
- 6) If the firm is declared bankrupt or insolvent.
- 7) Failed to submit the required documents/information for review of registration where required.
- 8) On any ground which, in the opinion of DPS, retention of the firm's name in the list of registered suppliers is not in public interest.

5.16.2 When any such instances are brought to the notice of the registering authority a show cause notice will be issued to the firm about the action proposed and grounds thereof. On consideration of reply thereto or after expiry of notice period, appropriate orders shall be passed for deregistration or cancellation of the registration of the firm and removal from the list of approved contractors.

5.17 Banning & Suspension of Business Dealings with the Contractors

5.17.1 Business dealings with a firm, whether it is registered or not, may be ordered to be suspended or banned in public interest by the competent authority.

5.17.2 Suspension of business dealings may be ordered where pending full enquiry into the allegations, it is considered not desirable that the business with the firm should continue

- 1) If the firm is suspected to be of doubtful loyalty to India.
- 2) If the CBI or any other investigating agency recommends such course in respect of a case under investigation.
- 3) 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 dealing with the firm being banned.

5.17.3 The grounds on which Banning may be Ordered:

- 1) Security considerations including question of loyalty to the State so warrant.
- 2) If the proprietor of the firm, its employees, partner or representative is convicted by a court of law following prosecution for offences involving moral turpitude in relation to the business dealings.
- 3) If there is strong justification for believing that the proprietor or employee or representative of the firm has been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolation, misrepresentation, evasion or habitual default in payment of any tax levied by law, etc.
- 4) If the firm continuously refuses to return government dues without showing adequate cause and government is satisfied that this is not due to reasonable dispute which would attract proceedings in arbitration or court of law.
- 5) If the firm employs a government servant dismissed, removed on account of corruption or employ a non-official convicted for an offence involving corruption or abatement of such an offence, in a position where he could corrupt government servants.

5.18 Procedure for Suspension & Banning of Business Dealings

5.18.1 All cases in which suspension or banning is proposed will be initiated by Registration Section and put up to Director, P&S, Directorate of Purchase & Stores with full details together with connected papers. After due scrutiny and after obtaining such further information as may be necessary, the case will be put up before Chief Vigilance Officer, DAE for initiating the required proceedings for suspension/banning of business dealings with the firm. DPS will provide all necessary assistance that may be required by Chief Vigilance Officer in the conduct of the proceedings by him. On receipt of order of suspension/banning of business dealings with the firm passed by Chief Vigilance Officer, DPS will communicate the same to all the Units.

5.18.2 It should be noted that no contract of any kind whatsoever shall be placed with the banned firm including its allied firms. However the contract concluded before issue of the banning order shall, however, not be affected by the banning order.

CHAPTER - 6

PREQUALIFICATION OF VENDORS

6.1 Introduction

6.1.1 Some of the materials required by certain divisions of Units should meet specific and stringent quality or with complicated technical specifications are being made for the first time in the country or the materials are being manufactured using reverse engineering. These materials may be of very high value.

6.1.2 Some times high value package contracts called mega projects consisting of civil, electrical, mechanical, instrumentation and other areas are combined in one contract. Execution of mega package projects or manufacture of highly complicated technology equipment mentioned above requires multidisciplinary skills of the bidders and involves in part or full the activities of detailed engineering, procurement, subcontracting, inspection, transportation, erection and commissioning. In such cases it is the responsibility of the contractor to coordinate all the work and to supply the item/equipment, complete the erection, commissioning and handing over the facility to the organisation. The bidders are required to possess necessary technical and organizational skills, financial capabilities, human resources and past experience of having executed similar jobs.

6.1.3 There may not be many vendors who are competent to execute such contracts. Such vendors who are competent both technically and financially to execute such jobs have to be identified. The department may have to interact with possible vendors to make them understand the actual requirement of the Unit. In such circumstances the normal tendering procedure may not yield the desired results.

6.1.4 In respect of package contract, all materials supplied by the contractor may not be the product manufactured by them. They may have to decide the make/model and the source of supply and obtain the approval of the buyer for sourcing from other firms. As an event manager, they are required to source, deliver, erect and commission the items at site as per the buyer's requirement. In this process apart from their technical capabilities they are supposed to have project management and organising skill to execute the package within the contractual completion period meeting stringent quality requirement of the department.

6.1.5 In these cases most stringent procedure should be followed for pre-qualification of suppliers for supplying critical components and plant and machinery, etc. While doing so instead of issuing/inviting bids from all the registered bidders, the vendors will be pre-qualified by fixing prequalification criteria based on the requirement of the items and work to be carried out.

6.1.6 The prequalification criteria shall be entirely based upon the technical capability and resources of the prospective bidders to perform the particular contract satisfactorily, taking into

account their (a) experience and past performance on similar contracts (b) capabilities with reference to personnel, equipments and manufacturing facilities (c) financial standing.

6.1.7 In view of the above, the following guidelines may be followed for prequalification criteria for procurement of items/equipments involving supply or supply as well as erection and commissioning.

6.2 Allocation of Resources

6.2.1 The financial criteria may be stipulated with a view that the Contractor needs to allocate his resources to other jobs in hand. The percentage of his capacity to be allocated for this work has to be decided based on the estimated value of the item to be procured. The capacity of allocation of resources on men, material and money has to be evolved.

6.3 Annual Turn Over

6.3.1 The annual turn over criteria can be stipulated based on percentage of capacity allocation for this job. If the capacity allocation is assumed as 40% then,

$$\begin{array}{l} \text{average annual turnover} \\ \text{during the last three years} \end{array} = \frac{\text{estimated cost of the tender}}{\text{desired execution period (years)}} \times 2.5$$

6.3.2 The single order value criteria are used to ascertain whether the Contractor has the requisite experience in carrying out the nature and value of the job presently tendered. In this regard it is necessary that bidders should have experience of having supplied and erected similar item/equipment of the value equivalent to x percentage of the estimated cost in the last five years depending upon the value and technology involved.

6.3.3 Accordingly, the single order value of 'similar work' shall be as under:-

Single order value = x % of the estimated cost of the tender.

6.3.4 In addition to the above, the following points may also be considered for finalisation of pre-qualification criteria:

- 1) The details and nature of similar works should be defined in clear and unambiguous terms.
- 2) Single order value should be considered for the value of the job completed satisfactorily. The same should be authenticated with documentary proof.
- 3) The executed order value should be without taking into account the FIM value issued to the Contractor.
- 4) The financial year closing which should be considered for calculation of annual turn over shall be clearly spelt out.

6.3.5 The criteria for prequalification of bidders can be derived from two important requirements i.e. (1) Technical requirements (2) Commercial requirements/Financial capability of the vendor.

6.3.5.1 Technical Requirements:

- 1) Availability of the required plant & machinery to perform the intended work.
- 2) Availability of qualified technocrat and qualified staff (minimum qualification may be identified).
- 3) Experience of key personnel.
- 4) Availability of in-house design and R&D facilities.
- 5) Availability of in-house QA personnel.

6.3.5.2 Commercial Requirement/Financial Capability:

- 1) Average annual turn over during the last three years.
- 2) Value of single biggest order executed during the last three years.
- 3) Incorporation details about the company.
- 4) Organisation expansion plan in the near future.
- 5) Details of orders under execution/orders received to be started for execution.
- 6) Past performance details with DAE.

6.3.6 Documents required to be submitted by the firm for verification towards pre-qualification:

- 1) Application issued by DPS inviting the bidders for pre-qualification with details filled in all respects.
- 2) Litigation/Arbitration history with other clients.
- 3) Documents supporting the availability of the required site, plant and machinery, personnel, R&D facility, inspection facility, etc.
- 4) Details about geographical location of various manufacturing facilities of the vendor.
- 5) Balance sheet and profit and loss account for the preceding three years and annual report to support the financial standing of the applicant.
- 6) PAN details.

- 7) Projected fund statement.
- 8) Reference from bankers.
- 9) Documents supporting the experience and the past performance on similar contracts for the last 5 years.
- 10) Supporting documents for execution of similar jobs with other govt. departments/PSUs etc.
- 11) Quality assurance programme.
- 12) Repeat performance for similar activities.
- 13) Testimonials and performance certificates from satisfied customers.

6.3.7 In respect of package contract, in addition to the above the following details are also to be furnished: -

- 1) Project Management Skill.
- 2) Organising capability to meet the desired contract completion period.
- 3) Capability of sourcing the material from the right source.
- 4) Previous experience in erection and commissioning of similar jobs.
- 5) Pre-qualification of sub-vendors and sub-contractors.

6.3.8 Indicating the above mentioned pre-qualification requirement public tenders should be issued requesting the firms, who are capable of fulfilling the above conditions and confident of executing the job, to submit tenders for consideration of pre-qualification. Such pre-qualification will not only save time in processing the file but also get technically and financially competent qualified vendors to execute the job in time.

6.4 Vendors not fit for Pre-Qualification

- 1) The vendors who do not have appropriate experience to perform the contract.
- 2) The vendors who have had judgement entered against them within the past five years for breach of contract.
- 3) The vendors who have been in substantial non-compliance with the terms and conditions of the previous contracts.
- 4) The vendors who are currently debarred/blacklisted from participating in the tender either in the government departments or in the public sector undertakings.

- 5) Vendors who have not furnished the required information in spite of giving the opportunity.
- 6) Vendors who have furnished incorrect or misleading information.

6.5 Evaluation for Pre-Qualification of Bidders

6.5.1 The application and supporting documents submitted with the application should be scrutinised and thoroughly evaluated. The objective of evaluation is to determine which of the vendors are competent and qualify to perform the particular task required by the organisation. The evaluation can be carried out by a Committee consisting of members drawn from user, specialist in the field, quality control personnel, maintenance engineers, purchase and finance. A senior officer who has sound knowledge in the particular field and in the project implementation should head the Committee.

6.5.2 This is an objective process and hence the onus of providing all the information required by the Committee is that of the applicant. Each applicant should be evaluated based on their technical capability, financial soundness, past performance, current workload, etc.

6.5.3 Bidders who are pre-qualified with the above procedure will be intimated and tender documents can be issued to them for submission of bid preferably in two parts.

6.6 CVC Guidelines

6.6.1 Central Vigilance Commission vide OM No. 12-02-1-CTE-6 dated 17.12.2002 issued an Office Memorandum on the subject pre-qualification criteria. The Commission has indicated that it received complaints regarding discriminatory pre-qualification criteria incorporated in the tender documents by various departments/organisations.

6.6.2 The Commission indicates that pre-qualification criteria are a yardstick to allow or disallow the firms to participate in the bids. A vaguely defined PQ criteria results in stalling the process of finalising the contract or award of the contract in a non-transparent manner. Some times the organisation picks up the PQ criteria for some similar work executed in the past, without appropriately amending the different parameters according to the requirements of the present work. The Commission has also indicated that very often it is seen that only contractors known to the officials of the organisation and to the architects are placed on select list. Hence it is necessary to fix in advance, the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.

6.6.3 The Commission has also indicated some of the lapses observed by them in this regard:

- 1) For work with an estimated cost of Rs. 15 crores to be completed in two years, the criteria for average turn over in the last 5 years was kept at Rs. 15 crores even though the amount of work to be executed in one year was only Rs.7.5 crores. The above resulted in pre-qualification of a single firm.
- 2) An organisation for purchase of computer hardware kept the criteria for financial

annual turn over of Rs. 100 crores although the value of purchase was less than Rs. 10 crores, resulting in disqualification of number of reputed computer firms.

- 3) In one case of purchase of computer hardware, the pre-qualification criteria stipulated were that the firm should have made profit in the last two years and should possess ISO certificate. It resulted in disqualification of reputed vendors including a PSU.
- 4) An organisation invited tenders for hiring of DG sets with eligibility of having three years experience in supplying DG sets. The cut off date regarding work experience were not clearly indicated. The above resulted in qualification of firm, which had conducted such business for three years, some twenty years back. On account of this vague condition, some firms that were currently not even in the business were also qualified.
- 5) In many cases, “similar works” is not clearly defined in the tender documents. One such case, the supply and installation of AC ducting and the work of installation of false ceiling were combined together. Such works are normally not executed together since the false ceiling work is part of a civil construction work or interior design work. Therefore, no firm can possibly qualify for such work with experience of similar work. The above resulted in qualification of AC contractor without having any experience of false ceiling work although the major portion of the work contributed false ceiling work.

6.7 Exhaustive and yet specific PQ Conditions

6.7.1 While framing the pre-qualification criteria, the end purpose of doing so should be kept in view. The purpose of any selection procedure is to attract the participation of reputed and capable firms with proper track record. The PQ conditions should be exhaustive, yet specific. The factors that may be kept in view while framing PQ criteria includes the scope and nature of work, experience of firm in the same field and financial soundness of the firm.

6.7.2 Pre-qualification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (i) experience and past performance on similar contracts for the last two years (ii) capabilities with respect to personnel, equipment and manufacturing facilities (iii) financial standing through annual reports (balance sheet and profit & loss account) of the last three years. The quality, delivery and value requirement shall be kept in view, while fixing the PQ criteria. No bidder should be denied pre-qualification for reasons unrelated to its capability and resources to successfully perform the contract.

CHAPTER - 7

EARNEST MONEY DEPOSIT, SECURITY DEPOSIT & PERFORMANCE BOND

7.1 Earnest Money Deposit (Bid Security)

Earnest Money Deposit is obtained to ensure the earnestness of the tenderer in the participation of the tender and as a deterrent against the tenderer withdrawing or altering his bids during the bid validity. In DPS, EMD is called for only in respect of Public Tenders.

7.2 Quantum of EMD

EMD is charged at the rate of 2% of the total estimated value of the stores required which should be calculated taking into account all the components subject to a maximum of Rs. 5 lakhs. The exact amount of EMD should be mentioned in the NIT and tender document.

7.3 Exemption from submission of EMD

7.3.1 Firms who are registered with DGS&D, NSIC & DPS irrespective of the stores for which they are registered can be exempted from payment of EMD. Organisations like KVIC who are treated on par with NSIC can also be exempted from payment of EMD.

7.3.2 The firms who are registered with DPS but validity of their registration has expired at the time of submission of their tender can be considered for exemption from submission of EMD/SD with the approval of Director, P&S provided the firm has already applied for renewal of registration which is under process and their past performance is satisfactory.

7.4 Form of EMD

In DPS, EMD is accepted in the form of demand draft or banker's cheque issued in favour of the Pay & Accounts Officer of the concerned Purchase Unit.

7.5 Rejection of Tenders not Accompanied with EMD

Tenders/offers from the tenderers (other than registered tenderers) not accompanied with EMD, as demanded, should be rejected summarily. The registered tenderers should furnish the details of their valid registration along with the tender.

7.6 Forfeiture of EMD

7.6.1 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.

7.6.2 If the successful tenderer fails to furnish the required Security Deposit then the EMD furnished may be forfeited.

7.7 Refund of EMD

7.7.1 EMD of the successful tenderer shall be refunded after the Security Deposit as called for in the contract is furnished.

7.7.2 EMD furnished by all unsuccessful tenderers will be returned as early as possible after the expiry date of validity of their offer but not later than 30 days of award of the contract.

7.8 Security Deposit

Security Deposit is obtained from the successful bidder for satisfactory performance of the contract. "Satisfactory performance of the contract here means acceptance of the material in respect of supply contracts and satisfactory completion of installation & commissioning and acceptance of the material/equipment". Firms registered with NSIC/DGS&D/DPS may be considered for exemption from submission of Security Deposit to the extent of value of their registration.

7.9 Quantum of Security Deposit

As per DPS Standard Terms & Conditions, Security Deposit shall be for an amount of 10% of the contract value. The Security Deposit will be obtained from the firms where the estimated cost of the tender is more than Rs. 5.00 lakhs.

7.10 Adjustment towards Security Deposit

7.10.1 In case the successful bidder makes a request to adjust towards the security deposit of the contract placed on him from (1) EMD furnished along with the tender (2) pending bills of the contractor, if any, against any other contract the competent authority may consider such requests wherever possible provided the contract against which the bill(s) submitted by the firm had been satisfactorily executed and the bills are due for payment and no other recovery is due from the contractor against any other contract.

7.10.2 Before taking action for recovery of the amount of Security Deposit from pending bills of the firms, the officer concerned should ensure, from the Accounts Officer, that the firms' bills are actually due for payment (the firm have completed the contractual obligations and the particular payment is due for release) and are pending for releasing payment. Once decision is taken to so recover the amount of Security Deposit from outstanding bills of the firm, it should be

immediately brought to the notice of the Pay & Accounts Officer for making necessary adjustment and transfer that amount to deposit account by debiting to the final head.

7.11 Forms of Security Deposit

7.11.1 In DPS, Security Deposit is obtained in the form of Bank Guarantee (BG) in favour of the President of India acting through the Director, Purchase & Stores (The Purchaser) as per the prescribed format. The Bank Guarantee should be from SBI or any one of the nationalized banks or private banks ICICI or HDFC or AXIS or IDBI and executed on non-judicial stamp paper of appropriate value. The BG should be valid upto at least 2 months beyond the contractual date for completion of the order.

7.11.2 In case the supplier requests for acceptance of bank guarantee from any other reputed private scheduled banks other than the ones mentioned above the same may be considered on the merit of each case with the approval of Director, P&S.

7.12 Verification of Genuineness of BG

7.12.1 Acceptance of the Bank Guarantee shall be subject to verification for its genuineness from the issuing Bank or from the controlling Regional/Zonal Office of the Bank. For this purpose the Officer-in-charge in the concerned Purchase Unit shall address a letter/email/fax to the concerned branch of the bank with a copy to the Manager of the Head Office or controlling Zonal/Regional 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 prepared as per the format in Annexure - 1.

7.12.2 In case the successful bidder expresses inability to obtain the Bank Guarantee, the Security Deposit can also be accepted in the form of Demand Draft/Banker's Cheque issued by SBI or any one of the nationalized banks or private banks ICICI or HDFC or AXIS or IDBI. The Demand Draft/Banker's Cheque should be drawn in favour of the Pay & Accounts Officer of the concerned Unit.

7.13 Intimation Regarding Receipt of Security Deposit

7.13.1 Immediately on receipt of Security Deposit within the period stipulated in the contract, intimation shall be sent to the concerned Paying Authority, Stores Unit and the Indenting Officer.

7.13.2 In the case of Security Deposit in the form of Demand Draft/Banker's Cheque, the Demand Draft/Banker's Cheque should be sent to the concerned Accounts Section for encashment who shall intimate the Purchase Section about its encashment or if any difficulty is faced in its encashment, at the earliest, so that the latter can take suitable action. Officer-in-charge in the concerned Purchase Unit will be responsible for getting confirmation from the Pay & Accounts Officer about the encashment of the Demand Draft/Banker's Cheque for which they should review the case frequently, say fortnightly.

7.14 Failure on the part of the Contractor to Furnish the Security Deposit

7.14.1 In case of failure on the part of the Contractor to comply with the requirement of Security Deposit it shall be lawful for the Purchaser to cancel the Contract or any part thereof and to purchase or to authorize to purchase the stores invoking the provision in DPS General Terms & Conditions of Contract.

7.14.2 In respect of registered firms who fail to furnish the Security Deposit, wherever called for in the Contract, they will be treated as unreliable supplier and may not be considered for award of the Contract for a duration of 1 year from the specified due date for submission of Security Deposit.

7.14.3 In case of unregistered firms, the EMD furnished by them will be forfeited.

7.14.4 If, however, a request is received from the Contractor for extension of time for submission of Security Deposit, the same may be considered in exceptional cases on merit and additional time may be allowed with the approval of competent authority.

7.15 Renewal of Security Deposit

7.15.1 Where execution of the Contract is going to be delayed beyond the period for which the Security Deposit furnished is valid, the Officer concerned will take action well ahead of the date of expiry of the validity of the Security Deposit for its renewal.

7.15.2 Wherever the Bank Guarantee is to be renewed/revalidated, this should be done by the concerned bank by documents executed in a suitable manner on a non-judicial stamp paper with reference to the earlier Bank Guarantee and not by a simple letter given by the bank concerned.

7.15.3 If the supplies have been completed within the contract delivery period and within the validity of the Bank Guarantee, balance/final payment should not be withheld by the Paying Authority for want of the renewal of the Bank Guarantee irrespective of the date of submission of the bill provided the same are supported by the delivery challan duly receipted by the consignee and shipping release wherever PDI is involved.

7.16 Refund of Security Deposit

Security Deposit is taken for the due performance of an individual Contract and become liable to be refunded when the Contractor has duly performed and completed the Contract in all respects and on receipt of CSRV from the Stores Unit (Detailed guidelines regarding return and discharge of BG towards SD are given under the Chapter 28 'Bank Guarantees'). In case the Security Deposit is kept in the form of cash, deposited in the Govt. account, the Contractor is required to submit an application cum cash bill for refund of Security Deposit as per Annexure - 2 attached. The Purchase Officer concerned after satisfying that the Contract has been completed in all respects should forward the claim submitted by the Contractor duly certified in Part C to Accounts Officer for payment.

7.17 Forfeiture of Security Deposit

7.17.1 Security Deposit taken for due performance of the Contract can be forfeited and credited to the Government in the event of a breach of contract.

7.17.2 Bank Guarantee obtained towards Security Deposit should be invoked 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 Bank Guarantee should be taken as far as possible by an officer higher in the rank than the one who accepted the Bank Guarantee (in DPS the decision to invoke the Bank Guarantee is taken by Director, P&S).

7.17.3 If any bank delays its action in releasing the guarantee 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, following course of action should be taken :-

7.17.4 To report to the Central Office of the bank clearly expressing that because of the bank's failure to take timely action the 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.

7.17.5 An administrative decision should be taken to debar acceptance of bank guarantees issued by such branches and from such firms.

7.18 Lapsing of Security Deposit

7.18.1 Security Deposits, which are not claimed for refund within three (3) complete account years, are treated as 'lapsed deposits' and are credited to the Government under the Consolidated Fund in terms of Rule No. 189 of Central Government Account, Receipts & Payment Rules.

7.18.2 Refund of lapsed deposit can be arranged as per the procedure laid down in Rule 190 of Central Government Account, Receipts & Payment Rules. Time bar will not operate in so far as refund of Security Deposit is concerned.

7.18.3 Extracts of Rule No. 189 & 190 of Central Government Account, Receipts & Payment Rules are given in Annexure 3 & 4.

7.19 Adjustment of forfeited Security Deposit

On breach of contract, the Security Deposit obtained from the Contractor should be credited to the Government account

7.20 Intimation to Indenting Officer regarding issue of conditional Shipping Release

7.20.1 Officer-in-charge of the Purchase Unit should ensure that the Indenting Officer is informed promptly of the fact that the firm has submitted the Security Deposit in terms of the Contract.

7.20.2 The contractors are not expected to offer the stores for inspection prior to submission of the Security Deposit within the stipulated time. If the stores are offered to the Indenting Officer for inspection before he receives an intimation from the Purchase Section about the receipt and acceptance of the Security Deposit, the Indenting Officer may undertake the inspection and issue the shipping release with the remark “subject to the contractors fulfilling all the contractual terms and conditions and without prejudice to the rights of the Purchaser under the Contract and under the law”.

7.21 Execution of Contract without Submission of Security Deposit

If the supplier executed the Contract without submission of Security Deposit and the material has been accepted by the Indenting Officer, CSRV received from Stores, and the Contractor has satisfactorily executed all other terms and conditions of the contract except Security Deposit clause and no recovery is due from the contractor, Accounts Officer may withhold the amount equivalent to the Security Deposit called for in the tender and release the remaining payment due to the supplier. The release of SD withheld has to be done as per the procedure followed for release of other SDs.

NOTE: This provision is not to be the part of the contract, but it is an instruction to Accounts for settlement of the bill withholding the amount equivalent to Security Deposit and transferring the amount to security deposit account.

7.22 Performance Bond

7.22.1 Performance Bond is obtained as a back-up surety for fulfilment of warranty obligation by the Contractor after satisfactory completion of the contract.

7.22.2 Form of PBG

7.22.2.1 Performance Bond is obtained in the form of Bank Guarantee as per DPS prescribed format to be executed from any one of the authorized bankers on non-judicial stamp paper of appropriate value.

7.22.2.2 In case PBG is received from a foreign bank, advice of SBI should be taken as to whether the foreign bank providing Bank Guarantee for Performance Bond is a first class bank of international repute before taking a decision whether such PBG should be further confirmed by SBI or any other nationalized bank.

7.23 Quantum & Value of PBG

As per DPS Standard Terms & Conditions, Performance Bond should be obtained for 10% of the total value of the purchase order.

7.24 Validity of PBG

7.24.1 PBG should be valid till at least two months beyond the expiry date of warranty period specified in the purchase order.

7.24.2 Detailed instructions for acceptance, renewal/revalidation, lodging of claims, return/discharge of Bank Guarantees (towards EMD, Performance Security, Performance Bond as well as Advance/Stage Payment and re-export of rejected instruments) and maintenance of the Bank Guarantee register are given in the Chapter 28 'Bank Guarantees'.

ANNEXURE - 1

**FORM OF LETTER TO BE ADDRESSED TO BANK
FOR VERIFICATION OF BANK GUARANTEE**

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S.Bhavan
Anushaktinagar
Mumbai 400 094

Ref: DPS/

Date _____

To

- _____ i) Bank concerned
_____ ii) Head Office of the Bank

Subject: - BANK GUARANTEE - VERIFICATION OF

Sir,

With reference to our Contract No _____ placed on
M/s _____ a Bank Guarantee
No _____ dated _____ for Rs. _____ issued
from _____ Bank located at _____ (Photostat copy of Bank
Guarantee enclosed) has been received.

2. It is requested that the genuineness of the Bank Guarantee may be verified and intimated to the undersigned at the earliest.

Yours faithfully,

(_____)

Purchase Officer

Encl: As above.

ANNEXURE - 2

**G.A.R. 43 [See Rule 186 (1)]
APPLICATION-CUM-BILL FOR REFUND OF DEPOSIT**

Month _____

Bill No. _____

HEAD OF ACCOUNT

AMOUNT

SIGN +/-

Rs.

P.

--	--	--	--	--

Original Challan or Receipt No. & Date	Bank/Office in which deposited	Name of Depositor	Amount originally deposited
1	2	3	4

Received this _____ day of _____ 20_____
the sum of Rupees _____
being repayable on account of release of deposit described above.

Claimant's Signature

(With revenue stamp affixed wherever necessary)

FOR USE IN DEPARTMENTAL OFFICE

Recommendation of Purchase Officer

Passed for payment of Rs. _____ (Rupees _____)

(Pay & Accounts Officer)

ANNEXURE - 3

Extracts of Rule No. 189 of Central Government Account Receipts and Payments Rule

Rule No. 189. Lapsed deposits:-

(1) At the close of March each year, (a) deposits not exceeding twenty-five rupees unclaimed for one whole account year, or residuary balances not exceeding the said amount out of deposits partly repaid during the year then closing, and (b) all deposits or balances in excess of the aforesaid amount, unclaimed for more than three complete account years, shall be credited to the Government under the Consolidated Fund, keeping necessary note in the register of deposits. In the case of deposits, the detailed accounts of which are kept by departmental officers, a list of deposits and balances thus lapsing shall be prepared by them and sent to the Accounts Officer in accordance with the relevant directions.

NOTE 1: For the purpose of this rule, the age of a repayable item, or of a balance of it, may be reckoned as dating from the time when the item or the balance, as the case may be, was initially deposited. If, however, a repayable item deposited by a party in connection with a contract or supply order is on request, decided to be reckoned as deposit against a subsequent contract or supply order awarded to the same party, the age of the item will be calculated with reference to the date of the latter.

NOTE 2: Such of the deposits (or balances of deposits) referred to in (b) of sub-rule (1) which pertain to contracts, supply orders that are under litigation or arbitration shall not be deemed as “unclaimed deposits” for the purpose of crediting to Government under this rule. They should, nevertheless, be listed out distinctly along with relevant particulars so as to facilitate action for releasing the deposit, or for forfeiting it, depending on the judgement or award at the conclusion of the litigation or arbitration. Relevant claim will require pre-check by the Accounts Officer before repayment.

(2) However, in the case of certain departments such as Central Public Works Department and Salt Department, which maintain detailed account of deposits themselves,

the age for the purpose shall be reckoned with reference to the provisions in the concerned authorized departmental regulations.

(3) The Government may, in relation to any particular class of deposits, issue orders varying or relaxing any of the conditions or limitations specified in the preceding sub-rules.

ANNEXURE - 4

Extracts of Rule No. 190 of Central Government Account Receipts and Payments Rule

Rule No. 190:

Procedure for repayment of lapsed deposits:

(1) Deposits, the detailed accounts of which are required to be kept by the departmental officer and which are credited to Government under provisions of Rule 189 cannot be repaid without pre-check by the Accounts Officer. On receipt of bill in Form G.A.R. 46 (along with the original departmental receipts issued to the refundees) from the departmental officer concerned, the Accounts Officer will pass the bill after checking that the item is covered by the credit reported by the departmental officer as lapsed and carried to the credit of Government and that the claimant's identity and title to the money are certified by the departmental officer who signs the application for the refund. The amount of the bill may, wherever necessary, be paid to the departmental officer on affixing his signature in token of receipt in the space provided for "Claimants' signature" in the bill after scoring these words.

(2) Deposits, the detailed accounts of which are kept in the Accounts Office and which are credited to the Government under Rule 189, may be refunded on receipt of an Application-cum-Bill in Form G.A.R.46 (along with the original challan or departmental receipt, as the case may be) from the departmental officer after verifying that the item was really received is traceable in his records and was carried to the credit of the Government as lapsed and was not paid previously and that the claimant's identity and title to the money are certified by the officer countersigning the application for the refunds.

(3) The repayment of lapsed deposit shall be recorded in the appropriate deposit register of receipts so as to guard against a second payment. If the payment is made after the Register of Receipts has been destroyed, the responsibility for verifying the claimant's title to the refund shall devolve on the authority who signs the Application-cum-Bill in Form G.A.R. 46.

CHAPTER - 8

STATUTORY LEVIES

(INCOME TAX / EXCISE DUTY / SERVICE TAX / CUSTOMS DUTY / VALUE ADDED TAX / CENTRAL SALES TAX / OCTROI DUTY / ENTRY TAX)

8.1 Introduction

8.1.1 In the basic scheme of taxation in India, it is envisaged that (i) Central Government will get tax revenue from Income Tax (other than agriculture income), Excise Duty (other than alcoholic drinks), Customs Duty and Service Tax. (ii) State Governments will earn revenue from VAT, Central Sales Tax, Stamp Duty, Excise on liquor and tax on agriculture income (iii) Corporations/Municipalities will earn the revenue from Octroi, House Property Tax and Professional Tax.

8.1.2 Income Tax, Central Excise, Customs, Service Tax are administered by Central Government. As regards Central Sales Tax, the same is levied by the Central Government but it is administered by the State Governments and tax collected in each State is retained by the State Government itself. VAT is levied and administered by the individual State Governments.

8.1.3 Income tax, wealth tax and gift tax are direct duties. As far as direct tax is concerned its impact and incidence fall on the same persons on whom it is imposed. In case of indirect tax, like excise, customs and service tax, VAT, Central Sales Tax, etc. impact is on one person and incidence is on some other person. Impact means immediate money burden on the person who pays it from his pocket. Incidence means ultimate money burden. The actual money burden is on the person who does not pay the tax to the tax collecting authority.

8.2 Constitutional Provision of Tax

8.2.1 Article 265 of the Constitution of India lays down that no tax shall be levied or collected except by the authority of law. Schedule VII divides this subject into three categories.

8.2.2 Union List As per Article 246 (1) of the Constitution, Parliament has exclusive power to make laws with respect to any of the matter enumerated in list I in the VII Schedule of the Constitution.

8.2.3 State List As per Article 346 State Governments have exclusive power to make laws with respect to matters enumerated in list II.

8.2.4 Concurrent List Both parliament and State Governments can pass legislation with respect to concurrent list. In case of conflict between Central and State Law the Central Law will prevail over State Law.

8.3 Income Tax

8.3.1 Income tax is a tax on the income of a person or company, whether real or deemed, in cash or in kind. Income tax is one of the major sources of revenue to the Government. This tax is levied, administered and collected by the Central Government. However tax proceeds are shared between Central Govt. and the State Governments on the basis of recommendation made by the Finance Commission, which is appointed by the President of India every 5 years.

8.3.2 At present the Law of Income Tax is governed by the Income Tax Act 1961 and is administered by the Central Board of Direct Taxes (CBDT). The Board has framed various rules for administration of income tax which are known as Income Tax Rules 1962. They are amended and modified from time to time as required due to changing circumstances. The rates of income tax are provided by the Finance Act passed by the Parliament every year along with Annual Budget.

8.3.3. Income Tax Law comprises the following:-

- 1) Income Tax Act 1961 as amended by Parliament upto date.
- 2) Annual Finance Act passed by Parliament.
- 3) Income Tax Rules 1962 as made and amended upto date by CBDT.
- 4) Judgements rendered by competent Courts of Law.
- 5) Circulars and Notifications issued by CBDT from time to time.

8.3.4 TDS on payment to Contractors

8.3.4.1 Section 194 (c) of the Income Tax Act 1961, provides for deduction of income tax at source at the rate of 2% (plus educational cess) on the payment made to the Contractor by government, local authority, statutory corporation, etc. The provision contained in this Section applies only in relation to Works Contract, Labour Contract and Composite Contract and do not cover the contract for sale of goods.

8.3.4.2 Accordingly, most of the purchase contracts which are concluded for sale of goods do not attract the provision of Section 194 (c) of the Income Tax Act. However supply contract included an 'element of works' will attract Section 194 (c). It is difficult to formulate rigid general guidelines for the purpose of determining whether the contract has an 'element of works' for the purpose of deducting income tax in terms of Section 194 (c) ibid the following clarifications are given for guidelines :-

<p>Where the contract is concluded only for supply of plant & machinery or equipment and no erection and commissioning is involved.</p>	<p>No need for deduction of tax at source as it is only sale of goods.</p>
<p>Contract pertaining to supply of machinery and plant and also for erection and commissioning by the firm and charges for supply and erection are indicated separately in the contract.</p>	<p>Deduction of 2% income tax under Section 194 (c) of Income Tax Act 1961 on the charges for erection and commissioning in addition to the service tax as applicable.</p>
<p>Contract for supply of plant and machinery and erection and commissioning is done free by the firm i.e. the charges are included in the contract price and are not separately quoted.</p>	<p>Deduction of 2% income tax under Section 194 (c) of Income Tax Act 1961 should be made along with Service Tax.</p>
<p>Contract pertaining to supply of machinery from overseas supplier or by their Indian Agent where only supervision of erection and commissioning is done by the firm at the consignee's premises. The supervision of erection and commissioning can be either free or at extra cost. In these types of contracts the contract provides for the service of one or two engineers for supervision the erection and commissioning activities, whereas the actual erection etc. is done by the consignee.</p>	<p>Deduction of tax at source to be examined on merit with reference to the terms and conditions governing each case. Please also refer to Section 115 (B) of Income Tax Act 1961.</p>
<p>Contract pertaining to supply of machinery and equipment from overseas contractor and its installation and commissioning is also carried out by the Principals. The contract provides separate charges for supply and erection.</p>	<p>Deduction of tax at source to be examined on merit with reference to terms and conditions governing each case. Please refer to Section 115 (B) of Income Tax Act 1961 also.</p>

Fabrication Contracts where materials are issued by the Department as free issue material and the major portion of the Contract is only labour charges	Deduction of 2% income tax under Section 194 (c) of the Income Tax Act on the contract value.
Fabrication Contracts where part of the material is to be procured by the supplier and some quantity of material is issued by the Department as free issue material.	Deduction of tax at source to be examined on the merit of each case.
Contracts concluded for manufacture of material/equipment where some components are issued as free issue material to be installed in the equipment being manufactured.	Deduction of tax at source to be examined on the merit of each case.

8.3.4.3 In case where charges for installation and commissioning are shown separately in the contract, 2% income tax will be deducted on that portion of the contract and in cases where in addition to supply there is some works portion for which no separate provision is made, and then 2% IT will be deduced on the entire value of the Contract.

8.3.4.4 As per Section 115 (B) the amount of Income Tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of 30% of such fees for technical services are received in pursuance of an agreement made on or before the 31st day of May 1997 and 20% where such fees for technical services are received in pursuance of an agreement made after 31st day of May 1997 but before the 1st day of June 2005 (115BB) and the amount of income tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of 10% if such fees for technical services are received in pursuance of an agreement made on or after the 1st day of June 2005.

8.3.4.5 In cases where there is a semblance of doubt regarding recovery of income tax at source in contracts, it would be advisable to err on the safer side and recover income tax from the payment to be made. The supplier can on the basis of income tax recovery certificate issued to him (presently quarterly returns) move the IT authority for refund or adjustment of the deducted amount of IT as the case may be.

8.3.4.6 A specific endorsement will be made in all such Contracts where deduction of IT at source is necessary.

8.3.4.7 In clearing Agency Contract, where reimbursement is allowed by the Accounts

Officer, charges like port dues, freight, insurance and customs duty, etc. will not attract provisions of Section 194 (c) of the Income Tax Act 1961. On the other hand charges like loading and unloading, crantage and handling charges, transportation charges if claimed separately will come under the purview of 'labour' contract and will entail deduction of IT at source along with agency transaction charges.

8.3.4.8 Deduction of tax at source will be made at the time of payment to the Contractor. No deduction will be required to be made if the consideration of the Contract does not exceed Rs. 20,000/-. If payment has already been made without deducting any tax at source, the authorities or persons responsible for making payment renders himself for penal provision contained in Section 201 & 276 (b) of IT Act. The tax deducted at source will be credited to Income Tax under the head of account indicated through monthly account.

8.3.4.9 If any refund of tax is claimed by a contractor on account of any excess recovery made by the Accounts Officer in the course of payment, the refund will be made by the IT Department only on the basis of a certificate (now quarterly return) issued by the concerned Accounts Officer.

8.3.5 Dispensation of issue of Form 16-A by the Accounts Officer

With effect from 1.4.2005, the scheme of dematerialisation of TDS certificate was introduced. As per this all deductors will have to file quarterly TDS return giving deducteewise break up of all deductions made by them. These returns will be filed on electronic format with Tax Information Network (TIN). TIN will verify particulars relating to deposit of TDS given in these quarterly TDS returns with corresponding information relating to credit of TDS received through On Line Tax Accounting System (OLTAS). Thereafter, deducteewise particulars of TDS will be posted to the ledger account of each deductee identified by their PAN. After the close of the year TIN will issue annual statements of TDS to each deductee under Section 203 AA of IT Act giving full particulars of all taxes deducted on his behalf by different deductors. This will ensure that all taxes deducted or deposited in government account and the deductions made by the deductors are reconciled with the credits claimed by different deductees in their respective return of income. This will eliminate possibility of bogus TDS certificates and related TDS frauds. This will eventually eliminate issue of TDS certificates by deductors and the requirement on the part of deductees to enclose the same with their respective returns of income.

8.4 Excise Duty

8.4.1 The power to levy Excise Duty

The Union Government has the power under Central Excise and Salt Act 1944 to levy an excise duty on all goods except on alcoholic liquor, opium and narcotics. Excise duty is an indirect tax levied on the goods manufactured in India.

8.4.2 Sales Tax & Excise Duty

Sales tax is a tax on sale and can be imposed only when there is a sale. On the other hand, excise duty is the duty on the manufacture of the goods, so duty can be imposed immediately after goods are manufactured, whether these goods are sold or not is immaterial.

8.4.3 Condition for levy of Excise Duty

8.4.3.1 It must be a duty on the goods. The goods must be excisable. The goods must be manufactured or produced and the manufacture or production has to be within India.

8.4.3.2 Goods for the purpose of levying excise duty must satisfy the following conditions:-

- (1) They must be movable
- (2) They must be marketable i.e. capable of being bought or sold
- (3) It is not necessary that they are actually bought and sold.

8.4.3.3 Articles that are attached to the earth are not movable goods. Plant and machinery that have been assembled and erected at site cannot be treated as goods.

8.4.4 Excisable Goods

For the levy of goods, the goods must be excisable. Goods are said to be excisable if the same is mentioned in the Schedule to Central Excise Tariff Act 1985 (CETA). It is essential that the goods must be mentioned in the CETA for the levy of excise duty. Excise duty is levied on the manufactured or produced goods.

8.4.5 Characteristics of Manufacture

- 1) A new and identifiable product must emerge.
- 2) The identity of the original article should be lost.
- 3) Commercially it has to be a different commodity.
- 4) Manufacture is the end result of one or more processes through which the commodity passes. Thus a manufacture implies a change. A new and a different article must emerge, having a distinctive name, character or use. In order to decide whether a commercially new product has come into existence or not, the normal commercial parlance will be used. Eg. when a long piece of wood is cut into small pieces, there is no manufacture. This is because no distinct and identifiable commodity has come into existence. However in the production of soap using various raw materials, a distinct commodity has come into existence.

8.4.6 Classification of Goods

8.4.6.1 Classification comes after the liability to pay the duty has been established. There are thousands of varieties of manufactured goods. It is not possible to identify the goods individually. It is necessary to identify the numerous products through groups and sub-groups and then decide the rate of duty on each group or sub-group. This is called classification of a product.

8.4.6.2 Different goods are classified into different groups and sub-groups.

8.4.6.3 In order to calculate the amount of excise duty, payable on a particular group, it is necessary to identify the particular group and sub-group under which that article can be classified.

8.4.6.4 The system of classification is done by the Central Excise Tariff Act, 1985 (CETA). The following 20 groups have been devised to classify the groups:-

1) Live animals and animal products, (2) Vegetable products (3) Animal or vegetable fats and oils, etc. (4) Prepared food stuff, spirit, tobacco, beverages, etc. (5) Mineral products (6) Products of chemical and allied industry (7) Plastic, rubber articles thereof (8) Raw Hides, skin, leather, etc. and articles thereof (9) Wood, articles of wood, wood charcoal, cork, etc. (10) Pulp of wood or of other fibrous cellulosic material, etc. (11) Textile and textile articles (12) Footwear, headgear, umbrella, etc. (13) Articles of stone, plaster, cement, asbestos, mica, ceramic glass and glassware, etc. (14) Pearl, precious, semi-precious stone, precious metal, etc. (15) Base metal and articles of base metal (16) Machinery & mechanical appliances, electrical equipments, sound recorders, etc. (17) Vehicles, aircraft, vessel and associated transport equipments (18) Optical, photography, measuring, medical or surgical instruments, apparatus, etc. (19) Arms and ammunitions (20) Miscellaneous manufactured articles.

8.4.6.5 The above categories are in 96 broad groups. These groups are further categorised into sub-groups. In classifying the goods into the above categories, the following shall be taken into account:-

- 1) Statutory definition
- 2) Primary function of the goods
- 3) Trade Parlance

8.4.7 Central Excise Valuation/Levy of Excise Duty

The assessable value on which excise duty is to be charged can be calculated based on the following methods:-

- 1) Transaction value
- 2) Value determined on the basis of maximum retail sale price
- 3) Tariff value

8.4.8 Transaction Value

- 8.4.8.1
- 1) For applicability of transaction value the goods are sold by an assessee for delivery at the time and place of removal. The term 'place of removal' has been defined basically a factory or a warehouse.
 - 2) The assessee and buyer of the goods are not to be related.
 - 3) The price is the sole consideration for sale.

8.4.8.2 Transaction value would include any amount which is paid or payable by the buyer to or on behalf of the assessee, on account of sale of goods. Expenditure towards advertising charges, publicity charges, any other expenditure for manufacturing, marketing, selling, packaging and warranty etc. Also form part of transaction value if it is a charge in connection with production and sale of goods recovered from the buyer. Discount of any type offered on any normal price will not form part of the transaction value. Any amount paid or payable to any statutory authority by way of tax shall be excluded from transaction value. Transaction price will generally be the assessable value.

8.4.8.3 Where any of the three requirements mentioned above is missing the assessable value shall be determined on the basis of the central excise valuation (determination of price of excisable goods) Rules 2001.

8.4.8.4 If the delivery of the goods is made by the assessee at a place other than the factory/warehouse and the cost of delivery is shown separately then the assessable value shall be transaction value without addition of the cost of transportation from factory/warehouse to the place of delivery.

8.4.8.5 However if the assessee has a system of pricing and sale at uniform prices inclusive of equated freight for delivery at factory gate or elsewhere, no deduction for freight elements will be permissible.

8.4.8.6 If the goods are transferred by the assessee to his depot or consignment agent or any other place for sale, the assessable value in such cases for the goods cleared from factory/warehouse shall be the normal transaction value of such goods at the depot, etc. at or about the same time on which the goods are being valued or removed from the factory or warehouse.

8.4.8.7 The value of goods which are captively consumed on cost construction method only as there have been disputes in adopting values of comparable goods. The assessable value of captively consumed goods will be taken at 115% of the cost of the manufacture of goods.

8.4.8.8 In case where price is not the sole consideration for sale, the value shall be determined by adding to the transaction value, the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

8.4.9 Tariff Value

For certain items the government may fix a tariff value as per Section 3 (3) of the Central Excise Act 1944. In such cases the assessment of duty shall be on the basis of the tariff value.

8.4.10 Value on the Basis of Maximum Retail Sales Price

The value is based on the maximum retail sales price in terms of Section 4A of the Central Excise Act 1944. This is applicable to notified commodities. The notification issued in this regard indicates the extent of abatement to be allowed for arriving at the assessable value for determination of amount of duty.

8.4.11 Payment of Excise Duty

Payment of excise duty is based on self declaration by the manufacturer, wherein the excise is to be prepared as per format provided by the Excise authority in quadruplicate copies. The 'original buyer copy' of invoice is required to be submitted for reimbursement of excise duty from the Purchaser.

8.4.12 Excise duty on Raw Material

8.4.12.1 As per the standard clause in the NIT, the Purchaser shall not be liable to any claim on account of fresh imposition and/or increase of Excise Duty, Customs Duty, VAT, CST on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the Contract, unless otherwise specifically agreed to in terms of the Contract.

8.4.12.2 As per Section 64A of Sale of Goods Act, 1930, reimbursement of any duty on increase in duty on raw materials used in the manufacture of the ordered stores would depend upon the terms and conditions of the Contract. Section 64A of Sale of Goods Act is attracted when (a) there is no different intention apparent from the terms of the Contract (b) any duty of customs or excise on goods or any tax on the sale or purchase of goods has been imposed, increased, decreased or remitted in respect of any goods after the making of the Contract for sale or purchase of such goods.

8.4.12.3 The words, sale or purchase of goods clearly indicate that the above Section would be attracted only in cases where the duty is imposed, increased, decreased or remitted in respect of goods sold. These words cannot be interpreted to cover the components or materials which are used in the manufacture or production of goods sold. If any duty is imposed, increased, decreased or remitted in respect of materials used in the manufacture of stores, the seller/purchaser cannot claim the reimbursement or adjustment in terms of Section 64A.

8.4.12.4 Reimbursement of any duty or increase in the duty on raw materials used in the manufacture of the ordered stores would depend upon the terms and conditions of the Contract. If there is a provision in the Contract to the effect that any increase in duty on raw materials would be reimbursed to the supplier, then alone it would be possible for him to claim reimbursement of the same from the Purchaser. If there is no such provision in the Contract, the supplier cannot claim such increase as a right, either under Section 64A or under the terms of the Contract.

8.4.12.5 There shall be a condition in the NIT that unless otherwise specifically agreed to in terms of the Contract, the Purchaser shall not be liable to consider any claim on account of fresh imposition and/or increase of excise duty on raw materials and other inputs.

8.4.12.6 Repair or reconditioning of an article does not amount to manufacture because no new goods come into existence. It is so, even if in the process of remaking, the defective equipment gets upgraded or it becomes a different model. For the same reason, repacking of goods from bulk packs to smaller packs would not ordinarily amount to manufacture.

8.4.12.7 The Excise Duty clause as per NIT stipulates that where the tenderer intends to ask for excise duty as extra, he is required to state it specifically. NIT has a specific clause for the tenderer to state whether Excise Duty is extra. 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 the tenders.

8.4.12.8 Where the tenderer 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 the stores, instead of mentioning its payment in an indirect manner.

8.4.12.9 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 the prices are exclusive of excise duty but no mention has been made that the excise duty will be charged extra, no claim for the same will be allowed after opening of the tender. If such offers are qualified for getting the orders, it should be clearly stated in the purchase order that the prices are exclusive of excise duty and should also be clearly indicated that the excise duty will not be reimbursed by the Purchaser and the prices shall be treated as firm and final.

8.4.12.10 In cases where the prices are firm and inclusive of excise duty the purchase order should clearly mention that the prices indicated are inclusive of excise duty. The certificate prescribed for claiming excise duty need not be called for in such purchases as otherwise these would attract Section 64 (A) of Sale of Goods Act.

8.4.12.11 By virtue of the provisions of Section 64 (A) of Sale of Goods Act, even in the absence of a stipulation in the Contract providing for statutory variations 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 making of the Contract and increase or imposition is in respect of the ordered stores as distinguished from the raw materials. It is therefore imperative that the intention to allow or deny increases under Section 64(A) be specifically incorporated in the Contract.

8.4.13 Reimbursement of Excise Duty

8.4.13.1 Wherever Excise duty is reimbursable as extra it will be paid against documents called for in the purchase order along with the bills for initial payment.

8.4.13.2 Where the question of levy of liquidated damages is to be considered, the bills for excise duty, if otherwise reimbursable, should not be withheld, but only the bill for balance amount should be held up for pending final decision regarding LD.

8.4.14 Excise Duty on Replacement Supply

8.4.14.1 Where the replacement supply is made under a Contract, Section 64(A) of Sale of Goods Act is attracted and increased duty is payable by the buyer. However, as delivery of the goods is delayed, the increase in excise duty would not have been payable, if the original supplies had not been defective and rejected, therefore required to be replaced, the additional expenditure on account of increased excise duty is a loss directly occasioned by the delay in supply. Hence the Purchaser is entitled to recover the LD at the contract rate upto a sum equal to the amount of extra expenditure incurred on account of the increased excise duty. In other words, if the rate of excise duty has increased when the stores are replaced, the increased excise duty is to be reimbursed but the increased expenditure on enhanced rate of excise duty can be recovered by the purchaser from the supplier.

8.4.14.2 The NIT should contain a clause i.e. if the tenderer is exempted from payment of excise duty upto any value of supplies from them, he should clearly state that no excise duty will be charged by him upto the limit of exemption which he may have. If any concession is available in regard to rate/quantum of ED, it should be brought out clearly. Stipulations like excise duty is presently not applicable but the same will be charged if it becomes leviable later on will not be accepted unless in such cases it is clearly stated by the tenderer that excise duty will not be charged by him even if the same becomes applicable later on. In respect of the tenderers who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of excise duty which is normally applicable on the item in question for the purpose of comparing their prices with other tenderers.

8.4.14.3 Any change in excise duty upwards/downwards as a result of any statutory variations in excise taking place within any contract term shall be allowed to the extent of actual quantum of excise duty paid by the supplier. Similarly in case of downward revision in excise duty, the actual quantum of reduction of excise duty shall be reimbursed to the purchaser by the supplier. All such adjustments shall include all reliefs, exemptions, rebates, concessions, etc. if any obtained by the supplier.

8.4.14.4 The following additional clause has to be incorporated in the Contract where the tenderer desires statutory variations from the date of tender:-

“ The prices are based on the current rate of excise duty viz. ---, the excise duty payable is as applicable on the date of delivery within the original committed delivery period and in the event of any statutory variations in the duty adjustment will be allowed as applicable from _____ (date specified here should be the date of the firm's tender) but not exceeding the delivery date i.e. _____ as per the terms of this purchase order”.

8.4.14.5 The following certificate has to be furnished by the supplier towards reimbursement of excise duty:

- 1) Certified that the excise duty charged on this bill is not more than what is payable under the provisions of relevant Act or the Rules thereunder.
- 2) Certified that the amount of Rs. _____ claimed as excise duty in this bill is in accordance with the provisions of the Rules in all respects and the same has been paid to the Excise Authorities in respect of stores caused by the bill.

NOTE: In case where prices are firm and final and inclusive of excise duty, the certificate in the prescribed form as above is not to be called from the firm.

8.4.14.6 In addition to the above certificate the suppliers are required to submit the following excise certificates/undertaking:

1. Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Contractor during three months immediately preceding the date of claim by the relevant bill.
2. Firm's statutory auditor's certificate as to whether any refunds have been obtained or applied for by the firm or not in the preceding financial year after the annual audit of their accounts, also indicating details of such refunds/applications, if any. This certificate should contain all the contracts held by the firm.
3. A certificate along with the final payment bills of the firm to the effect whether or not they have any pending appeal/protest for refund/partial refund of excise duty already reimbursed by the purchaser to the firm pending with the excise authorities and if so the nature, the amount involved, and the position of such appeals. This certificate should be signed by the firm's Managing Director/Manager/Accountant.
4. An undertaking to the effect that in case it is detected by the Govt. that any refund from Excise Authority obtained by the firm after obtaining reimbursements from the Department and if the same is not refunded by the firm giving details and particulars of the transaction, the Paying Authority will have full authority to recover such amounts from the firm's outstanding bills against that particular Contract or any other pending Government Contracts issued to the firm for which the payments are due and that no dispute on this account would be raised by the supplier.

NOTE: In case the firm intimates that any appeal regarding excise duty is pending under the above clause, then the final payment against the Contract should not be released by the Paying Authority and necessary instructions should be sent to the Paying Authority by the Purchase Officer concerned.

8.4.15 ED exemption for certain items procured for R&D Requirements

8.4.15.1 In exercise of powers conferred by sub-section (1) of Section 5A of the Central Excise Act 1944, Government of India vide Notification No. 10/97/C.E. dated 1.3.1997 exempt goods indicated below and falling under the Schedule to the Central Excise Tariff Act 1985 (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule, when supplied to a public funded research institution under the administrative control of Department of Atomic Energy by producing a certificate to the effect that the goods procured are for use in the concerned research institute of the Department of Atomic Energy, from an Officer not below the rank of the Deputy Secretary to the Govt. of India in DAE to the manufacturer at the time of clearance of the specified goods. The aggregate value of prototypes received by an institution does not exceed Rs. 50,000/-.

8.4.15.2 Description of Goods

- 1) Scientific and technical instruments, apparatus, equipment (including computer).
- 2) Accessories and spare parts of goods specified in (a) above and consumables.
- 3) Computer software, compact disc, read only memory (CD-ROM), recorded magnetic tapes, micro films, and micro fiches.
- 4) Prototypes.

8.5 Central Value Added Tax (CENVAT)

8.5.1 Introduction

8.5.1.1 Central Value Added Tax (CENVAT) has its origin in the system of VAT. Concept of VAT (Value Added Tax) was developed to avoid cascading effect of taxes. VAT was found to be very good and transparent tax collection system, which reduces tax evasion, ensures better tax compliance and increase in tax revenue.

8.5.1.2 MODVAT (MODIFIED VALUE ADDED TAX) was first introduced in India in 1986 and renamed as CENVAT with effect from 1.4.2000. This was called MODVAT as it was applicable upto manufacturing stage and credit of only excise duty paid on manufacturing product and corresponding CVD paid on imported goods was allowed. The new CENVAT Credit Rules 2004 are operative from 10.9.2004 and comprises Rule 1 to 16 covering both manufacturer and service provider.

8.5.1.3 CENVAT provides for credit of excise duty paid on capital goods, inputs, consumables, packing materials, inputs used as fuel (except light diesel oil, high speed diesel oil and petrol) and service tax paid by the manufacturer towards various input services which are used in relation to the manufacture and clearance of final products and the credit so earned can be utilised for payment of excise duty on the final product. Similarly, the service provider can take credit of excise duty paid on the inputs and capital goods procured by them for rendering output service and utilise the credit so earned towards payment of service tax applicable on the output service.

8.5.1.4 The term CENVAT refers to excise duty under Section 3 of Central Excise Act 1944:-

“There shall be levied and collected in such manner as may be prescribed a duty of excise to be called Central Value Added Tax (CENVAT) on all excisable goods produced and manufactured in India _____”.

8.5.1.5 CENVAT is a scheme under the Central Excise and Service Tax Law which enable manufacturers to take credit of this specified duty on eligible inputs and capital goods as well as service tax paid on notified inputs services which are received with specified duty/tax paying document and used in or in relation to manufacture and clearance of dutiable final product and service providers to avail credit of excise duty paid on inputs, capital goods and service tax paid on input services used by them for rendering taxable output service and permitting the utilisation of

credit so earned towards payment of excise duty by the manufacturers and towards payment of service tax by service providers.

8.5.1.6 The following examples may give an idea about actual working of CENVAT concept for a manufacturer:-

Example:	Product X	Amount of duty paid (Rs.)
A.	Inputs	
	(1) Steel	150
	(2) Aluminium	150
	(3) Components	90
	(4) Paints	50
	(5) Consumables (e.g. Welding Electrodes	70
	(6) Packing Materials	40
	Total	550
B.	Final products – Assessable Value	10000
	Duty (16% Ad valorem)	1600
C.	Payment of Excise Duty on clearance of X	
	Duty payable as per ‘B’	1600
	Less CENVAT credit on inputs availed as per “A”	550
	Duty payable by cash	1050

8.5.2 Credit of Duty paid on Input & Input Services

8.5.2.1 The CENVAT scheme is principally based on system of granting credit of duty paid on input and input services including services of testing etc. rendered prior to removal of item from the works. Credit will be available on excise duty paid on input and input services used for providing output services. Credit will be available on excise duty paid on (a) raw materials (b) materials used in or in relation to manufacture like consumables, etc. (c) paints (d) packing materials (e) fuel (other than high speed diesel oil, light diesel oil, motor spirit), etc. The input may be used directly or indirectly in relation to manufacture. The input need not be present in the final product. The credit should be availed on the basis of specified documents as proof of payment of duty on inputs or tax on input services.

8.5.2.2 Credit of duty on input can be taken up instantly i.e. as soon as input reaches the factory. In the case of capital goods, upto 50% credit is available in current year and the balance in subsequent financial year. In case if any manufacturer removes the capital goods as such in the first year itself, he can avail the entire credit before such removals.

8.5.2.3 In case of input services, credit can be availed only after amount of bill is paid to the person who has provided the service.

8.5.2.4 In some cases, it may be happened that duty paid on inputs and service tax paid on input services may be more than duty payable on final products. In such cases, though the CENVAT credit will be available to the manufacturer/service provider, he cannot use the same and the excess will lapse. There is no provision for refund of excess CENVAT credit.

8.5.2.5 CENVAT Rules do not require input output correlation to be satisfied.

8.5.3 No Input Credit if Final Product/Output Service is Exempt from Excise Duty/Service Tax:

8.5.3.1 No CENVAT credit is available, if final product exempt from excise duty or final service is exempt from service tax.

8.5.3.2 Certain goods like scientific and technical instruments, apparatus, equipment, etc. which are certified to be for the use of research and development activities by public funded R&D Units are exempted from payment of excise duty vide Notification No. 10/97-C.E. dated 1.3.1997. The tenderers who are availing CENVAT credit may not be eligible for availing the same for supply of above goods made against a Contract as the end product is not excisable. Hence while submitting the quotation the tenderers should take into account the NIL excise duty payable for the goods to be supplied and the CENVAT reversal and quote the tender rate accordingly. Normally Department will not allow CENVAT reversal in the Contract, as it is the responsibility of the Contractor to take these factors into account at the time of submission of the tender. In exceptional cases where the rate quoted is after availing the CENVAT credit, the tender should contain the details of CENVAT reversal to be reimbursed by the Purchaser and also indicating that the rate quoted is after taking into account the CENVAT credit. The NIT contains the following clause:-

“The purchases made for the research institution under the Department of Atomic Energy are entitled for excise duty exemption as per Notification No. 10/97-Central Excise dated 1.3.1997. Necessary excise duty exemption certificate will be provided by the Purchaser after placement of the order, but prior to despatch of the material.”

8.5.3.3 Since this Directorate handles the purchases for both research institutions and industrial units under the Department of Atomic Energy, the bidders should not include the excise duty in the quoted price, which can put them into a disadvantageous position. They should, however, quote separately the percentage/quantum of excise duty applicable.

8.5.3.4 Excise Duty Exemption Certificate will be issued only in favour of the Contractor with whom the purchase order is placed for the end product and not in favour of a third party. However, in case the offer is received from a sole selling agent of the original equipment manufacturer for which documentary proof should be submitted, issue of excise duty exemption certificate in favour of the original equipment manufacturer can be considered, provided such request is made in the original offer.

8.5.3.5 If the tenderer is availing CENVAT credit facility, this fact should be clearly indicated

in the tender. In the event of supplies being meant for R&D Unit for the items as per the Notification mentioned above, claim for reversal of CENVAT if any, should also be brought out in the tender itself separately.

8.5.3.6 Whenever excise duty is payable in respect of requirement for industrial units under the Department of Atomic Energy, excise duty will be reimbursed only against submission of original buyer's copy of invoice/invoice-cum-challan duly signed by the authorised representative of the Company with details relating to payment of excise duty to Govt. duly filled in.

8.5.3.7 Irrespective of issue of excise duty exemption certificate, for the purpose of comparison of the offers, the Purchaser will take into account the excise duty as normally applicable, unless the tenderer himself is specifically exempted from payment of excise duty under any other notification, which fact should be clearly brought out in the tender.

8.5.3.8 The tenderer shall be solely responsible for the declaration regarding excise duty made in his offer and shall indemnify the purchaser from any claim/liability from the excise authorities at any stage.

8.5.3.9 The effect of CENVAT scheme on the purchase contract issued by DPS can further be understood from the following example:-

8.5.3.10 A Purchase Order was placed on a pump manufacturer for manufacture of pumps motor set for supply to Heavy Water Plant. The pump is manufactured by him after importing the raw material used for manufacture of the pump. The raw materials were imported after payment of customs duty including counter veiling duty (CVD). The motor is manufactured by some other manufacturer and is a bought out item for the pump manufacturer. After purchase of motor, the pump manufacturer coupled the motor with the pump and got it tested outside the factory premises and testing charges and service tax on testing charges were paid for testing the equipment. After completion of successful testing the pump motor set was delivered to the buyer.

8.5.3.11 The following CENVAT credit would have been availed by the pump manufacturer subject to the Department paying the excise duty on the total cost of the pump motor based on original buyer copy of invoice:-

- 1) Excise duty paid on motor
- 2) CVD paid on imported raw materials
- 3) Service Tax paid on testing charges.

8.5.3.12 At the time of submission of the quotation for the pump motor manufacturer would have taken the above CENVAT credit into account for arriving at the cost price and quoted accordingly.

8.5.4 CENVAT Reversal

8.5.4.1 If manufacturer avails CENVAT credit in respect of input or input services (except

input used as a fuel) and manufactures final product or output services are not chargeable to duty/tax or exempted from payment of duty/tax and if he does not maintain separate accounts for input/output services, he shall pay an amount equivalent to 10% of the total price when the exempted final product is removed from the factory.

8.5.4.2 The contracting authority should thoroughly examine and satisfy himself that the item ordered is eligible for duty exemption and also obtain from the user the details regarding applicability of 10/97 Notification for the item being procured for R&D purpose and its end use. It should be clearly understood that issue of ED exemption certificate for non-applicable item may result in imposing of penalty by the revenue authorities both on the buyer and seller on the ground of evasion of tax. At the same time it should be ensured that ED exemption is claimed for all the items for which the same is applicable.

8.6 Service Tax

8.6.1 The rationale for the levy of tax on service can be traced to the recommendations made in early 90s by the Tax Reforms Committee headed by Dr. Raja Chelliah. Government of India vide Notification No. 1/94-ST dated 28.6.1994 with effect from 1.7.1994 under Finance Act 1994, issued notification for imposing Service Tax on certain services being rendered by Indian Citizens to different customers. Initially the Service Tax was imposed on 3 services. As of today there are 103 services which are included as taxable services under Service Tax Act. The Central Excise/Service Tax Department administers Service Tax.

8.6.2 The basic objective of service tax is broadening the tax base, augmentation of revenue and larger participation of citizen in the economic development of the nation. Service Tax has been introduced in order to explore new avenues for taxation and to bring more people into the tax net.

8.6.3 The service tax assessee is the person/firm who provides the service. Hence the service tax must be paid by the person/firm providing the service.

8.6.4 Commodity tax is levied with reference to the goods or commodities which are imported, exported, manufactured or sold as the case may be, but service tax is levied whenever any service is rendered. Common example of certain services is telephone service, catering service, insurance service, consultancy service, maintenance service, etc. Services are non-tangible whereas goods are tangible. This makes the fundamental difference between the commodity tax and service tax.

8.6.5 While presenting the Union Budget 2006-07, the Hon'ble Finance Minister stated that the ultimate goal is to have a combined goods and services tax and for this purpose, the year 2010 has been set as the year in which the transition must take place for a fusion of these two taxes.

8.6.6 Basic Rules

Every person providing a taxable service and liable to pay service tax is required to be registered with the Central Excise/Service Tax Department. The service provider is liable to pay the service tax. In the following cases liability to pay service tax has been shifted to the service receiver or other specified person in terms of Section 68 (2) of the Act:-

1. Insurer in case of service provided by the Insurance Agent.
2. Person making payment of freight in such cases where a goods transport agency provides taxable service to a specified consignor and consignee.
3. Asset management company or mutual fund in case of service provided by a distributor to them.
4. Where the service is provided to a person in India from a country other than India. Body, Corporate or a firm located in India receiving sponsorship service.

8.6.7 In all these cases, the person liable to pay service tax shall be obliged to register with the Department.

8.6.8 The turn over limit, i.e. the aggregate value of taxable service for threshold based exemption is, currently, Rs. 10 lakhs in a year.

8.6.9 The credit distributed against an eligible document shall not exceed the amount of service tax paid thereon.

8.6.10 Service Tax is not payable on payments that are received in India in convertible foreign exchange, provided the payment is not repatriated outside India.

8.6.11 Service tax is not levied on reimbursement of out of pocket expenses.

8.6.12 Service tax is levied only on the final party who renders service to the client.

8.6.13 Services that are rendered outside India are not subject to Service Tax.

8.6.14 Details of Service Tax for certain services which are normally availed by DPS are discussed below:-

8.6.14.1 Erection, commissioning & installation service

“Erection, commissioning & installation” means any service provided by a commissioning and installation agency or a manufacturing company doing erection and commissioning of their products of plant, machinery or equipment. The value of taxable service in relation to commissioning or installation is the gross amount charged by the commissioning or installation agency/manufacturer for the service rendered to his customer. The charges for erection, commissioning and installation have to be indicated separately in a contract for supply and erection & commissioning or installation. If so, service tax is applicable on that amount claimed for erection, commissioning and installation service. If the contract is for composite rate without any bifurcation for supply and services, then service tax is applicable on the composite rate.

8.6.14.1.1 In case of turn key project, the contract may be indivisible and no separate value could be assigned to commissioning or installation of goods. Doubts have also been raised as to

what would be value of taxable service. It is clarified that it has been provided in law that service tax is leviable on commissioning or installation charges only and not on the material or goods supplied. However it is upto the service provider to show the break up of commissioning and installation charges. In case service provider shows consolidated charges service tax would be leviable on such consolidated amount. Erection, commissioning and installation means any service provided by a commissioning or installation agency/manufacturer in relation to (i) erection, commissioning or installation of plant, machinery or equipment, structures whether prefabricated or otherwise or installation of (a) electrical and electronic devises including wiring or fitting thereof (b) plumbing, drain laying or installation for transportation of fluids (c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work (d) thermal insulation, sound insulation, fire proofing or water proofing (e) lift and escalator, fire escape staircases or travelators (f) such other similar services.

8.6.14.2 Maintenance & Repair Services

8.6.14.2.1 Any service provided to a customer by any person in relation to maintenance or repair to any goods or equipment excluding that of motor vehicle. The service is rendered to a customer by the maintenance or repair service provider. In case of an Annual Maintenance Contract, the contract value is taxable excluding the cost of parts, etc. if the cost of such parts is shown separately.

8.6.14.2.2 Under Section 67 of the Act, a service provider of maintenance or repair service the gross amount charged by such service provider is taxable. The Act further states that the cost of parts or other material if any sold to the customer in the course of providing maintenance or repair service is to be excluded from the gross amount charged by such service provider. The cost of such parts or other material has to be shown separately in the relevant records maintained by the service provider.

8.6.14.3 Technical Testing, Analysis and Certification

8.6.14.3.1 Section 65 of the Act has defined services in relation to technical testing and analysis. It means “any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or materials or any immovable property but does not include any testing or analysis service provided in relation to human being or animals. Technical inspection and certification means inspection or examination of goods or process or material to certify that such goods or process or material qualifies or maintains the specified standard including functionality or utility or quality or safety or any other characteristics or parameters but does not include any service in relation to inspection or certification of pollution level. Such inspection and certification can even be provided so as to ensure that the required standard of efficiency continues to achieve the desired end results.

8.6.14.3.2 The Act also defines taxable event means any agency engaged in providing technical testing and analysis or technical inspection and certification service to any person. The person could be an individual, a firm or a corporate entity. The person who is receiving the services may be a seller or buyer or manufacturer or user of such goods, materials, etc.

8.6.14.3.3 The value of taxable service is the gross amount received by technical testing and analysis agency or technical inspection and certification agency in relation to such testing, analysis, inspection or certification rendered by him. The amount received by an agency shall be

liable to be taxed to service tax at the prevailing rate of taxation. Small service provider whose value of taxable service does not exceed Rs. 10 lakhs in a financial year for all services put together and not rendered in other brand name are exempted.

8.6.14.4 Customs House Agent in Relation to Import & Export

8.6.14.4.1 Section 65 defines taxable service to mean any service provided to a client by a Customs House Agent in relation to the entry or departure of conveyance or the import/export of goods. Customs Act 1962 provides for the procedure relating to entry, off loading, on loading, warehousing, assessment, valuation of import/export cargo. The Customs House Agent is expected to be aware of customs laws and procedures.

8.6.14.4.2 The value of taxable services, as contained in Section 67, in relation to service provided by a Customs House Agent to a client shall be the gross amount charged by such agent from the client for the services rendered in any manner in relation to the import or export of goods. The main ingredients for computation of value of taxable service are (a) service for a client (b) service to be rendered in any manner (c) service rendered in any manner in relation to import/export of goods.

8.6.14.4.3 Since the definition refers to service rendered in any manner, service rendered could include any service relatable or incidental to entry or departure of conveyances or import and export of cargo. The customs house agent also attends to loading, unloading of import/export cargo from or at the premises or intermediate points of storage of the importer/exporter, the packing, weighment, measurement, transportation, etc. of import or export cargo, carrying out of various statutory and other formalities such as payment of expenses on account of destuffing/pallatisation, terminal handling, fumigation, drawback/processing survey, amendment fees, dock fees, repairing and examination charges, landing and container charges, statutory labour charges, testing fees, drug control formalities, sorting/marketing, stamping/sealing, etc. on behalf of the importer/exporter. The customs house agent also incurs various other expenses such as crane/forklift charges, taxi charges, Photostat and fax charges, bank collection charges, courier service charges and other miscellaneous expenses on account of the importer/exporter for whom the above services are rendered.

8.6.14.4.4 Apart from the above charges, the customs house agent charges the client for his service under the head/nomenclature of agency and attendance charges or similar kind of heads which are purported to be the service charges of the customs house agent for the services rendered in relation to import or export of cargo. These charges are to be included to the gross amount liable for service tax whether they are shown as agency commission charges, agency and attendance charges, agency charges or any similar nomenclature. The service tax is computed with reference to such charges.

8.6.14.4.5 In other words, payment made by the customs house agent on behalf of the client such as statutory levy (cess, custom duty, port dues, etc.) and various other reimbursable expenses incurred are not to be included for computing service tax.

8.7 Customs Duty

8.7.1 Introduction

8.7.1.1 After independence, manufacturing industry grew and trade expanded and need for elaborate customs act was felt. Accordingly the Customs Act 1962 was passed to consolidate Sea Customs Act, Land Customs Act and Provision for Air Customs. Customs Act 1962 provides the procedure for levy and collection of duty on import/export of goods, the provision for prohibition for import/export of prescribed goods and rules relating to enforcement of law made from time to time. The Act also specifies the penalties to be charged on different offences committed by the public while dealing with the import/export transactions.

8.7.1.2 In order to standardise the tariff applicable to the goods to be imported, Customs Tariff Act 1975 was passed, which came into effect in 1976. A new system of nomenclature known as Harmonised Commodity Description and Coding System (HSN) was developed by Customs Cooperation Council. HSN taken into account latest changes in technology and pattern of international trade. Import schedule to the Customs Tariff Act 1975 was replaced with a new Schedule in February 1986, based on HSN and subsequently the Central Excise Tariff was also replaced by a new Tariff based on HSN.

8.7.1.3 The Central Government formulates the Customs Law and relevant Rules and amends them from time to time, to raise revenue, to regulate the import and export business and to protect the Indian industry from dumping of those goods from neighbouring countries, which are being produced in India.

8.7.1.4 The Customs Tariff Act contains two Schedules. The Schedule-1 gives classification and rate of duty applicable for imports and Schedule-2 gives the same for exports. It also makes provision for duties like countervailing duty (CVD), preferential duty, antidumping duty, protective duty, etc.

8.7.1.5 The CBE&C is empowered to issue instructions/directions for purpose of uniformity in classification of goods with respect to levy of duty thereon. In order to give broad guidelines for classification of goods for the purpose of duty liability, CBE&C brings out periodically a book called 'INDIAN CUSTOMS TARIFF CODE' which contains various tariff ruling issued by CBE&C. This also contains detailed provisions for warehousing of the imported goods before further processing or sale to other party.

8.7.2. Various types of Customs Duty

8.7.2.1 Basic Customs Duty

Basic Customs Duty is levied under Section 12 of the Customs Act 1962. Normally it is levied as a percentage of value as determined under Section 14(1). The rate varies for different items, but general rate on non-agricultural goods at present is 10% with effect from 1.3.2007.

8.7.2.2 Countervailing Duty (CVD)

The additional duty called as countervailing duty (CVD) is levied under Section 3 (1) of the Customs Tariff Act and is equal to excise duty levied on a like product manufactured or

produced in India. If it is not manufactured in India, the ED that would be leviable on the product, had it been manufactured in India is the duty payable. If the product is leviable at different rates, the highest rate among those rates is the rate applicable. Such duty is leviable on the value of the goods plus basic customs duty payable. The CVD can be charged on all goods by the Central Govt. to counter balance excise duty leviable on raw materials, components and other inputs similar to those used in the production of such goods. However the CENVAT can be availed for CVD paid on imported goods, if these imported goods are used as raw material for manufacturing of finished goods.

8.7.2.3 Education Cess on CVD

An education cess has been imposed on imported goods with effect from 9.7.2004. At present the cess is levied at 3% on the sum of countervailing duty.

8.7.2.4 Customs Education Cess on Customs Duty

8.7.2.4.1 Customs Education Cess at 3% is imposed on the sum of basic customs duty + CVD + education cess on CVD. Education cess is levied on all imported goods. Similarly, if cess is leviable on goods manufactured or produced in India corresponding cess will be payable if similar goods are imported.

8.7.2.4.2 Distinction between cess and duty is that cess is a charge levied and collected for specified purpose, while duty (excise duty or customs duty) is for general revenue of Govt. Duty is for general revenue purpose while cess is for a particular purpose.

8.7.2.5 Special Countervailing Additional Duty

8.7.2.5.1 The 4% special countervailing additional duty under Section 3(5) of Customs Tariff Act 1975 which was imposed from 1.3.2005 only on information technology agreement (ITA), goods and their parts/components have been extended in general to all imports. It applies to both agricultural and industrial products (The Finance Bill 2006). This is an addition to additional duty leviable on the sum of assessable value + basic customs duty + CVD + education cess on CVD + customs education cess.

8.7.2.5.2 The purpose of additional duty is to counter balance sales tax, VAT, local tax or other charges leviable on articles on its sale, purchase transactions in India. Section 3(5) of the Customs Tariff Act, 1975, makes it clear that even if imported article was not sold in India, tax will be leviable on the basis of sales tax, VAT or other taxes that would have been payable if the goods were sold, purchased or transported in India. The obvious intention is to provide level playing field to manufacturers in India who are manufacturing similar goods.

8.7.2.6 Antidumping Duty

Some times in order to capture Indian market detrimental to Indian industry, the foreign firms dump into India, goods at prices below the amount charged by them in their domestic markets. This is known as dumping. In order to prevent dumping, the Central Govt. may levy additional duty equal to the margin of dumping on such articles, if the goods have been sold at less than normal value. Pending determination of margin of dumping, such duty may be provisionally imposed. After the exact rate of dumping duty determined, the Central Govt. may

vary the provisional rate of dumping duty. Dumping duty can be imposed even when goods are imported indirectly or after changing the condition of goods. However there are certain restrictions on imposing dumping duty in case of countries, which are signatories to the GATT (General Agreement on Trade & Tariff) or on countries given 'Most Favoured Nation Status' under an agreement. Dumping duty can be levied on import from such countries only if the Central Govt. proves that import of such goods into India at such low prices, causes material injury to the Indian industry.

8.7.2.7 Protective Duty

If the Tariff Commission set up by Law recommends that in order to protect the interest of the Indian industry, the Central Govt. may levy protective antidumping duties at the rate recommended on specified goods. Notification for levy of such duties must be introduced in the Parliament if Parliament is in session or in the next session by way of a bill. If the bill is not passed within six months after the issue of notification, the notification ceases to be in force, but the action already undertaken under this notification remains valid. Protective duty may be cancelled or varied by notification. Such notification also needs the approval of the Parliament as above.

8.7.2.8 Duty on Bounty Fed Articles

In case a foreign country subsidises its export to India the Central Govt. may impose additional import duty equal to the amount of such subsidy or bounty. If the amount of subsidy or bounty cannot be clearly determined immediately, additional duty may be collected on a provisional basis and after final determination, difference may be collected or refunded as the case may be.

8.7.2.9 Export Duty

Such duty is levied on export of goods. At present very few articles such as skin and leather are subject to export duty. The main purpose of this duty is to restrict export of certain goods.

8.7.3 Scope and Coverage of Customs Law

All goods become liable to import duty or export duty when there is import into or export from India. Export means 'taking goods from India to a place outside India' and import means 'bringing goods into India from a place outside India'. Section 2 (27) of Customs Act defines 'India' as inclusive of territorial water. Hence 'import' is complete as soon as goods enter territorial water extended upto 12 nautical miles from the base line on the coast of India and includes any bay, gulf, harbour, creek or tidal river (1 nautical mile = 1.1515 mile = 1.853 kilometers). Sovereignty of India extends to the territorial water and to the seabed and subsoil underlining and their earth space over the water.

8.7.4 The Central Government has been granted emergency powers to increase import/export duty if the need so arise. Such increase in duty is by way of notification which has to be placed in Parliament for approval if in session or within 7 days when the next session starts. Notification should be approved within 15 days.

8.7.5 Customs Duty on replacement supplies

8.7.5.1 Drawback on re-export of imported goods

8.7.5.2 Under the existing laws, no exemption from duty on 'no charge shipment' can be given, as duty has to be paid on each importation whether original or replacement. However in terms of Section 74 read with Section 76 of Customs Act, 1962 drawback is allowable on re-export of duty paid goods to the extent and subject to the fulfillment of the conditions stated therein.

8.7.5.3 Goods re-exported without use within a period of two years are eligible for drawback upto 98% and goods re-exported after use are eligible for drawback of imported duty on slab rate based on the length of period between the date of clearance and the date when the goods are placed under the customs control for export.

Not more than six months	-	85%
More than six months but not more than 12 months	-	70%
More than 12 months but not more than 18 months	-	60%
More than 18 months but not more than 24 months	-	50%
More than 24 months but not more than 30 months	-	40%
More than 30 months but not more than 36 months	-	30%
More than 36 months	-	Nil

Provided that where the period referred to be more than 24 months, drawback shall be allowed, only if the Collector of Customs concerned on sufficient cause being shown, has in that particular case extended the period beyond 24 months. This is not applicable for motor car for which there is a different method of calculation.

8.7.5.4 Certain items like wearing apparel, tea-chests, expose cinematograph films, unexposed photographic films, paper plates and x-ray films used after the importation into India, drawback shall not be allowed.

8.7.5.5 Section 74: Drawback allowable on Re-Export of Duty Paid Goods:-

(1) When any goods capable of being easily identified have been imported into India and upon which any duty has been paid on importation

(a) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51 or are to be exported as baggage and the owner of such baggage, for the purpose of clearing it makes a declaration of its contents to the proper officer under Section 77 (which declaration shall be deemed to be an entry for export for the purposes of this Section) and such officer makes an order permitting clearance of the goods for exportation

OR

(b) are entered for export by post under Section 82 and the proper officer makes an order permitting clearance of the goods for exportation.

98% of such duty shall, except as otherwise hereinafter provided, be repaid as

drawback, if -

- (i) The goods are identified to the satisfaction of the Asstt. Collector of Customs as the goods which were imported, and
 - (ii) The goods are entered for export within 2 years from the date of payment of duty on the importation thereof; provided that in any particular case the aforesaid period of 2 years may, on sufficient cause being shown, be extended by the Board of such further periods as it may deem fit.
2. Notwithstanding anything contained in Sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the official gazette fix.

8.7.5.6 Section 76: Prohibition and regulation of drawback in certain cases -

- (1) Notwithstanding anything herein contained no drawback shall be allowed
 - (a) In respect of any goods the market price of which is less than the amount of drawback due thereon;
 - (b) Where the drawback due in respect of any goods is less than Rs. 50.
- (2) Without prejudice to the provisions of Subsection (1), if the Central Govt. is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the official gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to restrictions and conditions as may be specified in the Notification.

8.7.6 Entitlement of the Purchaser to recover damages on excess customs duty paid on account of replacement:

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

8.7.6.1 Concession for Payment of Customs Duty

8.7.6.1.1 As per Customs Act 1962 all goods are subject to payment of customs duty at the time of import, except those specifically exempted by relevant notification.

8.7.7 The following concession from payment of customs duty is available to R&D Units of the Department of Atomic Energy:-

In exercise of the power conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 the Central Government, being satisfied that it is necessary in the public interest to do so, hereby exempt goods falling within the first schedule to the Customs Tariff Act, 1975 and specified below from so much of that portion of duty of customs leviable thereon which is specified in the said first schedule as is in excess of the amount calculated at the rate of 5% ad valorem, and from the whole of additional duty leviable thereon under Section 3 of the said Customs Tariff Act, when imported into India by public funded research institution subject to the conditions specified hereunder. This notification shall come into force with effect from 1st Day of September 1996.

Description of Goods:-

- 1) Scientific and technical instruments, apparatus, equipment (including computers)
- 2) Accessories, parts, consumables and live animals (for experiment purpose)
- 3) Computer software, compact disc-read only memory (CD-ROM), recorded magnetic tapes, micro film, micro fiches.
- 4) Prototype, the c.i.f. value of which does not exceed Rupees Fifty Thousand in a financial year.

Conditions:

The goods are imported by or for delivery to -

- 1) A public funded institution under the administrative control of the Department of Atomic Energy.
- 2) The importer produces, at the time of importation a certificate from the Head of the Institution, in each case, certifying that the said goods are required for research purpose only.
- 3) No objection certificate issued by the Committee for the purpose of control & supervision of experiment on animals in respect of import of animals.
- 4) When the goods are imported for delivery to an Institution, the certificate specified in terms of (1) (2) as the case may be, item (1) (2) (3) above shall

be produced at the time of clearance of goods from a warehouse appointed under Section 57 & 58 of the Customs Act 1962.

8.7.7.1 The Contracting authority should thoroughly examine and satisfy himself that the item imported is eligible for concessional Customs Duty and also obtain from the User regarding applicability of concessional Customs Duty Notification for the item being procured for R&D purpose and its end use. It should be clearly understood that issue of concessional Customs Duty Certificate for non-applicable item may result in imposing a penalty by the Revenue Authorities on the ground of evasion of duty. At the same time it should be ensured that concessional Customs Duty should be availed for all the items for which the same is applicable.

8.8 Value Added Tax (VAT)

8.8.1 Background

In the case of intrastate transactions where the goods are not required to move from one state to another state and they are sold and resold in the same state, sales tax is levied by the State Govt. on such transactions. This sales tax was required to be paid at multipoint, i.e. at each point of sale and ultimately the consumer had to bear the entire amount of multipoint taxation of item. In order to avoid tax on tax, the concept of Value Added Tax was introduced. VAT was introduced with effect from 1st April 2004 in some states and almost all the states adopted the concept of VAT with effect from 1st April 2005.

8.8.2 Basic Concept of Value Added Tax

8.8.2.1 VAT, in simple terms is also a multi point levy on each of the entities in the supply chain with facility to set off of input tax i.e. the tax paid at the stage of purchase of raw materials by a manufacturer and purchase of goods by a trader. Only the value addition in the hands of each of the entities is subject to tax.

8.8.2.2 Sales tax is related to selling price of products. The raw material passes through various stages and processes till it reaches the ultimate stage. Eg. Steel ingots are made in a steel mill. These are rolled into plates by a re-rolling unit which is a raw material for the furniture manufacturer which is the end product. Thus output of the first manufacturer become input for the second manufacturer, who carries out further processing and supplies it to a third manufacturer. This process continues till the final product emerges. This product then goes to the distributor/wholesaler, who sells it to the retailer and then it reaches the ultimate consumer.

8.8.2.3 If the items are taxed based on the selling price of a product, the tax burden goes on increasing as raw material and final product passes from one stage to another. Example Manufacturer X supplies his output to Y at Rs. 100. The sales tax payable is 10%. Y gets the material at Rs. 110. He carries out further processing and sells his output to Z at Rs. 150. Y has made a value addition of Rs. 40. While selling to Z he will charge tax at 10%. Thus Z will get the item at Rs. 165 (150 + 10% tax). As stages of production and/or sale continue, each subsequent purchaser has to pay tax again and again on the material which has already suffered tax i.e. tax is payable on the tax already paid. This is called cascading effect or additive of taxation.

8.8.2.4 In VAT the cascading effect of taxation is avoided. In the above example the value added by Y is only Rs. 40 and the tax payable on value added by him would be only Rs. 4, in place of Rs. 15 as in the earlier system of taxation. At each stage the concerned person will pay tax only on the value added by him to the product and not on total selling price.

8.8.2.5 The above process of payment of tax only on value addition by the dealer is regularised by tax credit system. Under this system credit is given at each stage for the tax paid at an earlier stage.

8.8.2.6 In the above example Y purchases goods from X at Rs. 110 which is inclusive of tax of Rs. 10. Since Y is going to get credit of tax of Rs. 10, he will not consider this amount for his costing. He will charge conversion charges of Rs. 40 and sell his goods at Rs. 140. He will charge 10% tax and raises invoice of Rs. 154 to Z (Rs. 140 + tax at 10%). In the invoice prepared by Y, tax shown will be Rs. 14. However Y will get a credit of Rs. 10 paid on the raw material purchased by him from X. Thus effective tax paid by Y will be only Rs. 4. Z will get the goods at Rs. 154 and not at Rs. 165 which he would have paid but for VAT. Thus in effect Y has to pay tax only on Rs. 40 which is the value added by him.

8.8.3 Rate of Value Added Tax

8.8.3.1 In order to simplify the taxation system, the goods are classified in 6 groups and the rate of tax is based on the type of goods in particular group. The uniform list of items included in the groups have been finalised by steering committee appointed for implementation of VAT in all states of India in consultation with the representative of the state governments. However, the decision to include goods as essential commodities (tax free goods) has been entrusted to the respective state governments.

8.8.3.2 The different groups and rates are as follows:-

Sr.No.	Group of goods	Rate of Tax
1.	Tax free goods essential commodities	Nil
2.	Bullion, jewellery & precious stones	1 %
3.	Important industrial raw materials and items of daily consumption	4 %
4.	Liquor	20 %
5.	Motor spirits	10.34 %
6.	All goods not covered above	12.5 %

8.8.3.3 These rates are applicable uniformly in all the states where the VAT system is implemented.

8.8.4 Advantages of VAT

8.8.4.1 It brings uniform tax rate/structure in all the states so that unfair advantages cannot be taken while levying the tax.

8.8.4.2 As input credit is available the end cost will be less which reduces the burden of common man.

- 8.8.4.3 Increase the tax net as the intermediate traders also need to pay tax to avail tax credit.
- 8.8.4.4 All the concession forms which were in vogue in earlier taxation system have been withdrawn, the taxation system has been simplified.
- 8.8.4.5 Tax returns are required to be filed on self declaration basis, hence onus of compliance rests with the dealer.
- 8.8.4.6 Procedure, relating to filing of returns, payment of tax, furnishing declaration and assessment are simplified under VAT system so as to minimise any interface between the tax payer and the tax collector.
- 8.8.4.7 VAT system proposes to minimise the discretion with the assessing officer so that every person is treated alike. For example, there is no discretion involved in the imposition of penalty, late filing of return or non-filing of returns or late payment of tax or non-payment of tax or in case of tax evasion. Such system would be free from all these harassments.
- 8.8.4.8 VAT brought transparency. In the VAT system, the amount of tax would be known at each and every stage of goods sale or purchase.
- 8.8.4.9 Tax concession to new industry is done away with the new VAT system. This was done as it creates discrepancy with investment decision. Under the new VAT system, the tax would be fair and equitable to all.
- 8.8.4.10 VAT proposes computerisation which would focus on the tax evaders by generating exception reports. In a large number of cases, no processing or scrutiny of returns would be required as it would free the tax compliant dealers from all harassments which are so much part of assessment. The MIS would make the tax department more effective and responsive.
- 8.8.4.11 The Work Contract Tax Act of the state governments were repealed. VAT is also applicable on Works Contracts. In the case of Works Contract along with the goods the services are also transferred. Hence the tax does not apply on full contract value.
- 8.8.4.12 The owner/contractor may opt to pay VAT on all the goods involved in the execution of contract based on the scheduled rates applicable for such goods. The input credit can be availed as per extant rules. However no credits shall be allowed for goods purchased on interstate sale basis.
- 8.8.4.13 The owner/contractor can opt for composite scheme, wherein, it is required to pay VAT at rates stipulated in the scheme. The rate for composite scheme at present in Maharashtra is 8% on the entire value of Contract. However a set off of 64% of contract value is available in Maharashtra State.
- 8.8.4.14 In order to ensure that VAT on Works Contract is paid by the Contractor, the paying authorities are required to deduct TDS at the rates specified in the Act. In Maharashtra, TDS is deducted at 2% from registered dealers and at 4% from unregistered dealers.
- 8.8.4.15 Depending upon the types of the Works Contracts and quantum of material components, the Contractor is required to decide the scheme under which he would like to pay VAT

applicable for each contract. The options need to be exercised before receipt/payment of first bill against the Contract. Once the option is exercised, it cannot be changed during the execution of the Contract.

8.8.5 Method adopted for collection and charging

8.8.5.1 Generally, there are two methods that are followed while charging and collecting VAT.

8.8.5.2 Invoice or Tax Credit Method

The tax is collected and charged separately on the basis of tax that is paid on the purchase and tax that is payable on the sale, shown separately in the Invoice. Therefore, the difference between tax paid on purchase and tax payable on sale as per Invoice is VAT.

8.8.5.3 Subtraction Method

Under this method, the tax is collected and charged on the aggregate value of the tax payable on sale and purchase by applying the rate of tax, applicable to the goods. Therefore, the difference between the sale price and purchase price would be VAT. It means VAT is the tax which consumers ultimately face. It is collected at each stage. The tax earlier paid can be allowed as set off or credit. Therefore it is called 'last point tax'.

8.8.6 Concept of Sale

- 1) Sale of goods; defined under the Sale of Goods Act.
- 2) Transfer of goods used as otherwise in pursuance of the contract.
- 3) Transfer of goods used otherwise in Works Contract.
- 4) Delivery of goods in pursuance to hire purchase agreement or on instalment.
- 5) Transfer of right to use the goods on lease or otherwise.
- 6) Supply of food by the club or body to its members.
- 7) Supply of food articles or drinks for consumption.

The transaction from (3) to (7) is considered to be deemed sale and power can be exercised to impose tax on such sale by the States.

8.8.7 TIN - Tax Payers Identification Number:

The tax payer's identification number will consist of 11 digits numerals throughout the country. First two characters will represent the state code as used by the Union Ministry of Home Affairs. The set up of next 9 characters may, however, be different in different states.

8.8.8 Tax Invoice

If a registered dealer is making a local sale to another registered dealer of Mumbai a tax invoice can be issued. The tax invoice should always mention the word 'tax invoice' in a prominent place, identity of the seller (with registration number, name and address), identity of the buyer (with registration number, name and address), description, quantity, volume and value of goods sold and/or services provided, amount charged with the amount of tax charged in the transaction indicated separately.

8.8.9 Retail Invoice

In retail sales, which are much more numerous and are smaller accounts, retail sale invoice can be issued. Although retail invoice should always identify the seller, indication of buyer's name is optional. Sale price shall be inclusive of tax charged thereon. The word retail invoice or bill should be mentioned in a prominent place. No tax credit can be availed by the purchaser on the strength of retail invoice.

8.8.10 Input Tax

Input tax means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods in the course of business for sale or for manufacture of taxable goods or for use as container or packing material or for the execution of Works Contract.

8.8.11 Input Tax Credit

It is the credit for the tax paid on inputs. Every dealer has to pay output tax on taxable sale effected by him. The basic formula of VAT is that every dealer pays tax only on the value addition in his hands. Input tax credit is the mechanism by which the dealer is enabled to set off against the output tax, the input tax. Dealers are not eligible for input tax credit on all inputs. There are certain restrictions and conditions on the eligibility of input tax credit as it is stipulated in the respective state legislation.

8.8.12 Sales not liable to tax under VAT -

- 1) Sale in the course of interstate trade or commerce which shall continue to be liable to tax under the Central Sales Tax Act 1956.
- 2) Sale which takes place outside the State.
- 3) Sale in the course of export or import.

8.9 Central Sales Tax

8.9.1 Introduction

8.9.1.1 Article 265 of the Constitution of India extends the power to Central and State Governments to enact rules for imposition of tax on sale. At present Sales Tax is levied by both Union and State Governments. The sales tax levied by the Union Govt. is called the Central

Sales Tax and the tax levied by the State Govt. is known as VAT. In pursuant to the provisions of Article 265 of the Constitution of India, Central Sales Tax Act 1956 was enacted by the Union Government. Value Added Tax Act enacted by the respective State Governments replaced the States Sales Tax Act of the respective States.

8.9.1.2 As per the Central Sales Tax Act, every dealer shall be liable to pay tax under this Act on all sales of goods effected by him in the course of interstate trade or commerce. Though the power to levy the sales tax on interstate sale rests with the Central Government, the administration of CST is done by the respective State Governments where sale is effected and the tax collected.

8.9.2 Sale

8.9.2.1 'Sale' with its grammatical variations and cognate expression, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration and includes a transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration.

1. A transfer of property in goods (whether as goods or in some other forms) involved in the execution of the works contract.
2. A delivery of goods on hire purchase or any system of payment by instalments.
3. A transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
4. A supply of goods by any incorporated association of body or person to a member thereof for cash, deferred payment or other valuable consideration.
5. A supply by way of or as part of any service or in any other manner, whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

8.9.2.2 It does not include a mortgage or hypothecation of or a charge or pledge in goods.

8.9.3 Inter State Sale

8.9.3.1 As per Section 3 of CST Act 'a sale or purchase of goods shall deemed to take place in the course of interstate trade or commerce, if the sale or purchase

- 1) occasions the movement of goods from one state to another

OR

- 2) is effected by a transfer of documents of title to the goods during the movement from one state to another'.

8.9.3.2 There should be an agreement to sale which contains a stipulation regarding movement of goods from one state to another.

8.9.3.3 Location of the buyer and seller is immaterial. Even if the buyer and the seller are within the same state, still interstate sale can be effected provided the sale occasions movement of goods from one state to another. Interstate sale can be effected by transfer of documents even when buyer and seller are in the same state.

8.9.3.4 It is immaterial whether a completed sale precedes the movement of goods or follows the movement of goods or takes place while goods are in transit.

8.9.3.5 Even if goods move from one state to another in pursuance of agreement to sale and the sale is completed in the state in which goods are received, it will be an interstate sale.

8.9.3.6 It is immaterial in which state the property (i.e. ownership) of goods passes to the buyer.

8.9.3.7 In case of interstate sale the mode of transport is immaterial. It may be any mode like rail, road, post, aircraft, ship or handcart.

8.9.3.8 Even if the buyer takes delivery from the seller, it can be interstate sale if movement of goods to other state is a necessary part of transaction, but buyer has to necessarily take the goods out of the state.

8.9.3.9 Temporary movement through another state is not interstate sale if movement of goods starts from one state and ends in the same state. It will not deem to be movement of goods during interstate sale even if during transit, goods pass through other state.

8.9.4 Transfer of Documents

8.9.4.1 A sale or purchase of goods shall be deemed to take place in the course of interstate trade or commerce if the sale or purchase is effected by a transfer of title of goods by documents during their movement from one state to another.

8.9.4.2 When the goods are handed over to the carrier, he hands over a receipt (negotiable instrument) to the seller. The seller sends the receipt to the buyer. The buyer gets delivery of goods on submission of the receipt to the carrier at the other end. The receipt of carrier is 'document of title of goods'. Such documents are railway receipt/lorry receipt/bill of lading/delivery order, etc. During transportation 'the documents of title' may be in favour of buyer/agent or seller/banker/self etc. This has to be transferred in favour of purchaser. Such transfer is done by way of endorsement on the 'document of title'. Transfer of documents is a symbolic delivery of goods to the purchaser. It carries with it full ownership of goods. Delivery of 'document of title' is equivalent to the delivery of goods themselves.

8.9.5 Stock Transfer/Branch Transfer

One of the basic conditions of interstate sale is that there should be a sale. If a manufacturer sends goods to his branch in another state or to his dealer or agent in another state who stocks the goods on behalf of the owner, it is not sale. Such movements are taking place by producing a declaration in 'F' form.

8.9.6 Rate of Central Sales Tax

With effect from financial year 2007-08 rate of Central Sales Tax applicable is equivalent to VAT applicable for that item in the selling state.

8.9.7 Sale to Government

8.9.7.1 The issue of form 'D' by Government Departments have since been withdrawn. Hence the Central Sales Tax applicable for govt. purchase is equivalent to VAT applicable for that item in the state of sale.

8.9.7.2 Sale to registered dealers of goods included in his registration certificate

8.9.7.3 Sale to registered dealer is taxable at 3% provided the goods are 'eligible' for concession in sales tax against form 'C'. In this case the purchaser needs to issue declaration in prescribed 'C' form to the selling dealer. If the purchaser does not give any declaration the dealer needs to pay Central Sales Tax equivalent to VAT applicable for that item in the state of the selling dealer. In the case of sale of undeclared goods the rate of sales tax is as applicable to VAT for that item in the state of the selling dealer.

8.9.8 Forms for Declaration

The dealer is required to issue certain declaration in form prescribed in CST to buyer/seller. Form 'C', 'E1', 'E2', 'F' & 'H' are printed and supplied by the sales tax authorities and in these cases the dealer is to issue declaration in the forms supplied by the Sales Tax authorities only. The blank 'C' forms are to be obtained from the Sales Tax authorities in the state in which goods are delivered which is usually the place where the purchasing dealer is registered.

8.9.9 Concept of E1/E2 Transaction

8.9.9.1 As per Section 6 (2) of CST Act, first interstate sale is taxable. Subsequent sale during movement of goods by transfers of documents is exempt from tax if the subsequent sale is to a registered dealer. This is subject to condition that such subsequent seller obtains declaration (a) from the selling dealer i.e. from the registered dealers from whom the goods were purchased (b) from purchaser a declaration in 'C' form. The selling dealer is required to make declaration in 'E1' form if it is a first sale and 'E2' form if it is a subsequent sale. The E1/E2 transaction can be explained by an example.

8.9.9.2 Assume that John despatches goods from Karnataka to Orissa and raises invoice on Ram in Madhya Pradesh. John charges 3% CST and pays the same in Karnataka. During movement of goods, Ram sells goods to Sohan in West Bengal and Sohan ultimately sells goods to Mishra in Orissa. Mishra takes delivery of goods and the movement of goods comes to an end. Sale from Ram to Sohan and Sohan to Mishra is by a transfer of documents. In this case John will receive declaration in 'C' from Ram and will issue declaration in 'E1' form to Ram. Later Ram will issue declaration in 'E2' form to Sohan and receive declaration in form 'C' from Sohan. Finally, Sohan will issue declaration in 'E2' form to Mishra and will receive declaration in 'C' form from Mishra, which will complete the chain and CST is to be paid only once by Ram and deposited by John in Karnataka. If the chain is broken, CST will be payable again by defaulting parties in the respective states.

8.9.10 Applicability of CST on freight and transit insurance charges

While placing the purchase order for procurement of goods, the purchaser may indicate the price basis as FOR Site, Ex-works, Free and Safe delivery, etc. The applicability of CST on these transactions will depend on which term the contract is finalised.

8.9.11 Ex-works basis

As the price does not include freight and transit insurance charges, CST is not applicable on these charges.

8.9.12 FOR Site basis

As price is inclusive of freight charges, CST is applicable on freight charges but not on transit insurance charges since sale price as per contract is inclusive of packing, forwarding and freight charges.

8.9.13 Free & Safe Delivery basis

Here basic sale price is inclusive of packing, forwarding, freight and safe delivery charges. As the price is inclusive of freight and transit insurance charges CST is applicable on freight and transit insurance charges also.

8.9.14 Free & Safe Delivery basis, but Freight and Transit Insurance Charges shown separately

8.9.14.1 Basic sale price is inclusive of packing and forwarding charges, but freight and safe delivery charges shown separately. Even though the price is inclusive of freight and transit insurance charges, but these two elements are shown separately, CST is not applicable on these elements.

8.9.14.2 Amendment with effect from 1.4.2007

- 1) The rate of CST on interstate sale to registered dealer (against form 'C') shall stand reduced from 4% to 3% or the rate of VAT applicable in the state of the selling dealer, whichever is lower.
- 2) The rate of CST on interstate sale other than sale to registered dealers shall be the rate of VAT applicable in the state of selling dealer.
- 3) The rate of CST on interstate sale to Govt. departments shall also be the rate of VAT applicable in the state of the selling dealer, indicated at (b) above. The facility of interstate purchases by Govt. departments against form 'D' stands withdrawn.
- 4) Enabling provision has been made for the states to levy VAT on tobacco. Tobacco has been dropped from the first schedule of the additional duty of excise (goods of special importance) Act 1957 as also from the list of declared goods to enable states to levy VAT on tobacco at rate higher than 4%.

8.10 Octroi Duty

8.10.1 Stores supplied to govt. departments against govt. contracts are exempted from levy of Octroi Duty, Town Duty, Terminal tax and other levies of local bodies. Contractors should ensure that stores ordered against contracts placed by govt. departments are exempted from levy of the abovementioned local taxes and duties.

8.10.2 Wherever required, they should obtain the exemption certificate from the Purchase Officers concerned to avoid payment of such local taxes or duties.

8.10.3 In exceptional circumstances the necessity of payment of such taxes or duties arises to avoid delay in supplies and possible demurrage charges, the competent authority may authorise payment of such charges and reimburse the same to the carrier after collecting the receipts obtained for such payments. The Purchaser concerned without delay take up the matter with the Corporation, Municipality or local body concerned quoting the relevant rules and obtains the refund.

8.11 Entry Tax

8.11.1 Introduction

The Value Added Tax (VAT) has been implemented in almost all the states. In VAT regime the rate of tax for manufactured goods is 12.5%. As the rate of VAT is more than the CST applicable for similar item the dealers may be interested to buy items from other states, though these items are manufactured in the respective states. In order to protect the interest of the local manufacturers some of the states like Karnataka and Rajasthan introduced levy of entry tax equivalent to VAT for certain declared list of goods. The entry tax is collected on these declared goods while entering the state.

8.11.2 Concept of Entry Tax

8.11.2.1 The salient features of the entry tax are as follows:-

- 1) Entry tax is introduced as special tax on entry of certain goods.
- 2) Entry of goods into local area means entry of notified goods into a local area from any place outside the state for consumption, use or sale therein.
- 3) This Act is applicable in the whole of the State.
- 4) This Act came into effect on the notification issued by the State Govt. on the list of declared goods notified for this purpose.
- 5) In case of registered dealer, the entry tax is collected by Sales Tax authorities wherein in the case of importers who are not registered dealers entry tax is collected by the Officer-in-charge of the Check Post at the entry point of the State.

- 6) Value of the notified goods is calculated from the purchase value of the notified goods, as ascertained, from original invoice and includes the value of accessories fitted to such goods, insurance, ED/CVD and any other duties, sales tax, freight charges and all other charges incidentally levied on the purchase of such goods.
- 7) Entry tax shall be levied and collected on the entry of any notified goods into the local area for consumption, use or sale therein, on the value of the notified goods at the rates specified in respect of such goods.

CHAPTER - 9

PRICE VARIATION

9.1 Variable Price

9.1.1 The general principle of entering into contracts is no contract involving any uncertain or indefinite liability or any condition of an unusual character should be entered into without the prior approval of the competent financial authority. Therefore, as a rule, contracts should be entered into on firm price basis and provisional prices subject to variation are to be considered only under exceptional circumstances like high fluctuation in the cost of raw materials or certain other items mainly required for manufacture of the end product being ordered against the contract or where the contract is for a period of 18 months or more, on case to case basis.

9.1.2 In the growing economy where the market conditions are fluctuating, and due to difficulties in obtaining raw materials, uncertainty in labour conditions and continual changes in national and international fiscal practices, the firms are not interested to quote firm prices and are willing to submit quotations only with price variation clause. As per the price variation clause both the seller and buyer are compensated for raise or fall in the costs of elements for which price variation has been accepted.

9.1.3 The contract on price variation basis should be considered on merit of each case and efforts should be made to fix the ceiling for price variation. Wherever it is proposed to accept variation, the price variation clause should be clearly spelt out in the NIT and in the tender document indicating the base date of the raw material, etc. on which price variation is agreed.

9.1.4 It is required to indicate in the tender enquiry the base date on which the firm should submit their prices in cases of variable offer. Otherwise there will be difficulty in comparison of the quotation on equitable basis if different tenderer base their price differently. The Purchase Section should therefore ensure to clearly indicate in the tender enquiry, the base date on which the firm should base their rate in respect of variable price quotation.

9.1.5 In respect of requirement where delivery period is likely to be beyond 18 months if it is decided to conclude the contract with variable price, an appropriate clause incorporating, inter-alia, suitable price variation formula should also be included in the tender documents. Such indents should be approved by the competent authority in the Group. Director, P&S after examining the indent and the market conditions, will take a decision regarding inclusion or otherwise of PVC in the NIT.

9.1.6 In respect of short term contracts where delivery period is less than 18 months if the fluctuation of the cost of some input material is very high in short duration, inclusion of PVC can be considered on a case to case basis.

9.1.7 Price variation clause relating to costs of raw materials, wages and other elements may be accepted subject to the conditions on the next page :-

- 1) A break down of quotation is obtained to enable the purchaser to satisfy himself that the variations in respect of raw materials and wages demanded by the firm are reasonable.
- 2) The right to examine the firm's books is reserved except where details furnished by the firm provide an adequate check and are satisfying in all respects.
- 3) The date of adjustment shall be mid point of manufacture or as mutually agreed between the buyer and seller depending on the nature of the material/contract.
- 4) No price increase is allowed beyond original delivery period unless the delay is attributable to the purchaser.
- 5) There should be a maximum ceiling for the price variation.
- 6) No price adjustment shall be payable on the portion of the contract price paid to the contractor as advance payment, fixed elements representing profit and over loads in the contract price.
- 7) Base price of raw materials should be that of a canalizing agency, wherever available for the purpose of price variation clause.
- 8) The indices published by a government agency or the Chamber of Commerce should be normally taken for consideration.
- 9) The price agreed upon should specify the base level viz. the month and year to which the price is linked to enable variation being calculated with reference to the price levels prevailing in that month and year.
- 10) If the production of the goods needs more than one raw material, then the input cost of material may be further sub-divided for different categories of material for which cost indices are published. The indentor should indicate the particulars of elements for which the price variation is recommended and the percentage assigned for fixed element, different material element, labour element and any other component like electricity, fuel, etc. for which price variation is to be considered.
- 11) The price variation formula is also to stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (e.g. where the resultant increase is lower than, say 2% of the contract price, no price adjustment will be made in favour of the supplier).
- 12) The price variation formula, as and when necessary should be formulated by a competent authority before incorporating the same in the tender enquiry document.
- 13) The price variation clause and its implication should be got vetted by IFA.

9.2 Placement of Order on items with volatile price and short validity of tender

There are certain items procured by the Department whose prices are volatile where the Department cannot include Price Variation Clause as the quotations are not based on some base price. For example: Magnesium Magnesium is being procured in the open market from importers on fixed price basis. Here the suppliers are not linking their price with any base price. The validity of the tender offered is also very short. Another example Computer Here the market price is going down and obsolescence is very fast. In these type of cases, the purchase order can be placed with the approval of the Chairman, S&EC/SPC and Chairman, TC/Board/Council depending on the value and subsequently the files can be submitted to these Committees for post facto approval. Any suggestions/comments made by the Committees should be taken into account for future procurement.

9.3 Standard Price Variation Clause

9.3.1 Some of the standard price variation clauses as per the DGS&D/DPS contracts are furnished below:-

- 1) Price variation clause relating to material and labour.
- 2) Price variation clause relating to raw materials.
- 3) Price variation clause relating to exchange rate.
- 4) Price variation clause relating to transport contracts for variation in diesel price.

9.3.1.1 Price variation clause relating to material and labour -

$$P1 = P0 (a + b L1/L0 + c M1/M0) - P0$$

Where P1 = adjustment amount payable to the contractor

P0 = the contract price (base price)

a = fixed element representing profit and overload in contract price

b = estimated percentage of labour component

c = estimated percentage of material component

L0 = labour indicates applicable to appropriate industry on the base date

L1 = labour indicates applicable to the date of adjustment

M0 = material indicates for raw material on base date

M1 = material indicates on date of adjustment

The sum of three coefficients a, b & c shall be = 1

Conditions applicable to price adjustments

- 1) Base date shall be the date on which 'the indicates' applicable as indicated in the tender.
- 2) Date of adjustment shall be the mid point of manufacture.

- 3) Price adjustment will be applied only if the resulting increase or decrease is more than 2% of the contract value.
- 4) No price increase is allowed beyond original delivery period unless the delay is attributable to the buyer.
- 5) There should be a ceiling for the maximum of PVC allowed.
- 6) No price adjustment shall be payable on the portion of the contract price paid to the contractor as an advance payment.
- 7) The price variation clause and its implication should be got vetted by IFA.
- 8) Base price of raw material should be that of channelising agency, wherever applicable for the purpose of price variation clause.

9.3.1.2 Price Variation Clause relating to Raw Material

Price variation clause for cables:

In case of variation in the price of aluminium is desired, the price variation shall be allowed in the manner indicated below:-

- 1) Price of finished product quoted shall be based on the following price of E.C. Grade Aluminium Ingots.

EC Grade Aluminium Ingots of minimum 99.6% purity (IS 4076/1978)	Rs. _____ per MT exclusive of excise duty (Ex-Nalco Plant/ indices as agreed between buyer & seller.
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- 2) Price to be taken into account for working the escalation/de-escalation will be as declared by the Nalco/indices as agreed between buyer & seller) in case of EC Grade Aluminium Ingots.
- 3) The price variation claim shall be worked with reference to the quantity of EC Grade Aluminium as given below.
- 4) For any lot supplied, price adjustment will be computed on the basis of actual price variation as declared by Nalco (or the documents on which the price variation is to be based as agreed between buyer and seller). The price taken for the purpose of working out adjustment will consist of basic price only as indicated above prevailing on the date 30 days prior to the date on which the said lot was offered for inspection as indicated in the inspection note. For determination of the quantum escalation per km of cable the formula indicated below shall be taken:

All relevant documents shall be submitted by the firm in this connection for verification of their claim.

- 5) For every raise or fall of Rs. 10 per MT in the basic price of Aluminium Ingot, the amount of adjustment in price per KM of cables will arise. No adjustment in contract price will be made if the variation up or down the aforesaid basic rate is less than Rs. 10 per MT.

Note: No escalation claim less than Rs. 100 shall be entertained for entire contract and not for Unit prices. For every raise or fall of Rs. 10 per MT in the price of EC Grade Aluminium amount of adjustment in the price shall be as follows :-

Sr.No.	Size of Cable	Net wt. of Al. in the finished cable	Amount of adjustment In Cable (Rs._____ per KM)
1	2	3	4

9.3.1.3 Metal price variation clause for ACC & ACSR Conductors

In case variation in price of steel/aluminium is desired the price variation shall be allowed in the manner indicated below:

- 1) Price of finished product quoted should be based on the following prices EC Aluminium Ingots and steel
 - a) EC Grade Aluminium Ingots of minimum 99.6% purity IS 4076/1978 Rs._____per MT exclusive of Excise duty (Ex-Nalco Plant/ indices as agreed between buyer & seller).
 - b) Steel (tested STD in coil IS-226) (High Carbon) 8.0 mm basic price. Rs.____per MT exclusive of Excise Duty.
- 2) Price to be taken into account for working the escalation/de-escalation will be as notified by Nalco in case of EC Aluminium Ingots (or the documents on which the price variation is to be based as agreed between buyer and seller) and the price of Steel as indicated in the document which has been mutually agreed for working out this price.
- 3) The price variation claim shall be worked out with reference to the quantity of EC Aluminium and steel as listed below.

- 4) For any lot supply, price adjustment will be computed on the basis of actual price variation as per the documents on which the indices to be taken as agreed between the buyer and seller.

The price taken for purpose of working out adjustment will consist of basic price only as indicated above, prevailing on the date 30 days prior to the date on which the said lot was offered for inspection. For determining the quantum of escalation per km the formula indicated below shall be taken. All relevant documents shall be submitted by the firm in this connection for verification of claim.

- 5) For every raise or fall of Rs. 10 per MT in the basic price of Aluminium Ingot/Steel the amount of adjustment in price per km will arise. No adjustment in contract price will be made if the variation up or down the aforesaid basic price of material is less than Rs. 10 per MT.

NOTE: It should be noted that no escalation claim less than Rs. 100 shall be entertained for entire contract and not for Unit prices.

Rs. 10 per MT applies separately to EC Aluminium ingot/ steel and /or collectively.

Sr. No.	Size	Net wt. of aluminium in Kg per KM	Amount of adjustment in conductors (Rs. ___per KM)	Net wt. of steel in Kg per KM	Amount of adjustment in conductor (Rs. ___per km)
1	2	3	4	5	6

For every raise or fall of Rs. 10 per MT in the price of EC Grade Aluminium and steel, as mentioned above, the amount of adjustment in the price per km will be as follows:-

Sr. No.	Size	Net wt. of aluminium in Kg per KM	Amount of adjustment in conductors (Rs. _____ per KM)	Net wt. of steel in Kg per KM	Amount of adjustment in conductor (Rs. _____ per KM)
1	2	3	4	5	6

9.3.1.4 Price Variation Clause relating to Transport Contracts for Variation in Diesel Price:

The price variation is applicable in case of major change in the price of diesel due to government notification either upward or downward.

$$\text{Actual increase (in Rs.)} = \frac{\text{Total distance} \times \text{difference in price of diesel}}{\text{Average Mileage}}$$

“Total distance” means the actual distance between the places from which the material is transported to the destination place.

“Average Mileage” means the distance to be covered by the vehicle per litre of diesel.

Difference in price = (The new diesel price - original diesel price as indicated in NIT).

It should be clearly indicated in the NIT the applicable distance between the places from which the material is transported to the destination place.

The average mileage for the concerned vehicle used for transportation of the materials should be indicated in the NIT.

A change in the diesel price exceeding Rs. 1 per litre shall be deemed to be major change and only in respect of major change shall price variation be considered. This should also be indicated in NIT.

The present price of diesel beyond which the variation will be considered should also be part of NIT.

9.3.1.5 Exchange Rate Variation (ERV)

9.3.1.5.1 In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated by the Purchase Organization in consultation with its Finance Wing, as needed, and incorporated in the Tender Enquiry Document. In that clause, the tenderers are to be asked to indicate import content(s) and the currency (ies) used for calculating the value of import content(s) in their total quoted price, which (i.e. the total quoted price) will be in Indian Rupees. The tenderers may be asked to indicate the Base Exchange Rate for each such foreign currency used for converting the FE content into Indian Rupees and the extent of foreign exchange rate variation risk they are willing to bear.

9.3.1.5.2 To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders (the Purchase Organization is to decide and adopt a particular suitable date). The variation may be allowed between the above base date and the date of remittance to the foreign principal/mid-point of manufacture of the foreign component/.....(the Purchase Organization is to choose the appropriate date). The applicable exchange rates as above will be

according to the TT Selling Rates of Exchange as quoted by authorized Exchange Bankers approved by the Reserve Bank of India on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus _____ percent. (The Purchase Organization is to decide the figure), any increase or decrease in the Customs Duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case Delivery period is refixed/extended, ERV will not be admissible, if this is due to default of the supplier. The Purchase Organization may formulate an appropriate ERV clause on similar lines as above in consultation with their Finance Wing.”

Exchange Rate Variation Clause to be Stipulated in the Contract :-

- 1) The prices are based on the rate of exchange of the foreign currency equivalent to the Indian rupee according to the TT selling rate of exchange as quoted by authorised exchange bankers approved by the RBI and ruling on _____ (the date of firm's tender is to be inserted here).
- 2) In the case of variation by more than 1% up or down between the base rate and the date of remittance to foreign principal, the contract price (limited only to that portion) of the FOR prices that are required to be remitted according to the contractual term to the firm's foreign principal in foreign currency will be subject to adjustment (up or down) in accordance with the TT selling rate of exchange, as quoted by any authorised exchange bankers ruling on the date payment is made by the firm to their principal abroad which should not be beyond two weeks from the date of receipt of material. No variation in prices will be allowed if variation in rate of exchange remains within the limit of 1% plus or minus.
- 3) Copies of import order placed on supplier.
- 4) Invoice of supplier for the relevant import order.
- 5) The documents to be submitted for claiming ERV are:-
 - (i) A bill of ERV claims enclosing working sheet.
 - (ii) Banker's Certificate/debit advice detailing FE paid, date of remittance and exchange rate.

CHAPTER - 10

ESSENTIAL POINTS FOR CONSIDERATION WHILE RAISING AN INDENT

10.1 Guidelines

The following are the general requirements to be considered by the indenting group while raising and approving the indent: -

10.2 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 number). All necessary details of the item including quantity, denomination, estimated price, specification, scope of supply, place of delivery, date by which delivery required, inspection authority, head of account, certification for availability of fund and the delegation order details under which powers have been delegated to the authority who has approved the indent are to be indicated in the indent to enable prompt procurement of the item.

10.3 Availability of the material with Stores

Normally before raising an indent, the indenter has to check with the Stores concerned regarding availability of the material and if available the status of sparing this item against his requirement is to be confirmed. Similarly, the statement containing the details of surplus stock circulated by various units of the department is also to be verified for transfer of the material instead of raising an indent for fresh procurement. Stores Officers may consider keeping the data relating to the details of the items in stock which can be spared and details of the surplus items circulated by other units in the Stores server which can be accessed through the net by the indenting group for verification before raising a fresh indent. A statement to the effect that the check has been made with the Stores data and its outcome may be indicated in the indent.

10.4 Certification of funds availability and Head of A/c details

10.4.1 Certificate furnished in the indent that funds are available for procurement of this item and also the detailed head of account indicated, authorize the competent authority in the purchase to enter into a liability/commitment for incurring expenditure on behalf of the President of India. In respect of the indent for which advance action is being taken to save time in anticipation of financial sanction and/or budget provision, the indenter should indicate in the indent in red ink or affix a rubber stamp stating “to be processed in anticipation of financial sanction/budget provision”, so that the indent will be processed. However commitment will be entered only after

obtaining confirmation from the competent authority who has approved the indent regarding financial sanction/budget provision.

10.4.2 In case of increase or likely increase of the expenditure over and above the sanctioned amount, the concerned indenting group should apply for revised financial sanction covering the increase or likely increase duly approved by the competent authority before payment is made for the increase in the expenditure.

10.5 Suggestion of Source of Supply

Possible sources of supply in case of new item should be indicated/suggested by the indenter under his signature duly countersigned by the authority competent to approve the indent. Previous purchase reference if available should also be indicated in the indent.

10.6 Estimated Cost

10.6.1 The tendering action revolves around the estimated cost. Hence adequate care has to be taken before arriving at the estimated cost. The CVC has repeatedly pointed out that there cannot be substantial variation between the estimated cost and the procurement cost. All the estimated costs should be supported with a back up paper in the group to show how the estimate has been arrived. The supporting document should consist of either break up of working out the estimate cost or previous purchase order reference properly escalated giving justifications for the basis of escalation so as to bring it to the present level or the budgetary price recently obtained from the probable vendors, if any, with justification about its broad reasonability. The estimated cost should include present prevailing basic cost, packing and forwarding charges, duties and taxes, safe transportation charges to the destination and other charges like training, inspection, etc. In case of estimated cost for imported item the foreign exchange rate variation (for past data in foreign currency, escalation as prevalent abroad should be taken in foreign currency and subsequently converted to rupee at present level) and customs duty, etc. should be kept in view. Proper care should be taken while working out the estimate, as this will have a bearing at the purchase recommendation stage about the reasonableness of the price. Future variation in FE rate from the date of indent need not be taken into account while working out the estimated cost of an item, all cost elements thereof and market condition such as inflation, recession, competition, etc. should be taken into consideration so that the estimated cost so worked out is comparable with the market price with the given specification/quality of the product. The meticulous working out of the estimated cost of an item will reduce the variation between the estimated cost and the tendered cost.

10.6.2 In case of products, which have been supplied in the past the actual cost of production of the completed contract or supplies may be obtained in addition to the price quotation. The current cost of production may be assessed keeping in view the actual cost of production duly updated to current rates.

10.6.3 Last Purchase Price (LPP) of more than three years vintage is not taken as a real cost for comparison. However, such last purchase price should be used as an input for assessing the rate. LPP should pertain to a past successfully executed order of similar magnitude and scope of supply. Factors like basket price and bulk discount offered need to be taken into account while

using LPP as a scale for comparing prices. Price variation clause, if any, and final cost paid by government in respect of last purchase to which LPP pertains to be considered. Factors like items supplied against LPP being of current production or ex-stock supply need to be taken into account. Market condition and extraneous factors like restarting production lines due to obsolescence may also have to be considered.

10.6.4 The break up of the material cost into the imported and indigenous material.

10.6.5 In case of imported material, break up of foreign exchange content, foreign currencies involved, exchange rate adopted and other costs to be obtained. In respect of direct material, various types of material used, their spec(s), unit rates and usage factor and credit for scrap arising should be assessed by a technical expert.

10.6.6 The man-hour rate and total standard man-hours should be assessed.

10.6.7 Cost break up wherever possible should be obtained.

10.6.8 In case where advance or progressive payments are likely to be paid, the advantage of advance in terms of lower cost of production should be considered.

10.6.9 Where the order is for large quantity, the benefit of economy of scale due to higher capacity utilization and reduction of overheads, particularly fixed overheads, should be taken into account.

10.6.10 In regard to price indices of indigenous item, website of the Ministry of Industry www.eaindustry.nic.in should be accessed for the latest indices/trends. For metals and other minerals www.mmr.online.com, www.tradintelligence.com and www.cmie.com can be accessed. The monthly report of CMIE (Centre for Monitoring Indian Economy) PROWESS package of CMIE giving updates on performance of latest Indian companies, RBI monthly bulletin, economic survey and its appendix containing statistical table are excellent reference material for market trends. The world economic outlook a monthly report from IMF, gives inputs on price trends of different countries. LME (London Metal Exchange) gives price trends of non-ferrous details, which often show volatile trends. Indices of electronic items often show lower trends. Instructions issued by Ministry of Finance on its website www.finmin.nic.in should be assessed as also CVC's site www.cvc.nic.in.

10.7 Specification

10.7.1 Specification should be broad based and not for a specific product. The specification so worked out should meet the basic needs of the Project without adding non-essential features that may result in unwarranted expenditure. In order to avoid procurement of stores conforming to stock samples or trade pattern, efforts should be made to the extent possible to standardise the specifications, to Indian Standards or British Standards. Some of the items must be manufactured as per or conforming to stringent specifications. The specifications are the detailed qualitative requirements of the item being procured and should indicate the material compositions, physical, dimensional and performance parameters, tolerance if any, manufacturing process where applicable, test schedule, preservation and packing, etc. Specifications should aim at procuring the latest technology and avoid procurement of obsolete

goods. Specifications should have emphasis on factors like efficiency, optimum fuel/ power consumption, use of environmental friendly materials, reduce noise and emission levels, low maintenance cost, ect.. Further specifications should not be too restrictive as the aim should be to attract reasonable number of competitive tenders. The specifications should also take care of the mandatory and statutory regulations, if any, applicable for the goods to be purchased. Where no widely known standards exist, the specifications shall be drawn in a generalized and broad based manner to obtain competitive bids from different sources. Except in the case of proprietary purchase from a selected single source, the specifications must not contain any brand name, catalogue number or specifications of a particular make and if the same is unavoidable due to some compelling reasons, it should be followed by the word “or equivalent”. The specifications and technical details should be expressed with proper clarity without any ambiguity or double meaning. Wherever necessary, the written specifications should be supplemented with drawings for additional clarity, etc.

10.7.2 Deciding tenders on the basis of tendered sample is too subjective. Therefore unless specifically decided due to some reasons duly recorded with the approval of the competent authority, tender sample clause should not be incorporated in the specifications. If necessary suitable stipulation for submission of advance sample (before starting bulk production) by the successful bidder may be incorporated in the specifications.

10.7.3 There are standard industrial specifications like IS, BS, etc. Whenever these specifications meet our requirements it is better the standard specifications are followed for tendering to get competitive bidding.

10.7.4 There are items for which standard specifications are not available. In such cases, the indenter must indicate the general parameters, normally the dimensional and performance parameters to enable procurement and inspection. Such specifications should be broad enough to permit wider participation by the suppliers and should not be restricted so that enough competition is developed.

10.7.5 At times certain items are manufactured as import substitute items and some of the items are manufactured as reverse engineering. In such cases, the indenting group with a consulting firm and/or the manufacturer prepares the specifications including the drawings and other details. Such specifications should be available with the indenting group and QA agency so as to ensure conformity of the product to the required quality standards.

10.7.6 The quantity to be ordered should not result in over stocking.

10.7.7 Many of the items are declared as common user items freely available in the market. However, as the quality of products of various manufacturers vary widely, such items should be procured from reputed manufacturers capable of meeting quality standards of the items for department use.

10.7.8 Technical particulars to be specified in the indent / tender document shall include the following to the extent applicable for a particular purchase.

1. Scope of supply including quantity required and also the end use of the required goods.

2. Specifications, technical parameters and product requirements (expressing the requirement in terms of functional characteristics)
3. Drawings
4. Requirement of BSI make, wherever applicable
5. Requirement of advance sample if any, at post contract stage before bulk production
6. Special requirements of Packing and Making
7. Inspection procedures for the goods ordered and criteria of conformity
8. Requirements of special tests if any.
9. Requirement of type test certificate if any.
10. Requirements of type approval for compliance of statutory requirements with reference to pollution, emission, noise etc.
11. Training, technical support, after sales service and annual maintenance contract requirements if any
12. Warranty requirements
13. If the tenders are to be evaluated taking into account the shelf life of the equipment, operational cost or any other factor, the details of the same and the loading factor for comparative purpose.
14. Qualification criteria of the tenderers.
15. Any other aspects particular to the goods in question.

The official/ authority formulating the specifications should ensure and also certify that the specifications and the allied technical details are complete and correct to the users requirements fully.

10.8 Metric System

Under the Standards of Weights and Measures Act 1956, the metric system of weights and measures was introduced. Accordingly no contract should be concluded in FPS system in respect of the description of the stores, drawings, specifications or rate per unit since such an action would contradict the provisions of law and the resultant contract would be liable to be held as void. The NIT should be issued indicating metric system only. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated.

10.9 Free Issue Material

In case the indentor proposes to issue certain materials/components, etc. as free issue material for fabrication/manufacture of the stores being ordered, the indent should contain the details of the free issue materials to be issued, quantity against each item, value of the material, any other special precaution to be taken by the supplier during transportation and/or during the material remaining under the custody of the contractor for preservation and safety of the material. The maximum percentage of wastage admissible against the work should be indicated in the indent. The details of the balance free issue material/scrap to be returned and the free issue material accounting to be submitted should be indicated in the indent to enable the Purchase Section to include the same in the NIT.

10.10 Delivery Schedule

The indent should contain the realistic delivery time within which the material is to be delivered. This should be arrived after taking into account the project schedule, the time by which the material is required so as to avoid slippage of the target and also taking into account the minimum time required for fabrication/manufacture of the equipment and also the status of availability of raw material in the market, etc.

10.11 Place of Delivery

The indent should contain the place at which the material is required to be delivered and the consignee and his address to enable the purchase section to add the same in the NIT.

10.12 Other details

10.12.1 Any training required either at the premises of the supplier or at the buyer's site has to be brought out clearly in the indent including the number of persons to be trained and the duration.

10.12.2 In case part/staggered supply is acceptable, the same has to be indicated in the indent, as it should be part of NIT.

10.12.3 Quality Assurance criteria for inspection should be indicated in the indent which will form part of NIT/purchase order.

10.12.4 No commercial terms and conditions should form part of the technical specifications, as standard commercial terms & conditions form part of the DPS tender form. Any commercial conditions put in the specifications by the user may be conflicting with those of the DPS tender form and likely to create confusion in the minds of prospective bidders. The bidders may take advantage of the same after submission of tender. Special terms & conditions apart from general terms & conditions to be considered for the item has to be brought out separately to include it in the NIT.

10.12.5 In case of proprietary indents, suitable technical justifications need to be furnished

duly approved by the competent authority. In case of proprietary indents with the estimated value exceeding Rs. 2.00 crore, prior approval of Member Finance needs to be obtained and copy of such approval should be attached to the indent while forwarding to DPS.

10.12.6 Adequate number of tender documents containing detailed specifications and drawings (if any) may be provided along with the indent to avoid sending back the vendors due to non-availability of tender documents and also to avoid extension of due dates, etc. A compact disc containing the tender documents in the suitable format as called for by the Purchase Unit should be submitted along with indent to enable the Purchase Unit to publish the same in the website, so that the interested eligible vendors can download the tender document and submit the same. Wherever it is decided that the tender documents need not be published in the website, approval of Head of the Department should be sent along with the indent.

10.12.7 In case indents are proposed to be processed on repeat order basis, it should be ensured that all the conditions for placement of repeat order are fulfilled and the details of the earlier order are to be furnished.

10.12.8 Any other specific requirements which will have a bearing on the costs have to be brought out clearly in the indent so that the same become part of NIT.

10.12.9 The indent should not be bifurcated to avoid obtaining approval of higher authorities or to bypass certain procedures to procure the material early. The requirements should normally be clubbed together to obtain competitive offers. However items of dissimilar nature to be procured from different categories of suppliers should not be indented together in one indent.

10.12.10 There are occasions when items are to be procured in the absence of detailed specifications or drawings or large quantity has to be fabricated from free issue materials, etc. In such circumstances before bulk manufacturing is taken up a sample has to be made and got approved so as to manufacture the rest of the quantities as per sample approved. In such cases a provision has to be made in the indent for submission of sample for approval before bulk supply. Similarly when an item is being manufactured for the first time, the necessity of making a mock up or proto type may arise. In such circumstances the indent should contain a provision for the same, which will become a part of NIT.

10.12.11 Indent for purchase of motor vehicles i.e. car, jeep, van, ambulance, motor cycle, bus, truck, etc. should be forwarded to DPS only after obtaining the administrative approval of the competent authority in DAE/MF for purchase of motor vehicle.

10.12.12 In respect of items declared as common stock items by the Unit, indents are not to be raised for such items by the Group and these items are to be drawn from the Stores. Respective Stores Officers will raise the indents and procure these items as per the procedure laid down for purchase of common stock items.

10.12.13 In order to finalise Two Part tender contracts in time bound schedule, all efforts should be made to give due thrust to the technical specification and also as far as possible the various options in specification should be avoided while preparing tender documents.

10.12.14 In addition series of questionnaire after opening of Part I (techno-commercial bid) should be avoided. This will ensure the minimum clarification after opening of Part I and will

speed up the procurement action and placement of order within the validity time.

10.13 Pre-Bid Meeting

In case of indents of high value/complicated technology equipment/two part tendering where pre-bid meeting or site visit is included in the indent, it should be ensured that the same is brought out very explicitly on the body of the indent or on the first page of the specifications prominently to avoid it being skipped from the notice of the Purchase Unit to include it in the NIT.

CHAPTER - 11

MODES OF PURCHASE

11.1 Fundamental principles of public buying

11.1.1 Every authority delegated with financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

11.1.2 The procedure to be followed must conform to the following yardstick:-

- 1) The specifications in terms of quality, type, etc. and also quantity of goods to be procured should be clearly spelt out keeping in view the specific needs of the Project/Unit.
- 2) The specifications should not include superfluous and non-essential features to avoid unwarranted expenditure.
- 3) The specifications should meet the basic needs of the Projects/Units.
- 4) Care should also be taken to avoid purchasing of quantity in excess of requirement to avoid inventory carrying costs and blocking of government money.
- 5) Offers should be invited following a fair, transparent and reasonable procedure.
- 6) The competent authority should be satisfied that the selected offers adequately meet the requirements in all respects.
- 7) The approving authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.
- 8) At each stage of procurement the competent authority must place on record in precise terms the considerations which weighed with it while taking the procurement decision.

11.2 Decentralisation

DAE has decentralized decision making process so as to enhance efficiency and expedite decision making. The procurement function has also been decentralized and the entire procurement powers of DAE have been delegated to the Heads of the Department. It must be

ensured that all the laid down procedures are meticulously followed in government purchases. The financial powers are decentralized to enable effective use of resources by the actual user. These powers are to be used within the framework of the laid down procedures/financial cannons. The powers so delegated also imply accountability and the competent authority must ensure that financial propriety and probity are observed in all cases.

11.3 Capital Expenditure

As per Rule 90 of GFR 2005, expenditure of a capital nature shall be an expenditure incurred with the object of acquiring tangible assets of permanent nature (for use in the Project/Unit and not for sale in the ordinary course of business) or enhancing the utility of existing assets. It should also bear charges for the first construction and equipment of a project as well as charges for immediate maintenance of the work while not yet open for service.

11.4 Revenue Expenditure

As per Rule 91 of GFR 2005, revenue should bear all subsequent charges for maintenance and all working expenses, these includes all expenditure on working and upkeep of the project and also on such renewal and replacement and such additions, improvements or extensions, as under rules made by the government are debit to the revenue account. The revenue procurement, therefore, is for items and equipments including replacement equipments (functionally similar)/assemblies/sub-assemblies and components to maintain and operate already sanctioned assets in the service, the necessity of which have been established and accepted by the government for revenue procurement.

11.5 Indigenous Procurement

Procurements from indigenous sources are called indigenous procurement. It is the policy of the government to encourage indigenization, particularly in the field of nuclear activities to achieve self reliance. Hence indigenous firms should be given all supports to produce and supply quality goods conforming to specifications. Proper loading criteria of all taxes, duties and other expenses involved in procurement of an item need to be applied to provide level playing field to the indigenous manufacturers. Payment against indigenous procurement is normally made in Indian rupee terms.

11.6 Foreign Procurement (Import)

Equipment/materials/instruments/components which are of foreign origin and items required to maintain and operate these equipments need to be procured from suppliers abroad in addition to certain fresh/replacement capital items. In such procurement, international trade practices are followed and sometimes our standard terms & conditions are not acceptable to certain suppliers. Payment against foreign procurement is made in foreign currency through a Letter of Credit (LC) or Bank Transfer (BT). A number of restrictions are imposed by many foreign governments in respect of supply to the Units of Department of Atomic Energy. All procurement Officers need to be aware of these provisions to obviate the difficulties in contracting and final delivery.

11.7 Mode of Purchase

11.7.1 As per Purchase Procedure of DAE, the following modes of purchase are in vogue:

11.7.2 On receipt of an indent in the Purchase Unit, the Officer concerned, after satisfying that the indent is complete in all respects, shall decide the mode of purchase and invite tenders by adopting any one of the following modes of purchase taking into account the history sheet and such other relevant data as may be available in respect of the item:-

(a) Cash Purchase (b) Telephonic Quotation (c) Single Tender (d) Limited Tender (e) Dispensation of Public Tender (f) Repeat Order (g) Emergency/Shutdown Requirement (h) Direct Purchase by Projects/Units (i) Ab-initio Negotiation (j) Open Tender (k) Two Part Tender (l) Global Tender (m) Supply Order against R/C.

11.7.3 In deciding the mode of purchase in respect of the imported items, the FOB value shall be the criterion for applying the prescribed financial limit. The Purchase Units of DPS may register as many suppliers as possible who are in a position to meet the requirements of the Projects/Units of the Department of Atomic Energy.

11.8 Purchase of goods without quotation (CASH PURCHASE)

11.8.1 Purchase of goods upto a value of Rs. 5000/- (Rupees Five Thousand) on each occasion may be made without inviting quotation or bids on the basis of a certificate to be recorded by the competent authority in the following format:-

“I _____ am personally satisfied that these goods purchased are of the requisite quality and specifications and have been purchased from a reliable supplier at a reasonable price.”

11.8.2 This procurement can be operated by the Units keeping an imprest amount depending upon the number of purchases being made in a month. Regarding sanction and maintenance of imprest the provisions of Rule 291 of GFR 2005 & para 10-12 of the Civil Accounts Manual Volume-I may be followed.

11.8.3 In the following type of cases, even though the value does not exceed rupees five thousand (Rs. 5000/-) regular purchase orders are to be placed:-

- 1) Foreign purchase.
- 2) Purchase of materials from upcountry firms.
- 3) When the items to be purchased are required to be dispatched to outstation.
- 4) Where items are to be manufactured against an order or against drawings and are not readily available in the market.
- 5) Where the nature of transaction makes it necessary to issue regular purchase order.

6) Where the sale procedure of the supplier does not provide for cash sale.

11.9 Telephonic Quotation (LPS)

11.9.1 For indents whose estimated value is beyond Rs. 5,000/- and upto Rs. 10,000/- quotations are to be invited from a minimum of three firms (unless the source of supply is less than the minimum number).

11.9.2 For estimated value above Rs. 10,000/- and upto Rs. 50,000/- quotations are to be obtained by fax by the Local Purchase Section. The decision for purchase above Rs. 10,000/- and upto Rs. 50,000/- is approved by the Purchase Officer/Regional Director based on the recommendation of a committee consisting of Assistant Purchase Officer and Finance & Accounts Member/Representative.

11.9.3 Normally indents processed in LPS should be restricted to off the shelf and readily available standard items for which Purchase Officer will take a decision for finalization of purchase based on the recommendation of the Committee without referring the file to the indenting officer for technical assessment/inspection of the material. Further the indents to be processed through LPS will be raised for a specific product by giving two or three brand names/model numbers which are technically at par.

11.9.4 Detailed procedure to be followed by LPS is as under:-

11.9.4.1 In order to maintain the record of enquiry being sent/quotations received, it has been decided that instead of telephone enquiry, fax mode of enquiry will be adopted. Transmission reports of the enquiry sent should be maintained in the file for record. Efforts to be made to develop a software programme whereby the entire operation from issue of tender (on rotation basis from the vendors list) to receipt of quotation (offers can be received only upto a particular date and time and can be opened and downloaded at the particular date and time indicated for receipt and opening of the tender) is system controlled. This entire operation should be controlled by the system without any manual intervention. This will help to achieve transparency, equal opportunity to the bidders and competitive bidding.

11.9.4.2 Fax enquiries should be sent to a minimum of five parties. The enquiries should indicate the specific fax number to which the party should fax their quotation. The enquiry should also indicate a specific due date and time i.e. 2 days from the fax enquiry and also should specify the delivery date for receipt of material after placement of order i.e. within five (5) days after placement of fax order.

11.9.4.3 Only reliable stockiest/dealers/suppliers who are in a position to arrange immediate supply of quality product should be contacted by rotation.

11.9.4.4 Quotations received by fax will be scrutinized by appropriate authority for placement of order.

11.9.4.5 Offers with delivery period of not more than five days from the date of acceptance of their offer only shall be accepted for placement of purchase order.

11.9.4.6 Offers with longer delivery period, any other unusual conditions and with the requirement of ED exemption certificate, CD exemption certificate, etc. can be ignored, except where the requirements is not readily available in the market or from the dealers/stockiest and same is required to be obtained only from the manufacturer. Such cases will be processed following normal purchase procedure i.e. by LT/SE, etc., as the case may be.

11.9.4.7 Close monitoring and proper follow up shall be done to ensure that supplies are made in time, regularized, payment released and the file is closed in all respects.

11.9.4.8 Delivery date shall invariably be incorporated in all the fax orders..

11.9.4.9 Wherever advance payments are made to the supplier, it is the responsibility of the officers concerned to keep a close watch on such cases and to ensure that supplies are received, accepted and advance payments made are regularized.

11.9.4.10 Purchase Officer or the Officer dealing with the Local Purchase shall maintain the accounts for the imprest amount. The cash book shall be closed on day-to-day basis and the cash balance vouchers for which payment made have to be tallied with the total imprest amount and should be certified by the Officer who is maintaining the imprest amount.

11.9.4.11 Materials against local purchases should be made available to the indenter within fifteen days of receipt of indent.

11.9.4.12 All purchases under Local/Cash Purchase Cell shall invariably be made from the suppliers who are registered with Sales Tax Department and possess the valid Sales Tax registration certificate number.

11.10 Single Tender

11.10.1 A single tender may be invited when an item or items of stores covered by an indent is available only from a single source, example - where the stores are spare parts, attachments, accessories, etc. required for an existing equipment or item of stores are the monopoly product of a single manufacturer, etc.

11.10.2 When an item or items of stores covered by an indent is of a proprietary nature and is recommended to be purchased from a single source with sufficient technical reasons for choice of the proprietary make with the approval of competent authority.

11.10.3 The indent should contain the technical justifications and certificate for processing the indent on a single tender basis and approved by the competent authority who have been delegated the powers to approve the indents on single tender basis for that estimated value.

11.10.4 In case where the estimated value of an indent for proprietary stores exceeds rupees two crores (Rs. 2 crores), a suitable proposal shall be submitted by the Projects/Units to DAE, furnishing justification for choice of the proprietary make of the item proposed to be purchased and get the approval of DAE/MF as is appropriate. The Projects/Units shall raise such indents on the Purchase only after the proposal for purchase of the item on single tender basis is approved by DAE/MF. In such cases the Projects/Units shall endorse a certificate on the indents itself to the

effect that prior consent of the DAE/MF has been obtained for indenting proprietary articles of stores and furnish the relevant authority number and date on the indent.

11.10.5 Single enquiry bestows monopoly and obviates competition. Hence approval for processing the indents on single enquiry must be granted only after careful consideration of all factors like fitness, availability, standardization and value for money. Many original equipment manufacturers do not manufacture assemblies, sub-assemblies and components but outsource these items. Hence such items may be available at cheaper prices with the actual manufacturers. The procurement Officers must therefore keep abreast with proper source knowledge and procure them from the right source to protect the interest of the government. However spares have to be sourced from OEM or OEM approved/recommended manufacturer only in order to make the OEM responsible for malfunctioning of the main equipment in which the spares have been fitted.

11.10.6 In case of Two Part Tender/Public Tender/Limited Tender resulted in Single Effective Tender, the same will be treated on par with Single Tender and the procedure to be followed for placement of order is as applicable for Single Tender. In such conditions, the Stores & Equipment Committee/SPC has to be satisfied that no more vendor could have participated and also the reasonableness of price. If the value is less than the limit of S&EC/SPC, the Group Director will approve the proposal after satisfying the above conditions. Indentor should be sensitized on this issue to carry out a thorough market survey before raising an indent/submission of proposal for approval.

11.10.7 If at the tender evaluation stage, only one vendor is found complying with all the specification parameters, then the request for proposal would be retracted with the approval of the competent authority and a fresh request for proposal issued by suitably reformulating the specification. This should be one of the options for the competent authority to examine before deciding on the tender.

11.11 Limited Tender

11.11.1 Purchase shall normally be made by limited tender in cases where the estimated value of an item or items of similar nature covered by an indent to be purchased at a time exceeds Rs. 50,000/- but does not exceed Rs. 25.00 lakhs. It shall be ensured that the field is covered adequately by contacting as many suppliers as possible.

11.11.2 Where the estimated cost of the item to be purchased is above Rs. 50,000/- and upto Rs. 2.00 lakhs, tender enquiry should be issued to at least five firms in the field.

11.11.3 Where the estimated cost of the item exceeds Rs. 2.00 lakhs, tender enquiry should be issued to a minimum of ten firms unless the source of supply is less than the minimum specified number.

11.11.4 Enquiries/bidding documents should be sent directly by speed post/registered post/courier/e-mail to the firms on the mailing list to be maintained upto date by DPS and the list will include:-

- 1) Suppliers registered with DGS&D/NSIC/ KVIC/DPS.

- 2) Past suppliers who have satisfactorily executed the contracts.
- 3) Likely suppliers for this item as indicated by the indenter.
- 4) Firms who are known to have the capacity to supply the stores.
- 5) Firms listed in the Hand Book of Indigenous Manufacturers published by the Development Wing of Ministry of Industry, Govt. of India.
- 6) Selection of suppliers for sending invitation to tenders will be made on rotation except in the case of a few proven core suppliers who can be invariably contacted to ensure timely supplies.

11.11.5 Further, web-based publicity should be given for limited tender. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.

11.11.6 Central Vigilance Commission vide Office Order No. 43/7/04 dated 2nd July 2004 indicated that in many organizations goods, services and works which as per laid down norms are to be procured/executed through open tender system, many times, due to urgency are done through short term tenders without resorting to wide publicity in newspaper because of time constraint. In all such cases short term tenders (by whatever name it is called) etc. should also be put on the website of the Department as it does not involve any additional time or cost.

11.11.7 Regarding applicability of the above instructions to the limited tender, where the number of suppliers are known to be small and as per the laid down norms, limited tender system is to be resorted to, through a system of approved/registered vendor, the following clarification is furnished:-

11.11.8 The Commission desires that in all such cases there should be a wide publicity through the website as well as through other traditional channels at regular intervals for registration of suppliers. All the required proforma for registration, the prequalification criteria, etc. should be always available on the website of the organization and it should be possible to download the same and apply to the organization. There should not be any entry barriers or long gaps in the registration of suppliers. The interval on which publicity is to be given through website and traditional means can be decided by each organization based on their own requirements and developments in the market condition. It is expected that this should be done at least once a year for upgrading the list of registered vendors.

11.11.9 As per CVC guidelines the concerned organization should give web based publicity for limited tender also except for items of minor value. If the organization desires to limit the access of the limited tender document to only registered suppliers they can limit the access by issuing pass words to all registered suppliers, but it should be ensured that pass word access is given to all the registered suppliers and not deny it to any of the registered suppliers. Any denial of the pass word to a registered supplier will lead to presumption of malafide intention on the part of tendering authority. DPS can skip publishing the tenders in the website provided the indenting Group submits a request with the approval of the Head of the Department recording the reasons for such a request.

As per para 6.13 of the Manual on Policies and Procedures for purchase of goods “web site publicity should also be given for Limited Tenders. However, the Ministry/Department can limit the access of the tender documents to only selected prospective suppliers by issuing them password to have access to the document”.

11.11.10 Invitation to tender should normally be issued only to the suppliers registered with the DPS, DGS&D, NSIC or those listed in the hand book of indigenous manufacturers published by the Development Wing of the Ministry of Industry, Govt. of India. Selection of suppliers for sending invitation to tenders will be made on rotation except in the case of a few proven core suppliers who can be invariably contacted to ensure timely supplies.

11.11.11 In case it is proposed to issue enquiries to unregistered firms which will normally be based on the recommendation of the projects/units in respect of some specialized requirements, where the field is limited the firms responded against our public tenders, the firms who have supplied similar items against our previous orders and the reputed suppliers who do not get themselves registered with DPS, prior approval of Director/Ex-Officio Director, P&S or the Officers who are exercising such powers on behalf of the Director, P&S/Ex-Officio Director, P&S shall be obtained. For imported stores however the respective foreign manufacturers/suppliers or their Indian agents shall be contacted. The powers at present authorised by the Director, P&S are as follows:-

Purchase Officer	-	Rs. 7.00 lakhs
Dy. Director	-	Rs. 20.00 lakhs
Regional Director/Jt. Director	-	Rs. 25.00 lakhs

11.11.12 While approving unregistered suppliers, the authority who is approving the same should ensure that they approve only the well established, reputed and reliable suppliers in line.

11.11.13 Time to be allowed for submission of tender: Not less than 30 days from the date of issue of tender.

11.11.14 Validity of offer: In respect of limited tender, the validity should be for a minimum period of 60 days from the date of opening of tender.

11.12 Dispensation of Public Tender

11.12.1 Public Tender can be dispensed with and a limited tender system adopted as the mode of purchase even when the estimated value of the item or items of similar nature covered by an indent to be purchased at a time exceeds Rs. 25.00 lakhs in the following circumstances in consultation with the Internal Finance of the Unit and with the prior approval of the Director, P&S/Ex-officio Director, P&S, provided detailed justification for dispensing with the issue of public tender is recorded

- 1) The competent authority in the department certify that the requirement is urgent and put on record the nature of urgency and the reasons as to why the procurement could not anticipated.

- 2) Sufficient reasons to be recorded in writing by the competent authority indicating that it will not be in the public interest to procure the goods through advertised tender enquiry.
- 3) The sources of supply are definitely known and possibility of fresh sources beyond this being tapped is remote
- 4) When stores are reserved for purchase from a specified category of industry as per the policy decision of the Government.
- 5) Where the field had already been explored by open tender for similar item during the period of one year preceding the date of the indent.

11.12.2 In such cases depending upon the estimated value of the item the field should be adequately covered by contacting as many suppliers as possible. All the suppliers who have participated in the earlier public tender and were technically qualified should be contacted. Regarding others who participated in the earlier public tender but could not be considered due to technical deficiency it should be examined whether there is any change in their capability and if they are found technically/financially competent, they should also be considered for issue of tenders. Similarly, tenderers who participated in the earlier tender, but their tenders were rejected being late/delayed tender may also be considered for this limited tender.

11.13 Repeat Order

11.13.1 Repeat order can be placed if an indent for an item or items of stores of identical description is received for which an earlier purchase order had been placed subject to the following conditions, dispensing fresh tendering action:-

- 1) The Contracting Officer should furnish a certificate after satisfying himself that there is no downward trend of the prices for this particular item in the market after placement of the earlier order.
- 2) Original purchase order was placed on the basis of lowest technically acceptable offer and was not on delivery preference or to cover urgent/emergent demand or processed on lack of competition basis.
- 3) It is not placed to split the requirement to avoid sanction of higher competent authority.
- 4) The supplier concerned is willing to accept the repeat order under the same terms and conditions as per the earlier order.
- 5) The repeat order is placed within six months from the date of original purchase order.
- 6) Repeat order quantity should not exceed one hundred percent of the last order quantity or Rs. 10.00 lakhs whichever is lower.

- 7) The power of competent authority to approve the repeat order procurement should be reckoned keeping in view the value of the original quantity plus repeat order quantity.
- 8) If the indent for repeat order is from the same Group, the indenting officer should furnish a justification as to why the requirement could not be clubbed together initially to obtain more competitive offers from the tenderers.
- 9) The requirement is for stores of identical nature/specification, nomenclature, etc. Minor improvements in specification or phasing out product due to obsolescence should not be precluded from the purview of repeat order.
- 10) Efforts should be made to obtain a suitable rebate from the supplier concerned for the increase in quantity and the results of the efforts made should be recorded in writing before the repeat order is submitted for approval of Director, P&S.

11.13.2 Director, P&S shall have powers to authorize and approve deviation in the value limit of the repeat order not exceeding Rs. 25.00 lakhs and time limit not exceeding twelve months from the date of the initial purchase order in consultation with Internal Finance in deserving cases subject to the condition that there is no downward trend in the price of the item in the market after placing the initial purchase order and he is satisfied that it is in the public interest to place a repeat order rather than inviting fresh tenders against the indent raised by the Project/Unit for the same item.

11.14 Emergency/Shutdown Requirement

11.14.1 In case of emergent requirement relating to any of the operating plant under the Department, Director, P&S/Ex-officio Director, P&S may at their discretion decide and authorize any mode of purchase in deviation to the normal procedure having regard to the canons of financial propriety. Such deviation should however be considered only against indent specifically marked as “Operational Emergency” or “Shutdown Requirement” and approved by the Head of the Plant/Unit provided the value of the item/items of similar nature to be purchased at a time does not exceed Rs. 25.00 lakhs.

11.15 Direct Purchase By Projects/Units

11.15.1 Heads of Projects/Units of Department of Atomic Energy shall have the powers to make purchase of stores directly, independent of the powers delegated to them by DAE under Works Procedure, without utilizing the services of DPS for all purchases upto a value of Rs. 50,000/- (Rupees Fifty Thousand) on each occasion except imported items.

11.15.2 Payment in respect of the purchases made as per above para, shall be effected by the Accounts Officer of the respective Projects/Units directly. Heads of Projects/Units shall ensure that the reasonableness of the price payable is established by obtaining quotation from a

minimum of three suppliers wherever possible. Heads of Projects/Units shall introduce suitable procedure and system for this purpose in consultation with their Internal Finance/Accounts Officer having regard to the canons of financial propriety.

11.15.3 The Heads of Projects/Units may, in the normal course, make use of the above provisions to the maximum possible extent in consultation with their Internal Finance/Accounts Officer and may also delegate these powers to the extent considered necessary to the senior subordinate officers.

11.15.4 Purchase of goods by Purchase Committee

11.15.4.1 Purchase of goods costing above Rs. 5,000/- (Rupees Five Thousand Only) and upto Rs. 1,00,000/- (Rupees One Lakh Only) on each occasion may be made on the recommendation of a duly constituted Local Purchase Committee consisting of Three members of an appropriate level as decided by the Head of the Department. The Head of the Department may constitute a Local Purchase Committee for each group taking into account the necessity. The Committee will survey the market and ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under:-

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

11.15.4.2 The above Purchase Committee can be constituted by the Head of the Department.

11.16 'Ab-Initio' Negotiation

11.16.1 Where 'Ab-Initio' negotiation is adopted as the mode of purchase, a set of tender form including specifications, drawings and other allied details of the stores shall be forwarded to the supplier(s) concerned with instructions that they should go through the documents thoroughly and return it with an undertaking that they have fully studied and understood the requirements correctly and can meet the requirement. Techno-commercial negotiation (excluding price) shall be conducted with such of those suppliers who have agreed to meet the requirements by a committee consisting of the representatives of the Purchase Unit, Internal Finance of the Purchase Unit and the Indenting Officer. After holding the techno-commercial discussion with the supplier(s) concerned, the negotiating committee will draw up minutes of the meeting indicating the techno-commercial agreements reached with the supplier(s) (excluding the price) and get the minutes signed by all the members of the negotiating committee including the supplier's representatives who are present at the meeting. The representatives of the suppliers who are present during the negotiation will be informed that they will be required to quote the price for the item in a sealed envelope super scribed with DPS Reference Number and the due date within the time and date specified by the Purchase Unit which will be fixed and intimated by the Purchase Unit to the suppliers concerned and open the price bid on the specified due date and time.

11.16.2 The above system may be adopted with the prior approval of the Director, P&S/Ex-Officio Director, P&S, in exceptional circumstances where there is no competition or where there is shortage of capacity or where it is in the public interest. In case the value of the stores to be purchased exceeds Rs. 20.00 lakhs, prior approval of the Department of Atomic Energy shall be obtained.

11.17 Open Tender / Public Tender

In all cases where the estimated value of an indent for an item or items of similar nature exceeds Rs. 25.00 lakhs purchase shall be made by inviting open tender.

11.17.1 Advertisement of NIT in Newspapers

11.17.1.1 In order to give wide publicity our tender notice should be published in important national dailies having wide circulation.

11.17.1.2 As per the new advertisement policy announced by DAVP in October 2007, classified advertisement can be directly sent by the Department to the newspapers with whom DAVP has entered into rate contract for publication of the tender notice at DAVP rates. The ratio of publishing by big, medium and small newspaper is 50:35:15 respectively. This is relating to the expenditure incurred. Alternatively, the services of DAVP can also be requisitioned as per the existing practice.

11.17.2 Publication of NIT in Indian Trade Journal

A letter should be sent to the Director General of Commercial Intelligence & Statistics, Kolkata, for publication of the tender notice in the Indian Trade Journal.

11.17.3 Display of NIT on DPS Website

11.17.3.1 The NIT along with tender documents should also be put on DPS website and providing link with NIC web site. Additionally, for wide publicity tender shall also be published in the web site of Central Purchase Organisation. If any of the tenderer wants to participate in the tender they can download the tender document and submit the tender along with the tender fee and EMD by two separate demand drafts to the address indicated in the NIT in a sealed envelope so as to reach before the specified due date and time. The demand drafts should be drawn in favour of the officer indicated in the tender and payable at the place indicated in the tender. A mention about the availability of the tender document on DPS website should also be made in the NIT/advertisement in the newspapers. Non-publication of tender in DPS website should be decided by recording the reasons for the same and with the approval of the Head of the Department of the Unit.

11.17.3.2 To ensure maximum participation and competitive offers from potential suppliers in the field, the NIT should include the following:-

- 1) A brief but clear description of the stores required should be specified in the NIT to enable the trade to understand our requirement and participate in the tender.

- 2) The quantity to be purchased should be normally mentioned.
- 3) The amount of EMD, the cost of tender, last date, time and place for sale of tender, due date, time and place for receipt of tender, date, time and place of opening of the tender should be specified.
- 4) The destination of the stores should be mentioned in the notice.
- 5) In case pre-bid conference is required as per indent, the date, time and venue of pre-bid conference should be mentioned in the NIT. The date of pre-bid conference should be fixed atleast 30 days in advance before the last date for receipt of tender so that sufficient time is available to the bidder for submission of the tender before the due date.
- 6) If any modified commercial terms than those indicated in DPS-P-11 including payment terms are proposed, the same should be part of NIT/Tender document.
- 7) In case Price Variation Clause is proposed to be added against certain item(s), the same along with base date should be part of NIT/Tender document.
- 8) Sufficient number of tender copies/drawings etc. should be forwarded by the indenting group in advance to avoid returning of the tenderers for want of tender documents.
- 9) Sufficient number of tender documents should be sent to Pay & Accounts Officer for sale immediately after the NIT is sent for advertisement and letters issued to the possible suppliers drawing their attention to the NIT.

11.18 Two Part Tender (TPT)

11.18.1 Two Part Tendering system is adopted -

1. Whenever the estimated value of an indent for an item or items of similar nature to be purchased at a time is Rs. 1.00 crore and above.
2. Where the estimated value is less than Rs. 1.00 crore but the indenting officer suggests processing of such indents on Two Part tendering basis due to the special/unfamiliar nature of the item needing detailed technical scrutiny of the offers before opening the price part of the tender.

11.18.2 While public tender shall normally be the mode of purchase for processing the indent, under the two part tendering system, Director, P&S/Heads of Projects/Units who have been authorized to exercise the powers of Director, P&S by DAE shall have the powers to adopt limited tender system as the mode of purchase in consultation with the Internal Finance after recording satisfactory reason for dispensation of public tender and subject to the conditions mentioned under the heading public tender dispensation.

11.18.3 Two part tendering system can be dispensed in respect of the following cases:-

- 1) Items to be purchased on single tender basis.
- 2) Purchase of raw materials linked to certain established standards like Indian Standard, British Standard, German Standard, Italian Standard, American Standard, such as fine and bulk chemicals, mild steel items, pipes and pipe fittings, sanitary items, construction material, public health material, furniture and fixtures and consumables.
- 3) Items of spare parts and components required to be purchased for the plant, machinery, equipment, vehicle, etc. from the original manufacturers or their authorised distributors/agents as the case may be.
- 4) Items covered under the DGS&D rate contract, annual bulk supply contract for common user items concluded by DPS/other Purchase Units of DPS.
- 5) Oils, paint, petrol and lubricants.
- 6) Drugs, medicines and diagnostic test kits.

11.18.4 In Two Part tendering system, tenders are invited in two parts, Part I (Techno-Commercial) & Part II (Price).

11.18.5 In respect of all Two Part tenders, a suitable provision is to be kept in the bidding document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details about the plant, equipment, and machinery etc. projected in the bidding document. After completion of technical discussion and arriving at the final technical specifications, commercial terms and conditions including packing, forwarding, safe delivery, payment terms, taxes and duties, submission of security deposit, performance bank guarantee, etc. are to be discussed and an uniform acceptable commercial terms and conditions has to be evolved. A consistent approach shall be followed by DPS while providing clarifications on commercial terms and conditions. The discussions of the pre-bid meeting shall be recorded and this shall be circulated to all bidders who have purchased the tender documents and the record note shall also form part of tender documents. This should also be attached with the remaining tender documents to be sold for the information of those who are subsequently buying the tender documents after the pre-bid meeting. The recorded discussions of the pre-bid meeting should also be kept in the DPS Website along with the tender documents for information of those who are downloading the tender documents. There shall not be any further communication by I/O / DPS with the individual bidder till the offers are received by DPS. This will provide transparency and uniform technical and commercial terms for all the bidders to offer competitive bids. Pre-bid meeting will also save considerable time in evaluating Part I Techno-Commercial bids, post-tender commercial discussions and help to finalise the contract within the original validity period of the tender. The date, time and place of pre-bid meeting should be indicated in the NIT/tender documents. This should be sufficiently ahead of bid opening date and a minimum of 30 days should be available for submission of bid after completion of pre-bid meeting.

11.18.6 Part I (Techno-Commercial) should include/contain only technical specifications, technical literature, reference to earlier supplies of similar equipment, drawing, quantity, time required for submission and approval of drawings, manufacturing and delivery schedule, inspection/testing procedure itemized list of spares and quantity (without price) recommended by

the tenderer for purchase, terms of price, mode and terms of payment, mode of despatch, the quantum and percentage of statutory levies payable by the purchaser as extra and all related commercial terms and conditions for the supply and for the services like erection and commissioning to be rendered by the tenderer. The details of the validity of the tender should also be indicated along with the commercial details. This part of the tender i.e. Part-I (Techno-Commercial) shall be enclosed separately in the green envelope sent by the purchaser duly sealed and super scribed with the purchaser's tender number and the last date and time specified for receipt and opening indicated in the tender document. The tenderer should take special care not to mix up the price of the stores in this part of the tender.

11.18.7 Part II (Price) shall include/contain only price, price break up, price/safe delivery charges, charges for training of the purchaser's engineer wherever applicable, lump sum charges for erection and commissioning work or per diem charges for the supervision of erection and commissioning work as is envisaged in the purchaser's tender document, testing charges, third party inspection charges, etc. This part of the tender i.e. Part II (Price) shall be enclosed separately in the Orange envelope sent with the tender and shall be duly sealed and super scribed with the purchaser's tender number and the last date and time specified for opening of the tender as mentioned in the tender document.

11.18.8 The tenderer shall correlate the prices in Part II of the tender with the description of the stores indicated in Part I (Techno-Commercial) by allotting a running serial number in order to enable the purchaser to identify the prices with the relative item in Part I (Techno-Commercial).

11.18.9 Part I (Techno-Commercial) and Part II (Price) should be enclosed in a common read envelope sent with the tender. This red envelope containing both Part I & Part II should again be sealed and super scribed with the purchaser's tender number and the last date and time specified for receipt and opening indicated in the tender document and should reach DPS on or before the time and date specified for its receipt. If the tenderer fails or omits to submit/reach any one part of the tender i.e. either Part I or Part II, within the initial due date and time specified for its receipt mentioned in the tender document such tenders will be treated as incomplete and will be liable for rejection.

11.18.10 If the tenderer includes price of any nature in Part I (Techno-Commercial) of the tender, such offers are liable for rejection without any notice to the tenderer.

11.18.11 The last date and time for submission of both Part I and Part II and date and time for opening of Part I and Part II shall be properly calculated and mentioned in the tender document. The tenderer should be asked to keep the offer valid for (a) 120 days from the date of opening of Part I, if approval of purchase is within the powers delegated to the Unit and a minimum period of 60 days after opening of the Part II (Price Bid), (b) 150 days from the date of opening of Part I and a minimum period of 90 days after opening of Part II (Price Bid) if approval of DAE/MF is required.

11.18.12 The tenders will be opened in two stages on the date and time specified in the tender.

11.18.13 Part I (techno-commercial) of the tender will be opened at the first stage on the date and time mentioned in the tender document. All the tenderers who have submitted their tender within the due date and time specified for its receipt shall be permitted to participate in the

opening of Part I (techno-commercial).

11.18.14 After completion of the evaluation of techno-commercial part and short listing of the technically acceptable/qualified bidders duly approved by competent authority, Part II (Price) of those technically qualified bidders only will be opened. Intimation shall be sent only to those technically acceptable bidders about the date and time of opening of Part II to enable them depute their representative to participate in the opening of Part II. Part II of the technically disqualified tenderers shall not be opened.

11.18.15 After opening of the Part I (Techno-commercial), of the tender, if it becomes necessary for the technical authority/user department to seek clarifications from the tenderers the same will be sought from the tenderers by the technical authority of the user department, In such an event, the tenderer shall furnish all technical information/clarification to the concerned technical authority directly in the green envelope sent by them to reach on or before the due date and time fixed by the technical authority with a copy to DPS in an ordinary envelope indicating the purchaser's tender reference. If the technical clarification/details sought for by the technical authority from the tenderer do not reach them on or before the due date and time fixed for its receipt such tenders will be liable for rejection at the discretion of Director, Purchase & Stores without any further notice. The tenderers should not, however, furnish altogether a new offer at this stage which is different from the purchaser's tender specification.

11.18.16 The tenderers will also be free to have technical discussion with the technical authorities concerning the scope/details of the tender if they so consider it necessary.

11.18.17 As a result of the clarification/discussion between the user and tenderer, if, in the opinion of the user, there is a change/modification in the tender specification which has financial implication the user will submit the recommendation indicating the change in the specification with reference to the tendered specification with justification as to why this changes are now necessary and why the same could not be considered at the time of tendering etc. to SPC/SEC through their Division Head/Group Director for consideration and approval for calling for revised bid. On approval, the revised bid shall be called for from the technically qualified bidders. The qualified firm(s) should be asked to indicate separately the plus/minus impact on the original quote either by way of amount or percentage of the originally quoted price with reference to the modified specification, instead of calling for fresh bids. The revised bid shall be submitted in a sealed envelope within the specified date and time and shall be opened in the presence of the attending representative, if any along with the original price bid. If revised bid is called for, the firm(s) should be asked to keep the validity of the original and revised bids for a minimum period of 60 days from the date of opening of the revised bid, in case the remaining period of validity of the original bid is less than 60 days from the date of opening of revised bid of Part II.

11.18.18 If there is no change in the specification or the minor change in the specification will not have significant financial impact, the technically qualified bidders will be intimated the date, place and time of opening of Part II (Price Bid) and the original price bids submitted by these firms shall be opened in the presence of the attending representative(s). In the event of the remaining period of validity of the original bid is less than 60 days, the firm(s) should be asked to keep the validity of the price bid for a period of 60 days from the date of opening of the Part II (Price Bid). No revision of price bids after the due date laid down for their receipt at all shall be

considered. If the revised price bid is called for during the validity of the tender and any firm fails to submit the revised bid, the original price bid submitted by the firm shall be treated as valid price bid and action will be taken accordingly.

11.18.19 If the evaluation of Part I and finalization of technically competent firm(s) is delayed beyond the original validity of the offers, extension of validity of the Price Bid should be called for, in time for the required additional period. In case the response is minimum/Nil, approval of SPC/SEC has to be obtained to call for revised bids indicating as to why evaluation of Part I could not be completed in time.

11.18.20 Postponement/advancement of the date for opening of Part II (Price):

Depending upon the time needed for completion of the technical evaluation, the due date fixed for opening of the Part II tender may be postponed or advanced. If opening of Part II of the tender is required to be postponed due to non-completion of the evaluation of Part I of the tender, intimation towards postponement of the opening of the Part II of the tender shall be given to all the tenderers who have submitted the offers within the due date and time specified. However, the tenderers whose techno-commercial offers (Part I) have been found suitable shall only be given intimation about the due date for opening of Part II of the tender and such tenderers whose Part I offers have been found suitable will only be permitted to participate in the opening of Part II of the tender.

11.18.21 Commercial bids not to be invited after opening of technical bids.

CVC has suggested that technical specifications should be firmed up in a pre-bid conference in two bids tender and it would be desirable not to invite fresh commercial bids after opening of technical bids.

11.19 Fixation of Tender Fee

As per Purchase Procedure approved by DAE, Director, P&S shall have the powers to fix tender fee in respect of tender document to be sold against public tender, keeping in view the estimated value of the items to be purchased as well as the man-hours and materials spent in the preparation of tender specifications and drawings. Accordingly the present rate of tender fee chargeable based on the estimated value of the indent is as follows:-

- | | | |
|----|--|--------------------------|
| 1) | Above Rs. 25.00 lakhs upto Rs. 50.00 lakhs | - Rs. 300 per tender set |
| 2) | Above Rs. 50.00 lakhs upto Rs. 1.00 crore | - Rs. 500 per tender set |
| 3) | Above Rs. 1.00 crore (Two Part Tender) | - Rs. 700 per tender set |

11.20 Earnest Money Deposit (EMD)

The EMD should be calculated at the rate of 2% of the estimated value of the indent subject to a maximum of Rs. 5 lakhs and the exact amount of EMD payable should be indicated in the NIT.

11.21 Fixation of Due Date

The due date for receipt of tender shall be calculated taking into account the time required for publication of the tender notice in national dailies, Indian Trade Journal and allowing sufficient time for the bidder to purchase the tender document, study the tender document and submit the offer.

11.22 Sale of Tender Document

11.22.1 The tender document shall be available for sale from the respective Pay & Accounts Officer indicated in the tender document and in the NIT on payment of the prescribed tender fee. The tender document can be collected personally from the concerned Pay & Accounts Officer on payment of the prescribed tender fee by Demand Draft. The tender document will also be sent by Speed Post on specific request indicating the tender number from the firms along with DD towards the cost of the tender and such request should be sent by the firms to reach P&AO much in advance to have sufficient time to forward the tender documents and the time taken by post. The tender sale section will keep the tenders sets received from Purchase and on receipt of request from individual firm, will issue these after indicating the receipt number and amount under the signature of the issuing official. In case of tender documents issued to NSIC registered firm, details of valid registration should be recorded in the tender under signature. Each office selling the tender sets will maintain a register indicating the number of sets received from the Purchase, number of additional copies subsequently received, number of copies sold, list of firms to whom sold and the number of sets and the details of NSIC firms to whom tender documents issued free of cost and the number of sets returned to Purchase after the closing date of sale of tender.

11.22.2 Payment on account of the tender sets as a rule is received in the form of demand draft/pay orders issued by the bank. The sale proceeds must be credited to Govt. account on daily basis. The sale proceeds should be entered in the specified register by the Cashier. The sale proceeds register is to be submitted to the Pay & Accounts Officer who has to attest all the entries.

11.23 Intimation to Registered/known/likely suppliers

11.23.1 A letter of intimation about the tender notice should be sent to the registered/known/likely suppliers to enable them to participate in the tender on payment of prescribed tender fee and EMD. The intimation should also contain the details of availability of tender documents in website for downloading.

11.23.2 Copies of tender notice should also be sent to the following:-

- 1) Director, MIS, New Delhi for giving publicity through NICNET Service.
- 2) National Small Scale Industries Corporation, Kolkata, Chennai, Mumbai and New Delhi.
- 3) Director (Technical Publication), NSIC, Nirman Bhavan, New Delhi.

- 4) Known trade association/Chamber of Commerce to give wide publicity.
- 5) Khadi & Village Industries Commission, Mumbai
- 6) KVIC Departmental Unit, New Delhi.

11.23.3 When a tender enquiry is scrapped and a fresh tender enquiry is issued, notice thereof should be sent to the firms who had quoted in response to the scrapped tender enquiry.

11.24 Complimentary copy to foreign manufacturer/supplier

11.24.1 In case the requirement is for imported stores, in addition to the advertisement in national dailies, Indian Trade Journal, complimentary copy of our tender document should be sent direct to the known foreign manufacturer/supplier in the line. As per the existing procedure followed those firms to whom complimentary tender copies are sent can submit the tenders without EMD.

11.24.2 Complimentary copy to TLM, Paris

A few copies of the tender documents should also be sent to our Technical Liaison Mission, Paris with a request to approach any other firms in the field and not covered directly by DPS. These firms can also submit the tenders without EMD.

11.25 Global Tender

In case it is desired to ensure a wide global coverage of the requirement, in addition to sending complimentary copy of the tender document to TLM, Paris and the foreign manufacturers/suppliers copies of tender documents should also be sent to Indian Missions & Embassies in other foreign countries and Foreign Trade Consulates/Embassies of other countries in India. They may also be requested to put the tender notice in their web sites. The selection of the embassies will depend on the possibility of availability of the required goods and the possibility of issue of export licence in such countries.

11.26 Time to be allowed for submission of tender from the date of publication

11.26.1 Time to be allowed for submission of tender is as indicated in Para 12.10.1. However, Director, P&S, DPS can modify the time allowed for submission of tender depending upon the merit of the case.

11.26.2 The tenderers will be asked to keep their offer valid for the period as indicated in Para 12.11.1. The indenter can ask for the validity of tender for more than the above mentioned days if required indicating the reasons for the same with the approval of the Group Director in the indent. In such cases the Purchase Unit will indicate the same in the NIT.

11.27 Postponement of Due date for submission of tender

11.27.1 In case of any change in the due date for submission of the tender, intimation should be sent to all the firms to whom tenders have been issued and a corrigendum to be published in the newspapers/ITJ/DPS website.

11.27.2 Request for the postponement of tender due date received from the tenderers should be decided on the individual merits of each case with the approval of the competent authority. Such request from unregistered firm should normally be refused except in cases of stores for which competition is lacking. Whenever it is considered necessary to postpone the tender due date, quick decisions must be taken and communicated to all the tenderers to whom tenders have been issued at least 10 days before the original due date for submission of tender.

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

11.28 Exemption from Tender fee/EMD

As per Govt. orders small scale units registered with NSIC and having valid NSIC registration certificate are exempted from payment of tender fee and EMD (Govt. of India, Ministry of Industry Order dated 30th July, 1993).

11.29 Placement of Supply Order against Rate Contracts concluded by DGS&D

11.29.1 Where valid rate contracts concluded by the DGS&D exists, the Officer concerned in the Purchase Unit should make use of such rate contracts concluded by the DGS&D and place supply order on the rate contract holder if the delivery schedule prescribed by the Projects/Units can be met by the supplies against rate contracts.

11.29.2 DGS&D vide circular No. 49 (CDN 1/DDO/II/MISC/95-96) dated 22.12.99 issued the following amendment:-

11.29.2.1 The rate contract will be operated by the indentors of the Central Government to be called as the Direct Demanding Officers (DDOs) in addition to the Officers of the DGS&D. There will not be a separate list of DDOs specifying particular Ministry/Department or an Indentor of the Central Government as a DDO for operating DGS&D rate contracts. It would suffice if the supply order placed by any Central Government Ministry/Department or the Office of the Central Government contains an undertaking to the effect that the authority placing the supply order is a Central Government Department/Office. The supply order should also include an indication with regard to the availability of the funds and also carry the following financial certificate:-

11.29.2.2 I certify that,

- 1) We are a Central Government Department drawing funds from the Consolidated Fund of India.

- 2) The expenditure involved for this purchase has received the sanction of the competent financial authority.
- 3) The funds are available under the proper head in the sanctioned budget allotment for the year..... and
- 4) I have been fully authorised by the Department to sign the supply order and incur the liability in respect of the stores being ordered.

Name of the Direct Demanding Officer

Designation

Office/Department

Date

11.29.2.3 In view of the above amendment, all the Officers in Headquarters and Regional Units can issue the supply order as per the powers delegated to them by Director, P&S indicating the certificate called for as per the amendment. Details of powers delegated to the various authorities in DPS are indicated in the Chapter-35 'Delegation of Financial Powers (DAE) for Procurement'.

11.29.2.4 DPS can also make direct procurement from the rate contract holders by placing purchase orders in the Departmental form provided the suppliers are willing to make supplies at the rate contract prices against our purchase order under the same terms & conditions as per the rate contract except the change in the inspection and paying authority. The inspection will be carried out by the authorized representative of the Department indicated in the purchase order and payment will be made by the Pay & Accounts Officer of the Department of Atomic Energy.

11.30 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 arrived 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 Units of the Department are met on time.

11.31 e-Procurement

11.31.1 Purchase of goods through electronic mode of interface with tenderers and IT enabled management of the entire procurement process(notice inviting tenders, supply of tender documents, receipt of bids, evaluation of bids, award of contract, and execution of contract through systematic enforcement of its various clauses and tracking of claims, counter claims and payments is gradually gaining popularity. In order to cut down transaction costs and improve efficiency and transparency, the Government aims to make it mandatory for all the

Ministries/Departments including the Central Public Sector Undertakings under the administrative control to conduct all their procurements electronically after a stipulated date. The Ministries/Departments have been advised to fix appropriate cut-off points in terms of size of procurement to switch over to e-procurement. The Director General of (Supplies & Disposal) has made significant progress in this direction and the National Informatics Centre is engaged in Pilot Projects to design a secure IT solution addressing concerns like encryption/decryption of bids, digital signatures, secure payment gateways, date/time, stamp for activities, access control etc. The Ministries/Departments have already been directed to publicise all the tenders on their websites as the first step towards full fledged e-Procurement. The Ministries/Departments are advised to proactively engage themselves in articulating user needs in the development of IT systems for e-Procurement. The system should be secure, capable of maintaining complete confidentiality at appropriate stages of the bidding process, so that the tenderers feel confidence in electronically transmitting their queries and bids.

11.31.2 However, as all the tendering firms may not have the facility of transmitting their quotations through e-mail, the Ministries/Departments should allow the receipt of quotations through hard copies as well as by e-mail. The closing date and time for receipt of tenders should be identical for both types of tenders.

11.32 Purchase of goods financed by loans / grants extended by international Agencies

The Articles of Agreement with International Agencies, like the World Bank, Asian Development Bank etc. stipulate specific procurement procedures, to be followed by the borrowers. The procurement procedures, as finalized and incorporated in the agreement after consideration and approval of the Ministry of Finance are to be followed accordingly.

CHAPTER - 12

RECEIPT, SCRUTINY, PROCESSING OF INDENTS AND ISSUE OF TENDER

12.1 Indent

Indent is a requisition from the user raised on the Purchase Unit for procurement of the required item or for obtaining the required service.

12.2 Form of Indent

The indent should be raised in the prescribed form by the authorized officers duly approved by the competent authority. The indent should be sent to the Purchase Unit through the concerned Stores Unit after ascertaining that the stores required are not available in stock.

12.3 Indent Scrutiny

12.3.1 On receipt of the Indent after necessary entry in the system/register, the officer concerned in the Purchase Unit, before initiating the procurement process, shall scrutinize the indent particularly in respect of the following aspects to ensure that the indent is complete in all respects:-

1. The indent is raised on the prescribed form and approved by the officers who have been delegated with the appropriate powers.
2. Any special mention is made on the indent such as emergency/shutdown requirement, most urgent, buy-back, proprietary requirement, etc.
3. A realistic delivery schedule is mentioned.
4. Place of delivery is mentioned.
5. The description/specification is generic, broad based, clear and complete for the trade to understand the requirement and respond to our tender.
6. The specification should not be the product of a particular manufacturer and should not include any make, brand name of the manufacturer or equivalent, etc.
7. The complete specification and the drawing as mentioned in the indent are received.
8. The technical specification should not include the user's name and address,

estimated cost, any commercial terms and conditions, which are in conflict with the standard terms and conditions.

9. The quantity of the stores required is clearly specified.
10. A realistic estimated cost is mentioned in the Indent.
11. In case the scope covers issue of FIM by the Department whether the complete details of FIM along with the itemized quantity and value are clearly mentioned by the indenter.
12. If the indenting officer desires any pre-bid meeting, the date, time and venue of pre-bid meeting to be decided and mentioned in the NIT.
13. In case the requirement is proprietary whether proper technical justification for the choice of proprietary item is furnished and the indent is approved by the competent authority.
14. In case where the estimated value of the indent for proprietary stores exceeds the powers delegated to the Heads of the Projects/Units by DAE, the Project/Unit shall obtain the approval of DAE/MF before forwarding the indent for single enquiry/proprietary stores to DPS and endorse a certificate on the indent itself to the effect that prior consent of DAE/MF has been obtained for indenting proprietary stores and shall furnish the relevant authority number and date on the indent.
15. Previous purchase order reference for the item indented is available.
16. The list of known sources is mentioned in the indent.
17. If the indent is for issue of repeat order and if so reference and date of the previous purchase order is mentioned.
18. In case the cost of the item to be procured or the cost of the major raw materials required for manufacture of the item is highly volatile in the market and it is felt that the firms may not submit firm price or may not give sufficient validity of the tender to finalise the purchase, any PVC is suggested by Indenting Officer for incorporation in the NIT. If so a provision for PVC in the NIT with base date applicable is to be added.
19. If the indent is for shut down/emergency requirement the same has to be processed separately as per the mode of purchase suggested and approved and it should be ensured that the material is available at the shortest possible time and obtained at a reasonable cost taking into account the urgency.
20. The financial sanction number and date, head of account number to which the expenditure for the purchase is to be debited, certification about the availability of funds for the purchase are mentioned in the indent.

21. In case the indent is for procurement under buy-back, whether certificate regarding examination by the Survey Committee and its report duly approved by the Head of the Unit is furnished in the indent.

12.3.2 After proper scrutiny of the indent, based on the estimated cost mentioned in the indent, appropriate procurement action shall be taken.

12.4 Procurement Planning of Indent in DPS

12.4.1 Planning of indent means determination of the method of purchase and also drawing up stage-wise programme of coverage. Programme so laid down is to be strictly adhered to.

12.4.2 Planning of processing the indents of high value may be adhered to as a beginning.

12.4.3 Indents whose estimated value exceeds Rs. 1.00 crore:

12.4.4 A Planning Meeting will be held as soon as the indent is received in the Office of Joint Director, P&S/Regional Directors of the Purchase Units in which the concerned Deputy Director, Purchase Officer and Assistant Purchase Officer would be associated. Planning of these indents would be the direct responsibility of the Joint Director, P&S/Regional Directors of the Purchase Units.

12.4.5 Planning of indents will be done in all cases at the earliest on receipt of high value indents. Joint Director, P&S/Regional Directors would determine the course of action after taking into account the following factors:-

- 1) Indent is complete in all respects and can be processed further.
- 2) Nature of the material.
- 3) Mode of Purchase.
- 4) If LT the source to be contacted.
- 5) If PT the dead line for issue of intimation to the newspaper and ITJ.
- 6) Last date, time and place of sale of tender/submission of tender/opening of tender.
- 7) Date of Pre-Bid meeting. This should normally be held at least 30 days in advance before the last date of submission of tender.
- 8) Whether any Price Variation Clause is to be included in the NIT.
- 9) Other than General Conditions of Contract any special terms & conditions to be included in the NIT.
- 10) If PT the list of firms to whom advance intimation is to be sent.

- 11) Whether to publish on website.
- 12) Date of submission of file to user after completion of CST and other formalities.
- 13) Target dates for submission to S&EC/SPC and TC/Council/Board.
- 14) If approval of DAE/MF is required target date for submission of proposal to DAE.
- 15) Target date for placement of purchase order after approval from various Committees/DAE.
- 16) Any other relevant factors.
- 17) Monthly/quarterly follow up date.

12.4.6 Indents where value exceeds Rs. 50.00 lakhs upto Rs. 1.00 crore.

12.4.7 Similar action to be taken by the respective Deputy Directors / Regional Directors.

12.5 Tender Document

12.5.1 The tender document consists of the following:-

- | | | |
|-------------|---|--|
| Section - A | : | Invitation to Tender & Instructions to Bidders |
| Section - B | : | General Conditions of Contract. |
| Section - C | : | Schedule of Requirements. |
| Section - D | : | Specifications and allied Technical Details. |
| Section - E | : | Price Schedule (to be utilized by the bidders for quoting their prices). |
| Section - F | : | Other Standard Forms, if any, to be utilized by the purchaser and the bidders. |

12.5.2 The following items need to be highlighted in the tender document:

1. Details of items required in a form, which each supplier can understand.
2. Quantity required.
3. Date, time and place for submission of tender and opening of Tender.
4. Desired period of validity of offers.
5. Technical specifications/drawings as applicable.
6. Inspection Clause.

7. Special Conditions of Contract.
8. Quality assurance requirements.
9. Mode and terms of delivery.
10. Mode and terms of payment and the paying authority.
11. Evaluation parameters.
12. Performance Guarantee if applicable.
13. Arbitration Clause.
14. Liquidated damages clause.
15. Bank Guarantee for advance payment.
16. Installation & Commissioning.
17. Warranty.
18. Security Deposit.
19. AMC if applicable.
20. Training/on job training.
21. Requirement of technical documentation.
22. Ultimate consignee.
23. Price Variation Clause.
24. Details of loading factors for equitable comparison.
25. Any other factor which is relevant to have an effect on the cost.

12.5.3 Preparation of Tender Document

12.5.3.1 The tender document shall be prepared with sufficient care incorporating the appropriate schedule to the tender, description, quantity, complete technical specification, drawing and other general commercial terms and conditions.

12.5.3.2 The tender number, the place, time and the last date for sale of tender documents, due date, time and place for submission of tender, date, time and place of opening of the tender, shall be prominently indicated at the appropriate place in the tender document.

12.5.3.3 The tender fee payable, the amount of EMD required shall also be mentioned on the front page of the tender document.

12.5.3.4 Any other commercial terms over and above the general terms & conditions to be incorporated in the NIT like special packing conditions, warranty obligations, training of personnel, payment terms, etc. should be indicated separately without adding it with specifications.

12.5.3.5 All government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. The tender documents should satisfy the above conditions.

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

12.5.3.7 The bidding document should contain:-

- 1) The criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facility and financial position, etc.
- 2) Eligibility criteria for goods indicating any legal restriction or condition about the origin of goods etc. which may required to be met by the successful bidder.
- 3) The procedure as well as date, time and place for sending the bids.
- 4) Date, time and place of opening of the bids.
- 5) Terms of delivery.
- 6) Special terms affecting performance, if any.

12.5.3.8 Provision for settlement of disputes, if any, emanating from the resultant contract should be kept in the bidding document.

12.5.3.9 The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.

12.5.3.10 The bidders should be given reasonable time to send their bids.

12.5.3.11 In case of Two Part tenders or turn key contract(s) or contract (s) of special nature for procurement of sophisticated and costly equipment, a suitable provision is to be kept in the bidding document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specification and other technical details of the plant, equipment and machinery projected in the bidding document and other commercial terms. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of the bid opening date say 30 days before opening of the tender.

12.5.3.12 Criteria for determining responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and criteria for awarding the contract

to the responsive lowest bidder should be clearly indicated in the bidding document.

12.5.3.13 There should be a provision indicating that bidders will not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids and the tender, if modified or withdrawn within the validity period of the tender, the EMD is likely to be forfeited..

12.5.3.14 The tender document should indicate the total number of tender sets (eg: in duplicate or in triplicate etc.) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes duly marking the same as 'Original', 'Duplicate', and so on and also putting the address of the Purchaser and the Tender reference number on the envelopes. Further the sentence 'NOT TO BE OPENED' before _____ (Due date and time of opening) is also to be put on these envelopes. The inner envelopes are then to be put in a bigger outer envelope which will also be duly sealed, marked etc. as above. If the outer envelope is not sealed, and marked properly as above, the Purchaser will not assume any responsibility for its misplacement, premature opening, late opening, etc.

12.5.3.15 The tender documents should specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency, Indian Agents of foreign suppliers are to receive their agency commission in Indian currency, costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency(currencies) and paid accordingly in that currency and the portion of the allied work and services, which are to be undertaken in India (like installation & commissioning of equipment) are to be quoted and paid in Indian currency.

12.5.4 Terms of Payment

12.5.4.1 DPS standard payment terms are full payment after receipt and acceptance of the stores within 30 days from the date of supply.

12.5.4.2 In respect of plant, machinery and equipment 80% payment against delivery at Purchaser's site and preliminary inspection and balance 20% after erection, commissioning and final acceptance.

12.5.4.3 As per Para 9.8 to 9.11 of Manual of Purchase Policies & Procedures issued by the Ministry of Finance, the following payment terms are admitted. These payment terms can be considered for incorporation in the NIT/tender documents on case to case basis with the approval of Director, P&S/authorities who are authorized to exercise the powers on behalf of the Director, P&S.

12.5.4.4 Terms of Payment for Domestic Goods

Where the terms of delivery is FOR Despatching Station, the payment terms, depending on the value and nature of the goods, mode of transportation etc. may be 60% to 90% on proof of despatch and other related documents and balance on receipt at site and acceptance by the consignee.

Where the terms of delivery is CIP destination/delivery at site/FOR destination, usual payment term is 100% on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.

Where the goods to be supplied also need installation and commissioning by the supplier, the payment terms are generally as under:-

- 1) For a contract with terms of delivery as FOR dispatching station 60% on proof of despatch along with other specified documents, 30% on receipt of the goods at site by the consignee and balance 10% on successful installation and commissioning and acceptance by the consignee.
- 2) For a contract with terms of delivery as CIP destination/Delivery at site/FOR destination 90% on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10% on successful installation and commissioning and acceptance by the consignee.

NOTE: Generally (especially for goods requiring installation and commissioning at site by the supplier), the desirable terms of Delivery are CIP destination or Delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, unless otherwise decided, Ex-works or FOR Despatching station terms, should be avoided.

12.5.4.5 Terms of Payment for Imported Goods

Cases where Installation, Erection and Commissioning (if applicable) are not the responsibility of the Supplier 100% net FOB/FAS price is to be paid against invoice, shipping documents, inspection certificate (where applicable), manufacturer's test certificate, etc.

Cases where Installation, Erection and Commissioning are the responsibility of the Supplier 80% - 90% net FOB/FAS price will be paid against invoice, inspection certificate (where applicable), shipping documents etc. and balance within 21 - 30 days of successful installation and commissioning at the consignee's premises and acceptance by the consignee.

Payment of Agency Commission against FOB/FAS Contract Entire 100% agency commission is generally paid after all other payments have been made to the supplier in terms of the contract.

12.5.4.6 Advance Payment to Supplier

Ordinarily, payments for supplies made or services rendered should be released to the supplier only after the supplies have been made or services have been rendered. However, it may become necessary to make advance payments in the following types of cases:-

- 1) Advance payment demanded by firms holding maintenance contracts for servicing of Air-conditioners, computers, other costly equipment, etc.
- 2) Advance payment demanded by firms against fabrication contracts, turn-key contracts, etc.

Such advance payments should not exceed the following limits:-

- 1) Thirty per cent of the contract value to private firms;

- 2) Forty per cent of the contract value in a State or Central Government agency or a Public Sector Undertaking.
- 3) In case of maintenance contract, the amount should not exceed the amount payable for six months under the contract.

In exceptional cases, the Ministries or Departments may, in consultation with their Financial Advisers, relax the ceilings mentioned above. However, while making any such advance payment, adequate safeguards in the form of bank guarantee etc. should be obtained from the supplier. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on case to case basis.

12.5.5 Payment of Air Freight Charges

Goods that are required to be air lifted are to be despatched through Air India/Indian Airlines only on a 'Charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to Air India/Indian Airlines in Rupees.

12.5.6 Refund of Taxes and Duties from Suppliers

Some times, the suppliers, after claiming and receiving reimbursements for sales tax, excise duty, customs duty, etc. from the Purchaser, apply to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receive the allowable refunds. Such refunds contain the Purchaser's share also (out of the payments already made by the Purchaser to that supplier). The tender enquiry documents and the contract are to contain suitable provisions for obtaining such refunds from the supplier.

12.6 Extension of Tender Opening Date

Sometimes situation may arise necessitating modification of the tender documents already issued (LT) or already put on sale (PT). Also after receiving the document, a tenderer may point out some genuine mistake necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment/modification should be simultaneously sent to all the selected suppliers by registered/speed post/courier/e-mail in case of LT. In case of PT, the copies of such amendment/modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached to the unsold sets of tender documents (which are available for sale), including the tender documents put on the website. When the amendment/modification changes the requirement significantly, and/or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding time frame for receipt of tender, tender validity period etc. and validity period of the corresponding EMD. Depending on the situation, such an amendment may also need fresh publication of tender enquiry.

12.7 Tender Documents for Sale

12.7.1 Sufficient number of tender documents shall be handed over to the Tender Sale Section immediately after issue of letter for publication of tender notice in the national dailies/Indian Trade Journal. Payment on account of tender sets, as a rule, is received in the form of demand draft or pay order issued by the bank. No documents should be issued after the last date and time indicated for sale of tender documents. Pay & Accounts Officer should take proper care to ensure that tender documents called for through post are sent immediately either on the date of receipt of requisition and DD or latest by the next day. Pay & Accounts Officer should also ensure that documents are issued in time in respect of DDs received. He should review the register of valuable and tenders issue register on daily basis to confirm the above. The sale proceeds to be deposited in the bank on daily basis. Action should also be taken by PAO for timely remittance of sales tax collected.

12.7.2 The Tender Sale Section shall keep proper records of the number of tender sets received by them from the Purchase Section, number of tender sets sold or issued free of cost to valid NSIC registered firms, the list of firms to whom sold/issued free of cost and return the remaining tender sets to the Purchase Section immediately after the last date for sale of tender after tallying the account.

12.7.3 Adequate care is to be taken to despatch/transmit tender documents in such a manner to ensure that the firms get them in time.

12.8 Issue of Tender Free of Cost and Dispensation of EMD in respect of Overseas Suppliers

In view of the prevailing embargo conditions and the desire to obtain more direct competitive offers from overseas suppliers to get genuine equipments/instruments/spare parts/after sales service etc., tender documents are issued as Complimentary Copy to Overseas suppliers and they are exempted from payment of EMD. Similarly, if the overseas suppliers submit the tender directly or through their Indian Agent in foreign currency against the tender document bought by their Indian Agent so that the order can be placed directly on the Principals, then the overseas supplier is exempted from payment of EMD.

12.9 Notice Inviting Tender

12.9.1 NIT can be issued through DAVP or directly sent to the chosen national and local newspapers with whom DAVP have entered into rate contract for advertisement of tender notice in their dailies at the rates approved by DAVP.

12.9.2 A letter shall be sent to the Director General of Commercial Intelligence & Statistics, Kolkata for publication of the tender notice in the Indian Trade Journal.

12.9.3 The tender notice and the tender documents should be displayed on DPS website to facilitate prospective eligible suppliers to download the tender documents and submit the tender along with the requisite EMD and tender fee.

12.9.4 A letter of intimation about the tender notice shall be sent to all the known, likely and

registered suppliers for participation in the tender.

12.9.5 In case competition is expected from overseas suppliers, complimentary copies of the tender enquiry shall be sent to the known foreign manufacturers and suppliers as a policy decision by DPS.

12.9.6 Some copies of the tender documents shall be sent to the Technical Liaison Mission at Paris for contacting any other probable suppliers not covered by the Purchase Unit.

12.9.7 In respect of Global tender requiring a wide global coverage in addition to contacting the known foreign manufacturers/suppliers and TLM, Paris, complimentary copies of the tender shall also be sent to the Foreign Trade Consulates/Embassies in India and Indian Embassies in other foreign countries for contacting probable suppliers in the line with a request also to furnish tender details in their website for wide publicity.

12.10 Time Allowed for Submission of Tender

12.10.1 Time to be allowed for submission of tenders from the date of issue of tenders is as follows:-

12.10.2 Global Tender : 90 days

12.10.3 Two Part Tender : 60 days

12.10.4 Public Tender (Single Part) : 45 days

12.10.5 Limited Tender : 30 days

12.10.6 Single Tender : Immediate not later than _____

12.11 Validity of Tender

12.11.1 Minimum required validity of the tender from the date of opening of the tender shall be as follows:-

12.11.2 Global Tender : 120 days

12.11.3 Two Part Tender

12.11.3.1 120 days from the date of opening of Part I if approval for purchase is within the powers delegated to the Unit and a minimum period of 60 days after opening of Part II Price Bid.

12.11.3.2 150 days from the date of opening of Part I and a minimum period of 90 days after opening of Part II Price Bid if approval of DAE/MF is required.

12.11.4 Public Tender (Single Part) : 90 days from the date of opening of the tender.

12.11.5 Limited Tender : 90 days from the date of opening of the tender.

12.11.6 Single Tender : 90 days from the date of opening of the tender.

12.12. Extension of Tender Validity Period

12.12.1 The entire process of scrutiny and evaluation of tenders, preparation of ranking statements and award of contract must be done within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for longer period entails the risk of getting higher prices from the tenderers.

12.12.2 If however, due to some exceptional and unforeseen reasons, DPS is unable to decide placement of the contract within the original validity period, it should request, before expiry of the original validity period, all the responsive tenderers to extend their tenders upto a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of EMD for the corresponding additional period. A tenderer may not agree to such a request and this will not tantamount to forfeiture of EMD, but the tenderers, who agreed to extend the validity, are to do so without changing any terms, conditions, etc. of their original tender.

12.13 Standard Forms for Issue of Tenders

12.13.1 For Indigenous Stores

Estimated Value of Indent	Applicable Tender Form
Upto Rs. 5.00 lakhs	Form No. DPS-P-22, DPS-P-22A
Above Rs. 5.00 lakhs – Upto Rs. 1 Crore	Form No. DPS-P-44, DPS-P-44A Schedule to Form DPS-P-44A (Contract Conditions Form No. DPS-P-11)
Above Rs. 1 Crore (TPT)	Form No. DPS-P-13 (Contract Conditions DPS-P-11)

12.13.2 For Import of Stores

Estimated Value of Indent	Applicable Tender Form
Upto Rs. 5.00 lakhs	Form No. DPS-P-62 Form No. DPS-P-63 (Terms & Conditions of Contract)
Above Rs. 5.00 lakhs upto Rs. 1.00 crore	Form No. DPS-P-15(Contract Conditions DPS-P-12)
Above Rs. 1.00 crore (TPT)	Form No. DPS-P-14 (Contract Conditions DPS-P-12)

12.13.3 Different types of standard tender forms which are at present in use for issue of tender depending on the estimated value of the indent are as follows:-

12.13.4 For Indigenous Stores

Estimated Value of Indent	Applicable Tender Form
Upto Rs. 50,000/-	Form No. DPS-P-22, P-22A
Above Rs. 50,000/- upto Rs. 1.00 crore	Form No. DPS-P-44,P-44A (Contract Conditions DPS-P-11)
Above Rs. 1.00 crore (TPT)	Form No. DPS-P-13 (Contract Conditions DPS-P-11)

12.13.5 For Import of Stores

Estimated Value of Indent	Applicable Tender Form
Upto Rs. 25,000/-	Form No. DPS-P-52
Above Rs. 25,000 lakhs upto Rs. 2.00 lakhs	Form No. DPS-P-62, DPS-P-63 (Terms & Conditions of Contract)
Above Rs. 2.00 lakhs upto Rs. 1.00 crore	Form No. DPS-P-15 (Contract Conditions DPS-P-12)
Above Rs. 1.00 crore (TPT)	Form No. DPS-P-14 (Contract Conditions DPS-P-12)

12.13.6 The above value limits were fixed long ago during 1972. Considering the erosion in money value due to inflation and other factors since then, it is proposed to dispense with form No. DPS-P-52 (for import of stores) and increase the value of other tender forms for indigenous stores as well as import of stores as mentioned above.

12.14 Modified Commercial Terms

In respect of high value indents, Jt. Director/Regional Directors can review the general terms and conditions of the contract based on the recommendations of the indenting group or taking into account the nature of the material and market conditions, can offer a modified commercial terms in the NIT/tender document especially with reference to payment terms, submission of SD, PBG, etc. and send a message to the market that the tenderer should adhere to these commercial terms and DPS will not accept any further modifications in the commercial terms. This will help to evaluate the tenders on an equitable basis.

12.15 Issue of Tender through Courier

As per Rule 151 of GFR 2005, copies of the bidding documents should be sent directly by Speed Post/Registered Post/Courier/Email to firms which are borne on the list of registered suppliers for the goods to be procured.

12.16 Clarification of Tender Documents

A prospective bidder requiring any clarification of tender documents should notify the Purchase Department in writing, which should respond to all such requests received no later than 15 days prior to the deadline for submission of quotations. Written copies to the clarifications will be sent to all prospective bidders who have received/purchased the tender documents. The clarification will be displayed in the website for the benefit of the tenderers who are downloading the tenders.

12.17 Review of Indents

12.17.1 It would be the responsibility of the Officer concerned to whom powers have been delegated to issue purchase orders to ensure timely action on each indent falling within his purchase powers. It would be his responsibility to review the progress of the case from time to time so as to ensure that action is taken at various stages in time and no item is lost sight of.

12.17.2 A monthly review will be conducted of all indents received.

12.17.3 The review will be conducted at various levels within whose powers the indent value falls.

12.17.4 The review will be made with reference to time limit prescribed for principal stages of purchase action.

CHAPTER - 13

SUBMISSION OF TENDER & TENDER OPENING

13.1 Submission of Tender

13.1.1 Tenders are to be submitted in sealed envelopes super scribed with tender number, due date and time clearly mentioning the name and address of the tenderer and should be sent to the respective Purchase Unit to reach on or before the specified due date and time.

13.1.2 Tenders are to be received through Tender Box. The Tender box should be located in a place, which is easily accessible to parties for dropping their tenders. The Tender box shall have two locks. Key of one lock will be with the Officer nominated and the other key with the official nominated for opening of the Tender box. On each occasion of the tender opening, the tender box will be opened by two officials at the prescribed time and the tenders will be taken out. The tenders so collected are to be entered in a register duly signed with date and time by the two officials and handed over to the Assistant Purchase Officer (Tender) for safe custody.

13.1.3 Tenders can be sent by post to the specified address of the concerned Purchase Unit or can be personally deposited in the tender box kept at the respective Purchase Unit so as to reach on or before the date and time specified for its receipt.

13.1.4 Bulky tenders which cannot be deposited in the tender box can be accepted by the Assistant Purchaser Officer, Tender Section or by an Officer nominated for this purpose by Director, P&S. While taking delivery of such bulky tender(s), the Officer who receives the tender(s) will sign on the cover duly indicating the date and time of receipt of the tender(s).

13.1.5 In case cover(s) received do not bear any tender number and/or other marking to show that a tender is enclosed therein, these will be opened by an official in the presence of the Assistant Purchase Officer, Tender Section or an Officer nominated by Director, P&S/RDs. The requisite details (tender number, date and time of opening) will be noted on a new envelope and the tender including the cover should then be put into the envelope, closed and sealed in the presence of the Officer. A certificate duly signed by these persons should be endorsed on the envelope indicating that the opening and resealing was done in their presence.

13.1.6 In the case of envelopes, which are torn, the fact should also be brought out on such envelopes which should then be put in another envelope and action should be taken as above.

13.1.7 Fax quotations will immediately on receipt, be passed on to Assistant Purchase Officer, Tender Section. Any such offers received prior to the time stipulated for receipt of tender would be closed in an envelope and the requisite details like tender number, date and time of opening, etc. will be entered in the cover. A certificate on the envelope indicating the date and time of receipt of telegram/fax/telex should be furnished by the officer concerned under his/her signature.

13.1.8 The late/delayed tenders should be passed on to the Purchase Officer concerned on the date of their receipt after indicating in the cover as late/delayed tender and the date and time of receipt under the signature of APO, Tender Section.

13.1.9 All the tenders received should be segregated tender-wise and due-date-wise and kept in the Tender Section under safe custody after making entry in the Tender Receipt Register of all the tenders received. On the date of tender opening, the tender covers for that day will be taken out by the Tender Section and after making necessary entries hand over the covers to the concerned officer opening the tenders with proper acknowledgement of receipt of tender covers and the relevant purchase files.

13.2 Tender Opening

13.2.1 Opening of the tenders is one of the important functions of the Officers in a Purchase Organisation. While opening the tenders the officers should exercise utmost care and be vigilant to avoid any lapse on their part, which can jeopardize the procurement process.

13.2.2 In order to ensure that the opening of the tender is done properly the officers concerned should strictly follow the following instructions:-

13.2.3 In respect of Public Tender/Open Tender:

13.2.3.1 The tenders shall be opened on the specified date and time by the authorized officer other than the one who has to deal with that tender subsequently in the presence of an Accounts representative. The officer who is dealing with that tender should under no circumstances open that tender.

13.2.3.2 If the date(s) specified for receipt and opening of the tender(s) is/are declared as holiday(s) abruptly by the competent authority due to administrative reasons, then the due date(s) for receipt/opening of the tender will get postponed automatically to the next working day.

13.2.3.3 Before opening the tender it should be ensured that the total number of tenders stated to have been received against that tender by the Tender Receipt Section tally with the tenders available for opening, all the tenders now kept for opening are relating to that tender only and the tenders available are from those firms to whom the tenders were sold/issued (to NSIC registered firms) or firms who had downloaded from the website and there is no unsolicited tender.

13.2.3.4 It should also be ensured that all the tenders are in properly sealed condition and included in the opening.

13.2.3.5 It is to be verified that the EMD as called for in the NIT (including the amount, date of drawal, in favour of, payable at, etc.) is furnished by the firm or the details of valid registration with NSIC/DGS&D/DPS is furnished. If these are not available the tender opening officer should make a recording to this effect on the tender.

13.2.3.6 The tenders shall be opened in the presence of authorized representatives of the firms who have submitted the tenders in time and wish to be present during the tender opening.

The bidders' representative shall sign a register/tender opening sheet evidencing their attendance. No quote shall be rejected at tender opening, except for the late quotations, which shall be kept unopened and subsequently returned to the tenderer. Withdrawn quotations before opening date of the tender will be returned unopened to the bidders. Late quotations are those which are received after the deadline for submission of the tenders prescribed by the Purchaser. Exception to this principle can be made when the offer is against single tender enquiry or proprietary purchase or from OEM. In case of any missing documents or any change is noticed (including the difference in amount between words and figures) all these details are to be noted in the tender by the tender opening Officer.

13.2.3.7 The tender opening officer shall sign with date and affix the stamp bearing the name and designation and also put the serial number of the bid with reference to the total number of bids opened against the particular tender on the first page of the bid.

13.2.3.8 The Purchase Officer opening the tender should verify that only the authorized representative of the firms which have actually submitted the tenders are present at the tender opening. Unauthorised representatives or representatives of the firms, which have not submitted the tenders, should not be allowed to be present.

13.2.3.9 The representatives of National Small Scale Industries Corporation will however be admitted when tenders are opened in public to enable him to take down necessary information for communication to small scale units concerned.

13.2.3.10 The officer concerned opening the tender will prepare a list of representatives present at the opening of the tender and obtain their signatures on the list which will be signed in the end by the tender opening officials. The list will be signed by the Officer from Purchase and the Accounts representative and shall be kept in the file for record.

13.2.3.11 It should be ensured that no tender is rejected by the tender opening official at the tender opening stage. They should open all the tenders as received, recording the deficiency in the tender documents.

13.2.3.12 Hand written quotations:

13.2.3.12.1 In case an entire tender is hand written, the tender opening officer should make a mention about this aspect on the first page of the tender. The rates in figures and words should be encircled and initialed by the tender opening officer.

13.2.3.12.2 In case, only the rates or any other portion of the tender is hand written, the hand written portion should be encircled and the rates in words should be written on the offer by the tender opening officer and duly initialled.

13.2.3.13 The officer opening the tender will read out the following particulars for each tender opened for the information of the representatives attending the tender opening:

- 1) Tender Number & the names of the tenderers
- 2) Articles/nomenclature of the stores

- 3) Quantity offered in the tender.
- 4) Unit price and applicability or otherwise of excise duty, statutory duties, sales tax, etc.
- 5) Whether any rebate/discount offered. If so, the percentage/quantum of discount and conditions, if any.
- 6) Delivery period offered.
- 7) Terms of delivery.
- 8) Payment terms including advances required, if any.
- 9) Any other additional charges like packing charges, safe delivery charges, installation and commissioning charges, etc.
- 10) Any special conditions and deviations from tender specification/DPS Standard Terms & Conditions of the Contract.

13.2.3.14 The tender opening officer should read out the particulars in the covering letter only in case where an indication calling the attention of the purchaser to these particulars has been given in the tender form. If no such indication is there in the tender form, the particulars in the covering letter need not be read out at the tender opening.

13.2.3.15 Where opening of the tenders is not completed in one sitting and is carried forward to a second sitting on the same day or after a break to the next day, the officer opening the tenders should get the signatures of at least two representatives present on the covers of all the unopened tenders. He should also record a note as to the total number of tenders remaining unopened which should also be got countersigned by two representatives whose signatures have been obtained on the covers of the unopened tenders. Thereafter the tenders shall be kept in the safe custody of the officer opening the tender.

13.2.3.16 Each page of the schedule or the letter attached to it shall be initialled with date particularly the prices, the delivery period and all other terms and conditions which has a bearing on the cost of the tender including taxes & duties, discount, any other charges claimed including packing & forwarding, transportation, training, testing, inspection, submission of test certificates, etc. shall be circled and initialled. Blank tenders should be cancelled under the initial and date of both the tender opening officers.

13.2.3.17 Alterations in tenders if any made by the firm should be initialled legibly by the officer opening the tenders to make it perfectly clear those alterations were present on the tender at the time of opening. Wherever any erasing or cutting is observed, the substituted words should be encircled and initialled and the fact that erasing/cutting of the original entry was present at the time of opening shall also be recorded. Each cutting/erasing of price schedule should be numbered serially i.e. 1, 2, 3 and the total number of cutting/erasing on the page should be mentioned.

13.2.3.18 Any addition, alteration, special conditions, etc. should be clearly mentioned on each page and initialled by both the officers opening the tender.

13.2.3.19 In case there are no cutting/erasing or alteration, the facts should be recorded as 'no correction' and should be initialled by both the officers opening the tender.

13.2.3.20 No amendment to the tenders will on any account be permitted after the due date and closing time of the tenders.

13.2.4 In respect of Two Part Tendering System

13.2.4.1 In a Two Part tendering system, Techno-commercial Bid (Part-I) and Price Bid (Part-II) in two separate sealed covers and both these covers again put in a single sealed cover are required to be submitted within the specified due date. At the time of opening of Part-I if a tenderer has included price or any other charges in Part-I or has failed to submit Part-II separately in a sealed envelope, such tenders are liable to be disqualified. The tender opening officer shall make a clear mention regarding the above aspects on the front page of the tender.

13.2.4.2 After opening of Part I of the tender, tender opening officer should sign on the envelopes/covers of Part II of the tender and indicate the same serial number as that of Part I and should obtain signature from two representatives of the firms present on the covers of Part II and all the covers after checking that they are sealed properly should be put in a box and the box should be sealed. Signature may be obtained from the representatives on the seal also.

13.2.4.3 The total number of tenders received and opened and the details of 'regret' if any received should be recorded in the file and signed by all the officers opening the tender. The concerned purchase file along with the tenders should be handed over to the Assistant Purchase Officer (Tender) under proper acknowledgement. The Assistant Purchase Officer (Tender) should immediately pass on the purchase file and the relevant tenders to the respective Purchase Officers who are concerned with the file.

13.2.5 In respect of Limited Tender

13.2.5.1 Considering the large number of limited tenders to be opened on each day, limited tenders in DPS are not opened in the presence of the representatives of the tenderers.

13.2.5.2 Limited tenders are opened by the nominated officers on each day who will be other than the one who has to deal with that tender subsequently.

13.2.5.3 The nominated officer along with a representative from Accounts shall open limited tender by Public Tender dispensation.

13.2.5.4 While opening the tenders, the tender opening officer shall strictly follow the instructions given above at 13.2.2.

13.3 Late and Delayed Tender

13.3.1 Tenders or modifications to tenders received after the specified time of opening are treated as 'late' tender.

13.3.2 Tenders or modifications to tenders received before the time of opening but after the due date and time for receipt of tender are considered as 'delayed' tender.

13.3.3 Both late and delayed tenders should not be considered.

13.3.4 In two-bid system, techno-commercial offers received after the date and time for its receipt and opening will be considered as late or delayed tender as the case may be.

13.3.5 Price bid received after opening of the techno-commercial offer though before the date fixed for opening of price bid will be treated as late tender.

13.3.6 Late and delayed tenders received will be marked 'late/delayed' tender on the envelope by the Officer-in-charge of the Tender Section and passed on to the Officer concerned. These tenders shall not be opened and should be kept as it is in the original envelope in the case file and return to the tenderer.

13.4 Safe Custody of Tender

The Purchase Section should prepare the comparative statement at the earliest possible time. Till such time, the tenders should be kept in safe custody of the officer concerned, safeguarding against any tampering of the bids/misplacement.

CHAPTER - 14

COMPARATIVE STATEMENT OF OFFERS

14.1 Introduction

14.1.1 Preparation of Comparative Statement of Tenders is one of the most significant areas of Purchase Management. The entire process of tender evaluation and placement of contract must be transparent. All the aspects which are to be taken into account for evaluating the tenders including the method to be adopted for evaluation of tenders and the techniques for determining the lowest evaluated responsive tender for placement of contract are to be incorporated in the NIT/Tender enquiry document in a clear and comprehensive manner without any ambiguity and/or confusing stipulations therein, so that the interested tenderers can formulate their competitive offers in a meaningful manner and participate in the tender process with confidence.

14.1.2 All the tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender enquiry document and terms and conditions etc. stipulated by the tenderers in their tenders. No new condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition should be overlooked while evaluating the tenders. Aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of the Purchaser. Details such as validity of the offer, delivery schedule, submission of EMD, SD, PBG, etc. should also be brought out in the CST.

14.1.3 If the offers have been received containing different currencies (in the case of imported goods), the entire quoted price are to be converted into a single currency for evaluation and comparison of offers on equitable basis. For this purpose all such quoted prices are to be converted into Indian Rupees as per the selling exchange rate as prevailing on the date of tender opening or any other date to be specified in the tender enquiry.

14.1.4 Sometimes while purchasing sophisticated and costly equipment, machinery etc., special emphasise is given to factors like high quality performance, environmental friendly features, low running cost, low maintenance cost, etc. To take care of the same, relevant details are to be incorporated in the tender enquiry document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of the same and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. If the tender enquiry document provides for any price preference and/or purchase preference for SSI/PSU etc., the same is also to be kept in view while preparing the comparative statement.

14.2 Comparison of offers on total evaluated cost

14.2.1 The comparison of the offers should not be made merely on the basis of the price quoted. All aspects of the case including the quoted terms and conditions of the contract, delivery

period, taxes and duties applicable, freight, insurance and other charges and the compliance to the specification shall be considered before a purchase decision is taken. One of the important element of the comparison process is the need to ensure level playing field to all bidders by proper ranking of their offers so that the decision making process is totally transparent. The financial implication should be considered as the all-inclusive cost to the government on delivery to the designated consignee. Conditional offers and those with specifications not in conformity with the tendered specifications (essential provision) should not be considered. For proper evaluation and ranking, the offers must be compared on a common platform on the basis of the total evaluated cost of each offer which should be arrived at by adding the basic price as well as other charges and all statutory levies as shown below :-

14.2.2 Evaluated Cost in respect of offer for indigenous stores:

- 1) Basic price quoted, less discount, if any.
- 2) Add cost of accessories/spares, if any.
- 3) Add packing charges, if any.
- 4) Add excise duty/customs duty (if applicable) on (1) + (2) + (3) above.
- 5) Add VAT/CST as applicable on (1) to (4)
- 6) Add safe delivery charges, if any.

(In case the offer is ex-works and the bidder has not specified the packing, forwarding and transportation charges separately, please add 2% of the basic price towards packing (both local and outstation firm) and 1% of the basic price towards safe delivery charges in respect of local firm and 3% of the basic price towards safe delivery charges in respect of outstation firm).

- 7) Add training/testing charges, any other charges quoted by the firm.
- 8) Add erection and commissioning charges (if any).
- 9) Add service tax on erection & commissioning charges.
- 10) Total landed cost = (1) + (2) + (3) + (4) + (5) + (6) + (7) + (8) + (9).
- 11) Add interest on advance, if any, asked for by the bidder.
- 12) Total evaluated cost = (10) + (11).

14.2.3 Evaluated Cost in respect of offer for imported stores -

- 1) Basic price less discount, if any -
Ex-works/FCA/FOB as quoted in the currency of country of origin, including agency commission.

(In case the priced quoted is ex-works (unpacked) add 2% towards packing and 3% towards inland freight/transportation to arrive at FCA/FOB).

- 2) Add freight as quoted or 10% of FCA/FOB or 15% on Ex-works price quoted.
- 3) C&F Price in the currency of country of origin = (1) + (2)
- 4) Convert C&F price into equivalent Indian Rupee at the prevalent exchange rate between foreign currency and Indian Rupee on the date of opening of the tender.
- 5) Add insurance (1% of C&F price).
- 6) CIF price in Indian rupee = (5) + (6)
- 7) Add customs duty (basic customs duty + Countervailing duty + additional customs duty + education cess as applicable).
- 8) Landed cost = (6) + (7).
- 9) Add testing/training charges, if any/any other charges.
- 10) Add erection & commissioning charges, if any.
- 11) Add service tax on (10) above.
- 12) Total landed cost = (8) + (9) + (10) + (11).
- 13) Add interest on advance, if any, asked for by the bidder.
- 14) Total evaluated cost = (12) + (13).

14.3 Comparison between Indigenous & Imported Offer

If comparison of offers includes both indigenous offers and imported offers, add 2% to the total landed cost of foreign offers towards charges for customs clearance and local transportation upto purchaser's site.

14.4 Loading Interest on Advance/Stage Payment

In case the tenderer has called for any advance or stage payment, interest shall be calculated on the amount of advance/stage payment asked for, for the delivery period quoted and added to the landed cost.

14.5 Important Points to be considered while preparing CST

Following points should be taken note of while preparing the comparative statement:-

1. Conditional discount offered by the bidders should not be taken into consideration for comparison.
2. In cases where the bidders have mentioned in the offers terms such as 'excise duty as applicable', 'excise duty nil against excise duty exemption certificate', 'excise duty at present nil/not applicable', the excise duty at the normal rate shall be added for arriving at the evaluated cost.
3. The details of validity period, delivery period, warranty period, payment terms, as quoted by the bidders should be reflected in the comparative statement of offers as it will have a bearing on the decision making.
4. 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.
5. If there is a discrepancy between words and figures, the amount in words shall prevail.

14.6 Checking of Comparative Statement

14.6.1 Since comparative statement is a very important document based on which the purchase decision is made, the dealing assistant should pay proper attention while computing the details from the offers as well as doing the calculation and ensure that there is absolutely no mistakes in the preparation of the comparative statement and the officer concerned must sign the comparative statement for its correctness in all respects.

14.6.2 The technical comparison of the offers should be made by the user based on the important parameters as per the original tender specification.

14.6.3 Even in cases where the technical/price comparative statement of offers is prepared by the user, the officer concerned in DPS should check the details and ensure that the CST is correctly prepared in all respects before reference to the competent authority/committee for approval.

14.7 Award criteria

The Purchaser will award contract to the successful bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the bidder is found to be technically, commercially and financially acceptable and whose goods have been type approved/validated by the Purchaser.

14.8 Model Comparative Statement of Tender

Model Comparative Statements of Tender are given in Annexure I & II.

ANNEXURE - 1

COMPARATIVE STATEMENT AMONGST INDIGENOUS & IMPORTED OFFERS

Against a public tender issued for a special type of equipment for one of the DAE Units in Mumbai, 5 offers are received as follows:-

1. Firm 'A' - Euro 60,000 FOB Germany.
Erection & Commissioning charges Euro 4000
L/C payment.
Delivery: 6 months.
Price includes agency commission at 5% to Indian agent.
2. Firm 'B' - £ 40,000 CIF Mumbai.
L/C payment.
Delivery: 8 months.
3. Firm 'C' - US \$ 70,000 Ex-works New York.
L/C payment inclusive of agency commission at 2%.
Delivery: 5 months.
4. Firm 'D' - Rs. 90.00 lakhs.
Free Delivery to Purchaser's site.
Erection & commissioning charges: Rs. 75,000/-
CST: Extra
Delivery: 6 months
Payment terms: 30% advance with order, balance 70% against delivery.
5. Firm 'E' - Rs. 81.00 lakhs Ex-works Baroda
ED: 14%, VAT extra, packing charges Rs. 1.00 lakh
Forwarding & freight: 5% on basic cost
Erection & Commissioning charges: Rs. 1.00 lakh
Delivery: 5 months.
Payment terms: 20% advance with order, balance 80% against delivery of the equipment.

Assume Customs Duty @ 30%. Excise duty 14%. Service Tax 12%. CST/VAT 12.5%.

Exchange Rate: 1 £ = Rs. 80.00 1 Euro = Rs. 60.00 1 US\$ = Rs. 40.00

The Comparative Statement of the above offers is as follows:-

Basic Price	Firm A	Firm B	Firm C	Firm D	Firm E
Ex-works			US\$ 70,000.00		
+ 5%	-		3,500.00		
FOB	Euro 60,000.00		7,000.00		
+ 10%	Euro 6,000.00				
C&F	Euro 66,000.00		80,500.00		
+ 1%	Euro 660.00		805.00		
C.I.F	Euro 66,660.00	£ 40,000.00	81,305.00		
Equivalent Rs.	39,99,600.00	32,00,000.00	32,52,200.00		
Customs Duty(30% of CIF)	11,99,880.00	9,60,000.00	9,75,660.00		
Landed Cost	51,99,480.00	41,60,000.00	42,27,860.00	90,00,000.00	81,00,000.00 (ex-works)
Packing charges					1,00,000.00
Customs clearance & transportation charge @2% of landed cost	1,03,990.00	83,200.00	84,557.00		2,43,000.00 (towards forwarding & freight @ 3% of basic cost)
Erection & Commissioning charges	Euro 4,000.00 = Rs. 2,40,000.00			75,000.00	1,00,000.00
Excise Duty					11,48,000.00
C.S.T./VAT	Nil			11,25,000.00	11,68,500.00
Service Tax	Nil			9,000.00	12,000.00
Total landed cost for delivery at Purchaser's site.	Rs.55,43,470.00	Rs.42,43,200.00	Rs.43,12,417.00	102,09,000.00	1,08,71,500.00
Interest on advance at 12% per annum				1,62,000.00 (interest calculated on 27.00 lakhs for 6 months)	81,000.00 (interest calculated on 16,20,000.00 for 5 months)
Total evaluated cost	Rs.55,43,470.00	Rs.42,43,200.00	Rs.43,12,417.00	1,03,71,000.00	1,09,52,500.00
Delivery period quoted	6 months	8 months	5 months	6 months	5 months
Payment terms	L/C	L/C	L/C	30% advance 70% against delivery	20% advance 80% against delivery
Rate of exchange adopted	1 Euro = Rs.60	1 £ = Rs. 80	1 US\$ = Rs. 40	-	-
Ranking	L3	L2	L1	L4	L5

ANNEXURE - 2

COMPARATIVE STATEMENT AMONGST INDIGENOUS OFFERS

X - MUMBAI	Y - CHENNAI	Z – BARODA																																																																																																																																																																																													
Rs. 20.00 lakhs Ex-works Excise Duty 14% VAT 12.5% <u>Payment Term</u> 30% advance 60% against delivery 10% after final acceptance Installation charges: Rs. 1.00 lakh	Rs. 25.00 lakhs Excise Duty at present NIL. Shall be charged if applicable later. Safe delivery charges : Rs. 50000/- Packing charges : 1% 20% advance 80% after delivery and final acceptance. Installation charges: Rs. 75000/- CST as applicable	Rs. 30 lakhs Excise Duty NIL against ED exemption certificate Free Safe Delivery No packing charges Full payment after receipt and acceptance. CST as applicable																																																																																																																																																																																													
Delivery Period: 15 months	12 Months	18 Months																																																																																																																																																																																													
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CHAPTER - 15

EVALUATION OF TENDERS & PURCHASE RECOMMENDATIONS

15.1 Evaluation on Equitable Basis

Evaluation of tenders shall be done on an equitable basis and in a fair and transparent manner. In order to ensure that all bidders are provided with a level playing field, all elements of the cost quoted by the bidders such as the basic price, discount if any, price variation, additional charges if any for safe delivery, packing, training, installation & commissioning, statutory levies, such as excise duty, custom duty, VAT or CST, including the terms and conditions with financial implications (such as advance/stage payment, etc.) must be taken into account and the offers must be compared on the basis of the total evaluated cost thus arrived at.

15.2 Preliminary Examination

15.2.1 After opening of the tenders, the Purchase Section dealing with the concerned files, will receive the file/tenders along with other documents from the Assistant Purchase Officer (Tender). All the tenders so received will first be scrutinized to see whether the tenders meet the basic requirements as incorporated in the tender enquiry document. The tenders which do not meet the basic requirements, are to be treated as un-responsive and a decision regarding their acceptability or otherwise has to be taken based on the merit of each case with the approval of the competent authority.

15.2.2 The following are the important points, for which a tender may be declared as 'Un-responsive' during initial scrutiny:

1. The tender is unsigned
2. The tenderer is not eligible
3. The tender validity is shorter than the required period.
4. Required EMD has not been provided.
5. The tenderer has quoted for goods manufactured by a different firm without the required Authority letter from the proposed manufacturer.
6. The tenderer has not agreed to give the required security deposit/performance bond.
7. Against a schedule in the list of requirement, the tenderer has not quoted for the entire requirement as specified in the schedule.

8. The tenderer has not agreed to some essential conditions.
9. Any other minor informality and/or irregularity and/or non-conformity which do not constitute any material deviation and financial impact and does not prejudice or affect the ranking of the tenders.
10. Details of all tenders, which have been declared unresponsive and to be ignored as per the above analysis and, also, the grounds for their becoming unresponsive are to be accurately recorded in the purchase file.

15.3 Points to be considered for Evaluation

The following points must be taken into account while evaluating the offers:-

- 1) Purchaser shall evaluate the bid to determine whether they are complete, whether any computational error have been made, whether required sureties have been furnished, whether documents have been properly signed and whether the bids are generally in order.
- 2) If there is a discrepancy between the unit price and total price, unit price shall prevail.
- 3) If there is discrepancy between words and figures, the amount in words shall prevail.
- 4) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected.
- 5) If, in the price structure quoted for the required goods, there is discrepancy between the Unit Price and the Total Price (which is obtained by multiplying the Unit Price by the Quantity), the Unit Price shall prevail and the Total Price corrected accordingly, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the Unit Price in which case the Total Price as quoted shall govern and the Unit Price corrected accordingly.
- 6) If there is such discrepancy in an offer, the same is to be conveyed to the tenderer and with a target date and if the tenderer does not agree to the observation of the Purchaser, the tender is liable to be ignored.
- 7) Sometimes, discrepancies are also observed between the original copy and the other copies of the same tender set. In such a case, the text etc. of the original copy will prevail. Here also, this issue is to be taken up with the tenderer in the same manner as above and subsequent actions taken accordingly.
- 8) All the above actions in sl. nos. 2 to 6 shall have the approval of the competent authority at appropriate stages.
- 9) Prior to detailed evaluation, the Purchaser will determine the substantial

responsiveness of each bid to the bid documents. A substantially responsive bid is one, which conforms to all terms and conditions of the bid documents without material deviation. Deviation from or objection or reservation to critical provision like bid security, warranty and guarantee, applicable law, taxes and duties will be deemed to be a material deviation.

- 10) Tenders indicating the validity shorter than the validity period asked for in the tender enquiry should be ignored as a rule. In exceptional cases, shorter validity tenders may be admitted with the concurrence of Finance and approval of Director, P&S irrespective of value for valid reasons to be properly recorded in writing.
- 11) In case the tender is unsigned, it should be examined whether it is a genuine error. In such cases the matter may be referred to the firm who should confirm that the tender was submitted by them and by oversight they failed to affix their signature and they now confirm that they abide by the tender submitted. However it is open to competent authority to accept or reject the tender.
- 12) All the offers must be compared on the basis of the essential technical specifications laid down in the tender document and the qualification criteria if any, mentioned therein.
- 13) The offers should not be given any special grading based on the additional features, if any, offered by the bidders which were not part of the tender specification.
- 14) Financial capability of the firm.
- 15) Technical capability.
- 16) Delivery period offered.
- 17) Past performance.
- 18) Reasonableness of price quoted.
- 19) Warranty period
- 20) Payment terms
- 21) Bids received should be evaluated in terms of the conditions already incorporated in the bidding document. No new condition which was not incorporated in the bidding document should be brought in for evaluation of the bids. Determination of the bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.
- 22) The lowest bidder meeting the laid down tender specification must be considered for acceptance if they are otherwise found suitable.

15.4 Technical Specification

The evaluation report should bring out clearly the deficiency in respect of each rejected offer with respect to the specification/drawing, qualification criteria or other particulars given in the tender for the requirement. In respect of plant, machinery and other equipments, in case the tenderer has not furnished the technical details regarding the deviation from the tender requirement wherever called for, this should be brought out clearly in the evaluation report.

15.5 Technical Capability

In respect of unregistered suppliers or firms with whom we have no previous experience, factory evaluation/inspection shall be done by a competent engineer to make an assessment of their technical competence, the infrastructure available and their past performance and their capacity to execute the order for the requirement against the tender.

15.6 Financial Capability

In case it is proposed to finalise the purchase in favour of an unregistered firm, financial standing of the firm should be assessed by obtaining the following documents:-

1. Copies of balance sheet and profit & loss account for the last three years.
2. By obtaining banker's report regarding the financial standing of the firm. The banker's report could be dispensed in respect of firms which are covered by statutory auditing process. However in respect of firms which are not covered by statutory auditing requirement the banker's report shall be called confidentially. If a report from the bank does not come within a period of 10 weeks from the date of reference to the bank, the financial aspect of the firm on the basis of their balance sheet shall be considered and decision taken.
3. Copies of purchase orders of major value executed by the firm in the previous 3 years.

15.7 Delivery Period

The delivery period as quoted by the firm should be taken for evaluation which should be closer to the specific delivery schedule, if any, mentioned in the tender.

15.8 Past Performance

Past performance of the firm is to be determined based on the following aspects:-

- 1) Execution of the previous order(s) within the original contractual delivery date.
- 2) Submission of SD within the specified period.

- 3) Submission of BG towards advance/progress payment in time.
- 4) Submission of design/engineering document within the specified time.
- 5) Supply of quality products without any defect or discrepancy.
- 6) Furnishing of required clarifications in time during the course of the contract.
- 7) Carrying out installation & commissioning within the agreed schedule.
- 8) Fulfillment of warranty obligation such as providing required technical support, after sale service and arranging rectification of deficiencies, replacement of defective parts/components during the warranty period.
- 9) Submission of Performance Bank Guarantee in time.
- 10) Fulfillment of any other contractual obligations against our earlier orders.

15.9 Reasonableness of Price

15.9.1 Reasonableness of price proposed for acceptance has to be established by taking into account the competition observed from the response of the trade to the tender enquiry, last purchase price, estimated value as given in the Indent, data base maintained on the costs based on the past contract entered with, market price wherever available and changes in the indices of various raw materials, electricity, wholesale price index and statutory changes in wage rates, etc.

15.9.2 The reasonableness of price may also be examined by resorting to cost analysis in situation where there is a wide variance over the last purchase price not explained by corresponding changes in indices.

15.9.3 Evaluation of tenders is made on the basis of the ultimate cost of the user.

15.9.4 Last Purchase Price of more than three years cannot be taken as a real scale for comparison. Such LPP could be used as an input for assessing the rates. The past contract should have been successfully executed. Factors like basket price and bulk discount offered need to be taken into account while using LPP as a scale for comparing prices. Price variation clause if any to be taken into account for the final price. Factors like ex-stock/current production need to be considered. Market conditions and extraneous factors like re-starting production lines due to obsolescence may also have to be considered. In the case of single tender, analysis of the cost and price structure may be done to ensure that the price quoted is reasonable with reasonable profit margin.

15.9.5 Assessing of reasonability may be an arduous task, especially where price data is not available or in case of overseas procurement. In such cases it is important to place on record efforts made for arriving at a price and taking procurement decision.

15.9.6 CVC had observed that the estimated rates are worked out in an unprofessional and perfunctory manner. CVC further observed that the estimated rates are vital element in

establishing the reasonableness of the prices and therefore, should be worked out in a realistic and objective manner on the basis of prevailing market rates, last purchased price, economic indices for raw material/labour, other inputs costs and assessment based on intrinsic value, etc.

15.9.7 Price paid in an emergency purchase or Purchase Price from a distress sale is not accurate guidelines for future use.

15.9.8 If L-1's price is not reasonable, then, in the first place, the Unit is to review its own data and details to recheck whether the reasonable price so arrived is correct or not. If it is correct, the Purchase may strictly as an exception, negotiate the price only with the lowest evaluated responsive tenderer (L-1) in an attempt to bring down the same. If L-1 reduces the price to the desired level, contract may be placed on it but if it does not agree, then future actions like retendering etc. may be decided depending on the merits of the case.

15.9.9 Sometimes sufficient number of tenders may not be received. A situation may arise where, after analysing the tenders, DPS may end up with one responsive tender. In such a situation, it should be first checked whether, while floating/issuing the tender enquiry, all necessary requirements like standard tender enquiry conditions, industry friendly specifications, wide publicity, sufficient time for formulation of tenders etc. were fulfilled. If not, the tender is to be reissued/refloated after rectifying the deficiencies. However, if after scrutiny, it is found that all such aspects were fully taken care of and in spite of that the Purchaser ended up with one responsive tender only, then contract may be placed on that tenderer provided the quoted price is reasonable.

15.10 Warranty

The warranty period quoted by the bidders shall be compared against the warranty period mentioned in the tender document.

15.11 Payment Terms

It is to be examined whether the payment terms offered by the firm matches with the provisions of NIT/tender document. Otherwise, tender conditions have to be examined in detail and an acceptable commercial settlement to be arrived on mutual agreement. Proper loading as per the procedure being followed has to be taken for deviation in the payment terms while preparing the CST.

15.12 Lack of Competition

Lack of competition exists if the following factors intervened:-

- 1) Number of acceptable offers is less than three.
- 2) Ring prices have been quoted by all the tenderers (cartel formation).
- 3) The product of only one manufacturer has been offered by all the tenderers irrespective of number of quotations.

15.13 Tolerance Availability

15.13.1 The terms and conditions offered by the firms within the zone of consideration should be clearly discussed by highlighting those terms and conditions which are at variance with DPS General Conditions of Contracts.

15.13.2 The proposal should not only discuss the merits of all the offers lower than the one to be accepted but also the merits of higher offers from SSI/PSUs which come within the range of price/purchase preference allowed under government policies as explained in Chapter -2 'Govt. Purchase Policy & General Guidelines'.

15.14 Points to be Recorded by I/O on Technical Evaluation

15.14.1 In brief recommendation for placement of purchase order shall contain, but not limited to the information on:

- 1) Scope of the tender in brief, estimated cost, completion time.
- 2) Pre-bid meeting, tender opening, post bid meeting details.
- 3) All bidders meeting criteria/requirements (technical/financial) specified in NIT.
- 4) Brief of technical/financial evaluation of each tenderer with feed backs (detailed feed reports and individual visit reports to be kept in file).
- 5) Report of Technical Evaluation Committee, if any.
- 6) Site preparedness / availability, wherever installation & commissioning are part of the tender.
- 7) Status of drawings and FIM, if any to be provided to the suppliers.
- 8) Bidders having agreed to all technical specifications, tender conditions & payment terms, etc.
- 9) Vetting of CST by DPS along with observation, if any.
- 10) Offer validity.

15.14.2 Detailed reasons for variations in estimated versus recommended cost shall be furnished. Wherever there is large variation, say more than 10% between the estimated cost and the recommended value, indenter shall provide quantifiable reasons for variation and not merely qualitative statements in the recommendation.

15.15 Dividing the Quantity

As per standard procedure, each schedule of requirement incorporated in the tender

enquiry document is to be covered on the lowest responsive tender for that schedule without dividing the same. The tenderer who does not quote for the complete schedule as required is normally to be treated as unresponsive and ignored. However, there may be special occasions of purchase of very large quantities of goods which are beyond the capacity of a single tenderer and the lowest responsive tenderer is unable to take the load of the entire quantity. In such cases, the remaining quantity may be ordered on the second lowest responsive tenderer (L-2) at the rates offered by the lowest responsive tenderer (L-1), as far as feasible and for this purpose, negotiation may be held with the above tenderer (L-2). In such cases, it may not also become necessary to divide the requirement under a schedule by placing multiple contracts for part quantities on more than two responsive tenderers. Such eventuality should normally be foreseen and provided for in the Notice Inviting Tenders. The formula proposed to be adopted for allocation of orders to multiple (responsive) tenderers should be clearly brought out in the Notice Inviting Tender. The splitting of order should be an exception rather than a rule.

15.16 Scrapping of Tenders and Issue of Fresh Tenders

15.16.1 This contingency should be an exception rather than a rule. Reinvitation to tender can be justified only where there has been a material change in the basic specification after receipt of tenders or where the offers received do not conform to specifications in important respects or where prices quoted are unreasonably high because of a sudden slump or lack of competition.

15.16.2 Re-tendering may be considered with utmost caution under the following circumstances:-

- 1) Offer does not conform to essential specifications.
- 2) Wherever there are major changes in specification and quantity, which may have considerable impact on the price.
- 3) Prices quoted are unreasonably high with reference to assessed price or there is evidence of a sudden slump in prices.
- 4) There may be cases when the lack of competition is due to restrictive specifications, which do not permit many tenders to participate. The competent authority must consider if there are reasons for review of specification of the item to facilitate wider competition. Re-tendering will be done only after approval of IFA and Director in all cases.
- 5) In case L1 tenderer withdraws his offer, re-tendering should be resorted to as per CVC instructions.

Note:

- 1) The case where no offer has been received should be treated as if Purchaser has not gone out for tender at all.
- 2) The cases where enquiries against the same requirement are sent in the second or subsequent round, the previous one having been scrapped for

one reason or the other, it should be made clear to the parties who may have quoted against the previous tender that the fresh invitation to tender is in super session of the previous one.

- 3) Tender enquiries/notices should also be sent to those firms who had participated in the tender enquiry subsequently scrapped.

15.17 Tenderers' Representation

A tenderer shall have the right to be heard in case he feels that proper procurement processes is not being followed and/or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing, which is to be examined by appropriate administrative authority in the Department. However, such representations have to be sent within One month from the date of placement of contract and to be replied within One month from the date of receipt of representation. In order to discourage frivolous complaints, a non-refundable fee of suitable amount (linked to the value of the purchase order) should be prescribed.

15.18 Refund of Tender Fee

If it is decided to cancel/scrap the tenders after receipt of tenders, the tenders received may be returned on request. It is not necessary to authorize automatic refund of cost of tender on scrapping. Claims when received should be finalized with the approval of competent authority.

CHAPTER - 16

SCRUTINY & SUBMISSION OF PURCHASE RECOMMENDATION TO PURCHASE COMMITTEES FOR APPROVAL

16.1 Scrutiny of Purchase Recommendation

On receipt of the purchase recommendation from the User and before submission to the Purchase Committee, the Officer-in-charge in the Purchase Unit should check that the purchase recommendation is complete in all respects and is in order in accordance with the Department Purchase Procedure, General Financial Rules, CVC guidelines and orders issued by the Government from time to time on public procurement.

16.2 Aspects to be checked

The following important aspects must be checked before submitting the purchase recommendation for consideration and approval of the concerned Purchase Committee:-

- 1) Whether all the valid offers are evaluated with reference to the tender specifications, conditions and qualification criteria.
- 2) Unsolicited offers, late and delayed offers, offers without EMD and the requisite tender fee in respect of public tender should not be considered for evaluation.
- 3) In case the recommended offer is not the lowest whether technical justification for rejection of all lower offers are furnished by the user.
- 4) Correctness of the comparative statement of offers should be rechecked with reference to -
 - a) Whether all valid offers are included in the comparative statement,
 - b) Whether the details computed in the comparative statement are in accordance with the details given in the offers,
 - c) Whether the loading factors such as price variation, interest on the advance/stage payment required by the bidders, full CD/ED wherever applicable, packing, forwarding & freight charges wherever required are correctly taken into account,
 - d) Whether the calculation is correct in respect of each of the offers,
 - e) Whether the ranking of the offers shown is correct.

- 5) In case the recommended offer is the only technically suitable offer/only offer against PT or LT and the tendered cost is much higher than the estimated cost, it should be examined whether retender by contacting more firms with relaxed specifications if acceptable to Indenting Officer will bring more competitive offers, otherwise reasonableness of the price offered is to be certified by the user with the approval of the competent authority.
- 6) If the purchase is for spares/accessories whether details of the cost of original equipment for which the spares/accessories are required and the date of supply/installation of the equipment and the reference of relevant purchase order are given.
- 7) Whether approval of Director, P&S for deviation in the Purchase Procedure is obtained.
- 8) Whether the recommended offer is valid.
 - i) The Officer-in-charge should ensure that the approval of the Purchase Committee is taken as early as possible within the original validity period of the tender.
 - ii) The tendency to request the tenderer to extend the period of validity of their offer should be curbed. This is of considerable importance as apart from the delay which would invariably occur in meeting the requirement and thereby causing delay in the receipt of stores by the user, there is also a risk of the firm refusing to accede to the request for extension or the firm withdrawing the offer or extending the offer with the revised price all of which might lead to delay and avoidable additional expenditure.
 - iii) In cases where seeking extension of the offer become inescapable action should be taken much in advance of the expiry date of offer and the communication seeking extension of offer should be sent at least 15 days prior to the expiry date, as in such cases the offer of the firm who do not agree to the extension will still be available for consideration for a few days more.
 - iv) To avoid delay, the communication seeking extension of the offer can be sent to the firm by fax/email and a copy of the communication should be sent under 'Registered Post/Speed Post' to avoid any complaints from the firm that they have not received such communication.
 - v) Where only part quantity/item of the tenders are proposed to be accepted and for the remaining quantity/item the tenderer is required to keep their offer open upto a subsequent date, such quantity/item should be specifically mentioned in the communication addressed to the tendering firm.
 - vi) While submitting the purchase proposal for approval of the concerned Purchase Committee it is essential that the date upto which the

recommended offer is valid/open for acceptance should be clearly indicated in the proposal so that the final decision on the purchase can be taken at the appropriate level within the validity period of the offer.

- 9) Whether the total value of the requirement as per the purchase recommendation is correctly worked out on the basis of the recommended offer.
- 10) Whether the item(s) recommended are in accordance with the item(s) quoted by the bidder in their original bid received within the specified bid due date.
- 11) Any additional item(s)/spares/accessories which were not included in the original tender and subsequently offered by the firm after the due date and opening of the tender should not normally be considered being a post tender revision.
- 12) In case of wide variation between the estimated cost and tendered cost (beyond $\pm 10\%$) on the basis of the recommended offer whether sufficient justification is given for the wide difference duly approved by the competent authority.
- 13) In case the recommended bidder has declined to furnish the Performance Bank Guarantee, whether the recommendation/ opinion of the user is available for the waiver of PBG based on their past experience on the performance of the product/feed back from other user/reputation of the firm.
- 14) In case the funds for the requirement is provided under Revenue Budget, whether certificate from Finance regarding availability of funds in the applicable financial year has been obtained and enclosed to the purchase recommendation.
- 15) In case the funds are provided under Capital Budget whether details of financial sanction number, name of the project and head of account as well as the endorsement of the Project Coordinator regarding availability of fund and this item is part of the approved project are furnished.
- 16) Whether all the particulars/information required as per the standard proforma are filled in by the user and approved by the competent authority.
- 17) Post tender negotiation :-
 - a) In case the Indenting Officer has suggested negotiation of price in his recommendation this aspect should be thoroughly examined before referring to the Committee.
 - b) As a rule negotiation after tenders have been opened should be severely discouraged. Negotiation vitiates the sanctity of the tender system and reduces the credibility of the Purchase Organisation. Unless there is a definite scope for reduction in price and evidence to show that the prices quoted are unreasonably high or there is a ring formation or lack of

capacity, negotiation should not be resorted to at all. Even in such cases negotiation should be done only with L1 or in respect of offer against single tender or only effective offer against LT/PT.

16.3 Purchase Proposal for Submission to Committees

After satisfying that the purchase recommendation is in order the Officer-in-charge should prepare a purchase proposal based on the purchase recommendation in the prescribed proforma incorporating the following important details and send it to the Secretaries of the various Committees formed in each Unit depending upon the value of the purchase for presentation, scrutiny and recommendation/approval of the Committee for procurement:-

- 1) Name of the recommended firm.
- 2) Brief description of the item.
- 3) Quantity.
- 4) Total value of the recommended item(s) (i.e. basic cost of the equipment/accessories/spares plus the charges towards safe delivery, installation, commissioning, testing, training, if any).
The statutory levies such as excise duty, service tax, central sales tax, VAT, custom duty, as applicable should be mentioned separately.
In respect of imported offers the total FOB value of the requirement in the currency of country of origin quoted inclusive of the agency commission payable to the Indian Agent, if any, as well as the equivalent Indian rupees and the exchange rate taken into account for the conversion should be mentioned.
- 5) Mode of purchase adopted (PT/LT/ST).
- 6) Number of offers received.
- 7) Status of the recommended offer (whether lowest/lowest technically suitable/only technically suitable/only offer).
- 8) Validity of the offer.
- 9) Whether approval of competent authority obtained for deviation in the procedure.
- 10) Any other information which should be specifically brought to the notice of the Purchase Committee, such as negotiation of price, payment terms - advance/stage payment, warranty, etc.

16.4 Approval of the Proposal

16.4.1 The powers have been delegated to various authorities in each Unit depending upon their

status and responsibilities to approve purchase recommendation. All the Units have formed a local Stores Equipment Committee to scrutinize and approve the proposals upto certain values. Beyond this, the purchase proposals are submitted to the Stores Equipment Committee/Stores Purchase Committee/Special Purchase Committee, etc., formed in each Unit with the concurrence of DAE. Purchase proposals exceeding the value limit of this Committee are submitted to the Board/Council of the various Units with the recommendation of SEC/SPC, etc. for their detailed examination and recommendation to the Unit Head/DAE/MF for consideration and approval. The details of powers delegated to the various authorities and the Committees are brought out in detail in the Chapter 35 'Delegation of Financial Powers relating to Purchase'.

16.4.2 The competent authority who has been delegated powers to approve expenditure may at his own discretion or if so stipulated can appoint an Advisory Committee to assist him in decision making. However his/her decision will be final and at his/her own responsibility and accountability.

16.4.3 In cases where the financial powers are not vested in an individual but in a Committee which becomes a competent authority. Normally, the composition of the Committee is also stipulated in government regulations and the finance member is invariably a part of the Committee. Such Committee holds its own meeting and takes a collective decision. Each member is responsible and accountable for the quality of decision made.

CHAPTER - 17

NEGOTIATION

17.1 Introduction

Negotiation is the art and skill of using the information and empowerment to affect the behaviour within a time context. Negotiations after a competitive bidding should be severely discouraged. Negotiations send wrong signals in the market and vitiate the sanctity of the tendering system. If negotiation becomes the order of the day it reduces the credibility of the Department in the market. Quality may become the casualty. Negotiation shall be conducted with the prior approval of Director, P&S.

17.2 CVC Directive

Central Vigilance Commission has also banned negotiations other than with L1. They have also indicated that even with L1 negotiations can be undertaken only in the following circumstances:-

- 1) As post tender negotiations could often be a source of corruption, it is directed that there should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional situations would include procurement of proprietary items, single tender items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.
- 2) In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re-tender for the entire requirement would delay the availability of the item, thus jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.
- 3) Negotiations should not be allowed to be misused as a tool for bargaining with L-1 with dubious intentions or lead to delays in decision-making. Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In cases where the proposal is to be approved

at higher levels, a maximum of 15 days should be assigned for clearance at each level. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

- 4) As regards the splitting of quantities, some organizations have expressed apprehension that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of the L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. It is essentially in cases where the organizations decide in advance to have more than one source of supply (due to critical nature of the item) that the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself. This must be followed scrupulously.
- 5) Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc. (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

17.3 Committee for Negotiation

Where price negotiations have been approved by the competent authority, the following have to be kept in mind. Price negotiation is to ensure that the interest of the state is fully protected and the price paid is reasonable. The relationship between purchaser & seller is a long standing one for the mutual benefit of both. Hence the result of the negotiation should end in win-win situation. On the government side negotiations are invariably conducted by a duly appointed Commercial Negotiation Committee. The Committee should consist of a representative of purchase, indenting group, Accounts, quality assurance and preferably a specialist from other group. If necessary a legal representative may be added. The basic objective of the negotiation is to establish reasonableness of price being paid by government. This is a complex task and many factors need to be considered. Some of the guidelines to be considered for negotiations are furnished in the following clauses.

17.4 Essential Features for Negotiation

The essential features required for successful negotiations are:

- 1) Information (2) Personality (3) Empowerment (4) Time

17.5 Scope of Negotiation

What to negotiate : 1) Price (2) Quality (3) Quantity (4) Delivery (5) Transportation (6) Commitments (7) Commercial Terms. Negotiation should be for the least total cost.

17.6 Circumstances for Negotiation

17.6.1 When to negotiate: Total cost is high. Total cost is = Initial cost + running or maintenance expenditure for life of the equipment.

- 1) Purchase of equipment is unique in nature or of highly complicated technology.
- 2) Equipment is being procured for the first time and only a little information is available regarding the cost of the material.
- 3) Prices quoted are based on suspected cartel formation.
- 4) Number of suppliers in the field is limited.
- 5) In a competitive bid the cost quoted is higher than the reasonable estimated cost
- 6) When it is proposed to conclude parallel contracts
- 7) Proposed to conclude rate contracts with more than one supplier
- 8) Commercial terms offered are much in variance than the NIT terms

17.6.2 In the case of parallel contracts and rate contracts negotiations will be conducted with the firms other than L1 bidders also.

17.7 Preparation for Negotiation:-

- 1) Define the objective
- 2) What is to be accomplished in short term/long term
- 3) Identify the areas where the cost quoted is higher and where there is scope for negotiation or reduction
- 4) Form the negotiating committee and identify the Chairman of the negotiating committee. Define the responsibility of team members.
- 5) After collecting all the information the negotiating committee will work out the strategy to be adopted during the negotiation.
- 6) Normally the negotiation from the govt. side will be conducted by the Chairman of the negotiating committee and other members will play a supporting roll.

17.8 Information

17.8.1 Collect the essential data like last purchase price, movement of price indices, the market intelligence regarding cost of the item or similar items, material composition, cost analysis of raw materials, technological intricacies involved, whether of current production or otherwise, maintenance requirements, spares and warranties, etc. from the records available publication and reports, catalogues, press release, institutional and educational material, advertisement, public statements, company biographies, website, etc. Details of competitors and their price if they have not participated in the tender and from other customers who bought the equipment or similar one earlier. The committee will examine the report submitted by the specialist and other members and analyse the data for its correctness, and frame the basis for negotiation.

17.8.2 The committee will outline the overall negotiation strategy based on the inputs received. It will identify the strength and weakness of both sides. Normally only the Chairman of the negotiating committee speaks to avoid giving the impression that there is more than one view from the government side.

17.9 Empowerment

The negotiating committee should be suitably empowered to take decision on the spot keeping government interest in mind. The competent authority should give clear guidelines and empower the committee to take decision within the framework of the guidelines.

17.10 Personality

The Chairman of the Negotiation Committee should be holding a senior position in the government depending on the value of the contract and have the authority. He should have quick grasp, clear understanding and coherent in talking. He should be a rapid thinker. He should have lot of patience and able to remain calm in adverse conditions. He should be capable of handling complex situation. He should be able to look into all aspects of negotiation. He should be a good listener and listen and consider the ideas of others. He must be tactful and having a good sense of humour. He should be able to view the negotiation from the opposition side also. He should always keep the objective in mind and at the same time try to be flexible in approach to achieve the objective. He should be fair and ethical. He should avoid showdown and show the respect to the other side. He should not push the suppliers to a corner and make him to understand that the department needs him for a long time business relationship. He should make the supplier feel that he is also participating in the technological achievement. He should not divert the attention on too many details which may divert from the objective. At times it is better for him to remain in silence and listen more than talking. He should encourage the other side to talk and make themselves in giving concession. He should not reveal his card early. Withhold information for future concession.

17.11 Time

- 1) Do ignore deadlines.

- 2) Do not show that you need it urgently and do not be in hurry to finish the deal early. Keep alert for a favourable moment to act. Evaluate the benefits and risk of going beyond the deadline.

17.12 Essentials for Negotiation

- 1) Divert attention if negotiation hit your weak point.
- 2) Do not allow the negotiation to reach a break point.
- 3) Do call a recess or lunch break if there is a dead lock and arrange good lunch for the other side.
- 4) Do allow the other side to retreat gracefully.
- 5) Do bypass an issue if there is an impasse.
- 6) Do avoid showdown.
- 7) Do not push the supplier to a corner and make him to understand that yours is a long term business relationship and not for one time deal.
- 8) Do artfully switch the negotiation to a win-win situation.

17.12.1 Both sides may be using different information bases and facts. Both should be willing to share the information to arrive at the right solution.

17.12.2 As the business relationship with the vendor is a long term relationship and both need each other it is always better to end the negotiation in a win-win situation.

17.12.3 Successful negotiation lies in trying out what the other side really wants and showing them a way to get it, while you get what you want.

17.13 Minutes of Meeting

Detailed record of discussion regarding compliance with tendered quantitative requirements, price and contract clause should be prepared and placed on record in the form of minutes of the meeting. It should be signed by all the parties to the negotiation.

CHAPTER - 18

SETTLEMENT OF COMMERCIAL TERMS

18.1 Introduction

18.1.1 The offers received against the tenders are evaluated on the basis of the total evaluated cost (explanation to arrive at evaluated cost is given in Chapter 'Comparative Statement') and the lowest technically acceptable offer is determined and recommended for acceptance in respect of competitive bids against PT/LT.

18.1.2 In cases where there is only one effective offer against PT/LT or in respect of offer against single tender, the offer is evaluated for its suitability in terms of the tender specification and recommended for acceptance if found suitable.

18.1.3 The governing standard terms and conditions and special conditions of the contract form part of the NIT. It is possible that the recommended bidder has sought in his bid for certain deviations from the DPS standard commercial terms and conditions which are required to be mutually settled/sorted out before issue of the purchase order to make it a legally enforceable contract.

18.1.4 Since the tenders are already evaluated and ranked on the basis of the terms and conditions stipulated by the bidders in their offers settlement of commercial terms with the lowest acceptable bidder recommended for award of the contract will not in any way alter his original status and affect the purchase decision.

18.2 General Deviations

18.2.1 The deviations generally sought by the bidders and are required to be settled before issue of the contract relates to the following factors:-

18.2.2 Validity of Offer

In cases where after the purchase decision is taken and approved by the competent authority there is very little time left before expiry date of the offer and it is not practicable to issue the contract within the offer validity, after completion of the required procedures and formalities, the recommended bidder should be requested to extend the validity of the offer for a suitable period.

18.2.3 Break up of Cost

In case the bidder recommended for award of the contract has quoted a lump sum price in his bid and the scope of the tender covers supply of more than one item and/or installation and

commissioning, training of the user, etc., the break up of the item-wise price, installation and commissioning charges, training charges and charges for safe delivery etc. shall be obtained from the supplier for incorporation in the purchase order.

18.2.4 Packing & Safe Delivery Charges

In cases where the offer is for Ex-works or FOR Station of despatch or the bidder has specified that packing, forwarding and freight charges are payable extra/at actual, the reasonable amount of packing and safe delivery charges shall be arrived at in consultation with the bidder and incorporated in the contract.

18.2.5 Taxes & Duties

In case the recommended bidder has specified that taxes and duties are payable extra or statutory levies are extra, the exact applicability of the statutory levy like ED/CD/VAT/CST/Service Tax and the specific percentage rate shall be checked and incorporated in the contract.

18.2.6 Payment Terms

18.2.6.1 In case the payment terms in the recommended offer are different from the standard terms of DPS or the specific payment terms offered by DPS against this contract, the supplier shall be requested to accept offered terms. In case of disagreement, reasonable terms of payment can be settled based on the merit of the case fully safeguarding the government interest.

18.2.6.2 Where advance/stage payment has been mutually agreed between the buyer & seller, the minimum amount of advance (say 5% to 10% of the basic cost) and stage payments on completion of definite milestones can be agreed to in consultation with the user and with approval of the competent authority. Such advance payments against each milestone should not be more than the value of the work done. Normally advance/stage payments should be considered against high value long delivery orders where the investment of the seller is high or in case of developmental, import substitutes, reverse engineering and highly technology oriented contracts. The advance and all stage payments should be fully secured by bank guarantees from any one of the authorized banks, as per DPS format for equivalent value which should be valid till two months after satisfactory completion of the Contract.

18.2.6.3 In case the scope covers installation and commissioning, certain percentage of payment depending upon the nature of installation & commissioning activities (a minimum 10%) of the basic cost should be retained till the completion of the installation and commissioning, in addition to the installation and commissioning charges payable as per the offer. A Performance Bank Guarantee for 10% of the total value of the contract should also be insisted in the form of BG valid till two months beyond the warranty period before making the final payment.

18.2.7 Warranty

The standard warranty should be of 12 months from the date of delivery and acceptance in respect of standard items where installation & commissioning is not involved or 12 months from the date of installation and commissioning in respect of equipment, plant and machinery, where installation & commissioning is involved. Otherwise the warranty clause should be as mutually agreed between buyer & seller.

18.2.8 Liquidated Damages

The LD clause should be as per the General Terms & Conditions of the Contract. Otherwise the LD clause should be as mutually agreed between the buyer and seller depending upon the merit of each case.

18.2.9 Waiver of Security Deposit

The Contractor should submit the Security Deposit wherever applicable as called for in the NIT. Director, P&S can consider waiver of Security Deposit in respect of firm registered with NSIC/DGS&D/DPS. In respect of other cases, Director, P&S can consider waiver of SD after taking into account the following:-

- 1) When the supply involves development efforts or import substitute or manufacture of special items of equipment and machinery.
- 2) That the recommended firm is well established and reputed.
- 3) Their past performance is satisfactory with respect to the timely execution of the orders, supply of quality product, satisfactory after sale/warranty service and fulfillment of contractual obligations.

18.2.10 Performance Bond

The NIT stipulates the condition for submission of Performance Bond in the form of BG and hence the rate quoted by the supplier includes the cost of submission of PBG. In respect of firms who are well established and reputed and other firms who are regularly supplying such items to the Department and the performance of the equipment during the warranty period in the past cases are satisfactory and even in a few cases where there is deficiency the firm promptly attended the deficiency in time and ensured the proper performance of the equipment, Director, P&S may consider waiver of PBG subject to satisfaction that no cost has been added for submission of PBG in the tender, this will not alter the status of the tender and no undue advantage will accrue to the firm. However, this should be considered on case to case basis depending upon the merit of each case. Before taking a decision the recommendation of the Indentor and the feed back from other users regarding past performance of the firm should be obtained for consideration.

18.2.11 Inclusion of Force Majeure Clause

In cases where the recommended bidder has included in his offer the force majeure clause the same should be properly scrutinised by the Officer-in-charge in the Purchase Unit. The force majeure clause as agreed between buyer & seller can be considered for incorporation in the Contract. A standard model force majeure clause is given in the Chapter 19 'Drafting of Purchase Order/Contract'.

18.2.12 Agency Commission

In cases where the recommended offer is from the Indian Agent who has quoted on behalf of their foreign principal or in cases where the offer is directly received from the foreign

supplier indicating the name and address of their Indian agent, the exact quantum/percentage of agency commission included in the price quoted should be obtained and clearly mentioned in the purchase order indicating that the agency commission is payable in equivalent Indian currency at the rate of exchange prevailing on the date of payment to the foreign supplier. The copy of agency commission agreement between the Indian Agent and their Principal and also the DGS&D compulsory registration certificate should be verified. The agency commission payable is as per the agreement between the Principal and their Indian Agent in Indian rupee.

18.2.13 Insurance Elements

In case the recommended bidder has specified in the offer that the price quoted is inclusive of transit insurance, the element of insurance included in the price quoted should be ascertained from the bidder and they should be requested to absorb the same since as per policy of the government transit insurance is not required for government goods and the Purchaser will not admit or pay for any insurance charges.

18.2.14 Any other commercial terms & conditions like inspection, training, replacement/repair of rejected material at the buyer's premises including its installation & commissioning without any additional expenditure to the buyer during the warranty period, submission of documents for verification and reimbursement of certain claims agreed, etc. has to be mutually settled between the buyer & seller before the same is incorporated in the Purchase Order.

CHAPTER - 19

FORMULATION OF PURCHASE ORDER/CONTRACT

19.1 Drafting of Contract

The drafting of Contract is the most important stage in the procurement process and it should be ensured that the contract is issued complete in all respects without leaving any room for avoidable correspondence at a subsequent stage.

19.2 Terms & Conditions as per Tender or as Mutually Agreed

The terms and conditions being incorporated in the contract should be in conformity with the offer of the recommended firm and any variations being incorporated should have been mutually agreed to. Unilateral insertion of any terms and conditions which are different from those of the tender will not bind the contractor and should be avoided.

19.3 Aspects of Contract

The following aspects must be taken care of while drafting the contract:-

19.3.1 Parties to the Contract

Parties to the contract are the Contractor and the Purchaser.

19.3.2 Name and Address of the Contractor

19.3.2.1 The complete name and address of the Contractor along with the Pin code number, telex, fax, email address, wherever available, should be indicated correctly.

19.3.2.2 When the tender is submitted by a person representing as a Sole Proprietor of the firm, the contract should be issued in the name of the Sole Proprietor working in the name and style of the firm eg. when XYZ signs the tender documents as the Sole Proprietor of the firm, the Contract can be issued as:

1) XYZ working in the name and style of M/s. ABC

OR

2) M/s. ABC through its Sole Proprietor XYZ.

19.3.2.3 By addressing in the above manner, the contract will be binding on the Proprietor of

the firm and the contractual rights can be exercised properly.

19.3.3 Name of the Purchaser

DPS enters into a contract/issue purchase order on behalf of the President of India. Accordingly, the word 'For & on behalf of the President of India' should immediately follow the name and designation of the officer who is authorized to sign the purchase order/contract.

19.3.4 Conditions Governing the Contract

19.3.4.1 Purchase orders issued by DPS are governed by the general terms and conditions contained in Form No. DPS.P.11 or DPS.P.12, as applicable.

19.3.4.2 In cases where there are other special stipulations over riding or supplementing the general conditions of contract, a suitable addition should be made inviting the attention to relevant clauses. Clear and specific indication must be given as to the clauses of the general conditions of contract that will not apply.

19.3.5 Scope of the Contract

The scope of the contract should be clearly mentioned whether the scope covers only supply or includes design, manufacture, installation, testing, erection, commissioning, training etc. at Purchaser's Site. It should also include whether any FIM is to be issued by the Purchaser.

19.3.6 Description/Specification of the Stores

Description of the item should be clearly mentioned without any mistake. The specifications/drawings, if any, should be correctly mentioned. Make/Brand/Model, if any applicable, should be clearly mentioned as per the offer or as mutually agreed.

19.3.7 Quantity

The quantity to be ordered should be clearly mentioned which is generally as per the tender quantity. In case of increase in quantity, the efforts made to obtain quantity discount and its outcome should be indicated in the file. In case of decrease in quantity, acceptance of the supplier should have been obtained for execution of the orders under the same terms and conditions as per the quotation/mutually agreed.

19.3.8 Delivery Date/Schedule

19.3.8.1 The delivery date of the stores stipulated in the contract is the essence of the contract. It is therefore necessary that a definite date not only for supply of the stores but also for completion of all the contractual obligations should be stipulated in the contract. For example, if the scope of the contract is only for supply, the delivery date stipulated in the contract should be for supply of acceptable stores ordered. In case, the scope of the contract includes supply, installation and commissioning, training etc. the delivery date stipulated in the purchase order should be for completion of all contractual obligations.

19.3.8.2 Expressions such as 'Immediate', 'Ex-stock', 'As early as possible' should be avoided.

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

19.3.8.3 When tenderers quote in terms of weeks or months, a specific date should be worked out on the basis of firm's offer. The period will be counted from the date of issue of the contract.

19.3.8.4 Delivery of Stores in Instalments

19.3.8.4.1 In case of contracts where purchase of large quantities of stores is involved, delivery may be specified in instalments wherever possible; say, per month, per quarter, etc. However, a final date for completion of the total ordered quantity should be stipulated.

19.3.8.4.2 It should be ensured that where quantity in indent is large and the requirement is at periodical intervals, specific instalment delivery either per month or per quarter etc. should be indicated in the tender enquiries so that such instalment deliveries can be included in the contract.

19.3.8.5 Provisional Delivery Date

19.3.8.5.1 Where the delivery of stores is linked with certain conditions say approval of advance sample or opening of letter of credit or approval of drawing or advance payment, etc., initially delivery period will be shown as quoted by the firm. The delivery period will be subsequently refixed as per the provision of this clause indicating the specific date after the incidence happened. When the delivery date is linked to a certain condition to happen, the contract should not be open ended for the incidence to happen. A definite date has to be fixed for completing the incidence and incorporate it in the purchase order.

19.3.8.5.2 Example: - Where advance sample is required, a target date for submission of acceptable advance sample in accordance with the contract specifications and the authority to whom the sample is to be submitted should be clearly indicated in the contract. Considering the period required for approval of the sample, tentative delivery dates for completion of supply will be worked out in line with the delivery period offered by the supplier and indicated in the contract. As soon as intimation is received from the concerned authority about the approval of the sample, the delivery date should be refixed in accordance with the offer of the firm.

19.3.8.6 Delivery Linked with Opening of Letter of Credit

Where firms offer delivery in terms of weeks or months after opening of letter of credit, eg. Delivery 8 to 10 months after opening of letter of credit, the delivery period in the contract may be stipulated initially as quoted by the firm. Immediate action should be taken to open letter of credit and as soon as the letter of credit is established, the delivery date should be refixed in accordance with the offer of the firm.

19.3.8.7 Delivery date in CIF Contract

In CIF contract, it should be clearly mentioned that the date of delivery mentioned in the contract in terms of the firm's offer is the date on which the goods actually arrive at the Indian Port.

19.3.9 Price

19.3.9.1 The price should be clearly mentioned as per the offer or as mutually agreed as a result of negotiation. There should be clear mention as to whether the price mentioned is Per Unit or Per Lot.

19.3.9.2 It should also be mentioned whether the prices accepted are firm and final or variable. If the prices are variable, the price variation formula mutually agreed upon should be incorporated in the contract along with the maximum ceiling, if any. The base date and the cut off date for applying the PVC should also be clearly mentioned in the contract.

19.3.10 Basis of Price

As per the terms of DPS NIT, the prices should be for safe delivery of the required stores at the Purchaser's site. In case the bidder has quoted for ex-works/FOR station of despatch etc., separate charges for safe delivery of the stores at Purchaser's site shall be obtained from the recommended bidder and the same shall be clearly mentioned in the purchase order.

19.3.11 Exchange Rate Variation

Wherever the exchange rate variation is agreed upon as a contract term beyond certain percentage of variation in the currency of the country as agreed and exchange rate prevailing on the date of quotation or the date as mutually agreed between the buyer & seller should have been obtained and the same should be mentioned in the contract as the base rate along with the formula for applying the exchange rate variation. The rate of remittance to foreign principals, the contract price (limited to that portion of CIF/FOB prices that are required to be remitted according to the contractual terms to the firm's foreign principals in foreign currency) will be taken into account for arriving at the variation. This payment should not be more than two weeks from the date of the material is received. No variation is payable if the difference is within the percentage of variation agreed to be borne by the supplier. The exchange rate variation should be paid against documentary evidence submitted by the supplier for the exchange rate applicable. In case the exchange rate variation is on the lower side beyond the percentage of variation agreed, the contract price will be suitably reduced.

19.3.12 Statutory Levies

19.3.12.1 Excise duty: The applicability of Excise duty (whether inclusive or payable extra), rate of excise duty applicable, documentary evidence required, variations to be allowed or not etc. should be clearly spelt out. Where the tender mentions that the prices are exclusive of excise duty, which would be payable extra, it should be definitely stated in the acceptance of the tender (purchase order) that the duties payable at a specified rate in addition to the cost of stores instead of mentioning its payment in an indirect manner.

19.3.12.2 The mere statement in the tender that the prices are exclusive of duty does not entitle the firm to the reimbursement of 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 opening of the tender. Therefore, it should be stated in the purchase order that the prices are exclusive of excise duty and no reimbursement of excise duty is admissible and prices admitted in the contract are firm and final.

EXCISE DUTY CLAUSE TO BE INCORPORATED

- (a) When the rate of duty is on fixed amount basis, prices are based on the current rate of excise duty viz. and in the event of any statutory variation in this rate, the prices will be adjusted accordingly.
- (b) When the duty is on percentage advalorem basis, the rate of excise duty is percentage advalorem. The excise duty at present leviable in this case is% on Rs. being the unit value of stores as assessed by the Controller of Excise.
- (c) Additional clause to be incorporated in the order where the tenderer desires statutory variation from the date of tender, The prices are based on current rate of excise duty viz. ... and in the event of any statutory variation in the duty, adjustment will be allowed from (date specified here should be date of the firm's tender) to the original/refixed delivery date. Firm's claim for statutory variation in the excise duty leviable on percentage advalorem basis should be supported by Form I and the Manufacturer's Price list as approved by Excise authorities. The two certificates after payment of the excise duty as indicated above are required to be submitted in such cases also. Certificates to be produced with the bill for claiming of reimbursement of excise duty. The variation in duty is admissible for the variations taking place within the original committed delivery period unless contract terms are amended.

19.3.13 Exemption from Excise Duty for R&D Units of DAE

19.3.13.1 As per Notification No. 10/97-Central Excise dated 1.3.1997, the purchases of following items made for the Research Institutions under the Department of Atomic Energy are entitled for Excise Duty exemption:-

- 1) Scientific & technical instruments, apparatus, equipment (including computers)
- 2) Accessories & spare parts thereof and consumables
- 3) Computer software, Compact Disc Read Only Memory (CD ROM), recorded magnetic tape, micro film, microfiches
- 4) Prototypes

19.3.13.2 Necessary excise duty exemption certificate shall be obtained from DAE and should be provided to the contractor after placement of order prior to the despatch of the material.

19.3.13.3 Excise duty exemption certificate should be issued only in favour of the contractor on whom the purchase order is placed for the end product ordered and not for raw material and other components that go into the manufacture of the item ordered, in favour of the third party.

19.3.13.4 However in case the offer is received from a sole selling agent of the original equipment manufacturer for which documentary proof should be submitted, issue of excise duty exemption certificate in favour of the original equipment manufacturer for the goods ordered can be considered, provided such request is made in the original offer.

19.3.13.5 The contracting officer should examine carefully whether the items being ordered falls under the items indicated in the 10/97 notification before incorporating the clause of issue of ED exemption certificate. He should also obtain a certificate from the user confirming that the items procured are covered under the notification and its actual end use. Submission of ED exemption certificate for non-applicable items may be viewed by Revenue Authorities as tax evasion and may impose penalty on both the seller and buyer. At the same time it should be ensured that ED exemption is availed for all the items procured which are covered under the exemption.

19.3.14 VAT, CST

19.3.14.1 Applicability of VAT, CST, (intra-state and inter-state) should be clearly spelt out in the contract and the rate of VAT and CST as applicable should be shown as a separate item in the contract.

19.3.14.2 In case the firm's offer stipulate that the VAT will be charged extra, the VAT clause in such cases should be in general terms that

VAT will be paid extra as applicable on the date of delivery within the original/refixed delivery period. The current rate of VAT applicable is (the rate applicable at the time of acceptance of the tender may be shown here).

19.3.14.3 In cases where the firm's tender stipulate VAT or CST at a specified rate, the specific rate should be stipulated in the contract after verifying that the tax is legally leviable and the rate is correct.

19.3.14.4 In no case, general stipulation is made in the contract to the effect that the VAT/CST will be paid extra and the applicable tax at a specified rate should be stated.

19.3.14.5 In all cases, where stipulation for tax in the contract is subject to legal leviability, an amendment has to be issued subsequently mentioning the character of tax, i.e. whether VAT or CST and the rate of VAT or CST as applicable so as to admit the claim by the Paying Authority.

19.3.14.6 Wherever VAT or CST is admitted, the contractor shall furnish a certificate as per the format along with their bill to the paying authority.

19.3.14.7 As per Taxation Laws (Amendment Act 2007) the rate of CST on Inter-State sale to government department shall be the rate of VAT applicable in the State in which the sale is originating. The facility of Inter-State purchase at concessional rate by the Govt. Department against Form 'D' stands withdrawn.

19.3.14.8 Sales Tax is not leviable on transactions of sale in the course of import-

1) Where the movement of goods from the foreign country to India is

occasioned directly as a result of the sale

- 2) Where there is a privity of contract between the foreign supplier and the Purchase Organization
- 3) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

19.3.15 Octroi Duty & Local Taxes

19.3.15.1 The stores supplied to Government Department against Government contract are exempted from levy of town duty, octroi duty, terminal tax and other levies of local bodies. The local town/Municipal Body regulation at times provides for such exemption on production of a certificate from an authorized officer from the concerned government department.

19.3.15.2 The contract should clearly specify that before arranging supply the contractor should obtain necessary exemption certificate from the purchaser or the consignee as mentioned in the contract and produce the same to the concerned authorities of the local bodies during transportation of the stores to claim exemption from payment of town duty/octroi duty & any other levies of local bodies.

19.3.16 Customs Duty

In case the order is to be placed in favor of the recommended firm who has quoted for supply of imported stores on forward delivery basis in rupee payment term and the price quoted does not include customs duty which is payable by the purchaser, the Contract should clearly specify the CIF value in the currency of country of origin on which the customs duty will be admissible, and the customs duty will be reimbursed at actual or as applicable within the original committed delivery period, whichever is lower, against submission of a copy of customs finalised bill of entry and a copy of foreign supplier's invoice. Wherever applicable customs duty exemption certificate is to be obtained to avail of the concessional duty.

19.3.17 Duties/Taxes on Raw Materials

The Purchaser is not liable to any claim from the supplier on account of fresh imposition and/or increase (including statutory increase) of excise duty, customs duty, sales tax, VAT, etc. on raw materials and/or components used directly in the manufacture of the contracted goods taking place during the pendency of the contract unless such liability is specifically agreed to in terms of the Contract. A suitable provision to this effect is included in the NIT/Tender/Contract.

19.3.18 Refunds from Suppliers towards Duties & Taxes paid

Some times, the suppliers, after claiming and receiving reimbursements for sales tax, excise duty, customs duty, etc. from the Purchaser, apply to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receive the allowable refunds. Such refunds contain the Purchaser's share also (out of the payments already made by the Purchaser to that supplier). The tender enquiry documents and the contract should contain suitable provisions for obtaining such refunds from the supplier. (Please refer the

certificates to be obtained towards this in Chapter - 8 'Statutory Levies' Clause no. 8.4.15.5 & 8.4.15.6).

19.3.19 Security Deposit

19.3.19.1 In terms of the General Conditions of Contract of DPS, the bidder in whose favour the order is finalized is required to furnish a Security Deposit in the form of a Bank Guarantee for 10% of the total value of the order. The bank guarantee should be obtained as per DPS format from State Bank of India or any one of the nationalised banks or reputed private banks ICICI or HDFC or AXIS or IDBI and should be valid two months beyond the contractual delivery date. In cases where the recommended bidder is registered with DGS&D/NSIC or DPS, they may be considered for exemption from Security Deposit to the extent of the value of their valid registration. Normally a period of four weeks from the date of issue of purchase order should be allowed to the firm to furnish Security Deposit.

19.3.19.2 If the Contractor having been called upon by the Purchaser to furnish security deposit fails to do so within the specified period it shall be lawful for the Purchaser (1) to recover from the Contractor the amount of such Security Deposit by deducting the amount from the pending bills of the Contractor under the Contract or any other Contracts with the Purchaser (2) it will constitute sufficient ground for forfeiture of EMD and processing the case for further action against the Contractor.

19.3.19.3 Security Deposit is to be forfeited and credited to the Govt. account in the event of a breach of contract by the supplier in terms of the relevant contract.

19.3.19.4 Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the Contractor, the Purchaser shall be entitled to withhold and also have a lien to retain such sum or sums in whole or part from the Security Deposit, if any, deposited by the Contractor pending finalization of any such claim or claims.

19.3.19.5 Security Deposit should be refunded to the supplier without any interest whatsoever, after the Contractor duly performs and completes the contract in all respects but not later than sixty (60) days of completion of all such obligations under the Contract.

19.3.20 Purchaser's FIM (Free Issue Materials)

19.3.20.1 In case the contract involves issue of FIM by the Department, the complete details of FIM to be issued as per the tender including the quantity and the value should be mentioned. Before issue of the FIM, adequate security in the form of bank guarantee or insurance policy should be obtained and the policy should cover all risks fire, theft, burglary, riots, civil commotion, terrorist act, other materials falling on the FIM etc. showing the beneficiary of the Policy as the President of India acting through the Director, Purchase & Stores, Department of Atomic Energy, Mumbai. The Policy should be valid till the satisfactory accounting of the FIM by the contractor after the delivery of the ordered equipment and return of the left over/balance material including scrap to the consignee.

19.3.20.2 Generally, the responsibility of transporting the FIM from the Departmental Stores to the Contractor's premises is entrusted to the contractor at their risk and cost. DPS should insist that the contractor take necessary Transit Insurance Policy for FIM as indicated in the

tender documents. This should be clearly specified in the contract. In exceptional cases, where it has been agreed that the responsibility of delivering the material is that of the Department, then care has to be taken to ensure that the FIM are transported at Carrier's risk after making the transport contractor known about the details of each material, quantity, cost of each material and the total value of the material and following all the procedure needed to make the transport contractor totally responsible.

19.3.20.3 Details of the free issue material issued and its value should be clearly indicated in the contract which should normally be as indicated in the NIT and in the tender documents.

19.3.20.4 The Contractor holds such material as Trustee for the Govt. He should use such material economically and solely for the purpose of the Contract. The Contractor shall be fully responsible for the full value of the FIM issued and shall be liable for loss or damage to such property from whatever cause happening while the property is in the possession of or under the control of the Contractor, his sub-contractors, servants, workmen or agents. He shall indemnify the contracting authority for any loss/damage to the government property.

19.3.20.5 Where the contract is terminated due to any default on the part of the contractor, the Contractor shall deliver any government material under his custody at such destination as may be determined by the Purchaser. The decision of the Purchaser in that behalf shall be final and binding on the Contractor.

19.3.20.6 Where the stores manufactured or fabricated by the Contractor out of the materials issued as free issue material are rejected the Contractor shall without prejudice to any other rights or remedy of the government, pay to the government on demand the cost price or market value of all such materials whichever is greater.

19.3.20.7 The Contractor before accepting the FIM should satisfy himself that the quality and quantity of the material issued are as per the contract terms and furnish acknowledgement to that effect.

19.3.20.8 Provision should be made in the contract for periodical physical verification of the quantity and the physical condition of the items issued at the contractor's premises. A suitable clause regarding accounting of FIM issued to the contractor must be made. The tender and the contract should specify the maximum percentage of wastage admissible taking into account the nature of work involved. The wastage should not exceed this percentage. The purchase order should include a condition that the surplus/left over FIM and also the scrap accruals thereof should be returned by the contractor normally along with the finished product and in any case, within 30 days from the date of delivery of the finished equipment and accounting of the FIM should also be completed within this period.

19.3.20.9 An indemnity bond as per Appendix enclosed should also form part of the contract/purchase order.

19.3.21 Subletting and Assignment

The Contractor shall not, save with previous consent in writing of the Purchaser, sublet, transfer or assign the Contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever. Provided, nevertheless that any such consent shall

not relieve the Contractor from any obligation, duty or responsibility under the Contract.

19.3.22 Prototype/Samples

Where, prototype or sample is required to be approved, the contract should clearly specify the date by which the sample/prototype should be submitted the date by which the sample approved or otherwise to be conveyed to the Contractor and the bulk supply should be effected only after approval of the sample/prototype. The authority to whom the sample/prototype to be submitted for approval should also be mentioned.

19.3.23 Drawings/Documents

Wherever the engineering drawings/other documents are required to be submitted by the contractor for scrutiny and approval by the user before commencing manufacturing of the equipment/instrument ordered, it should be clearly mentioned the date by which the required document should be submitted by the contractor and the time required by the user to convey the approval. The authority to whom these documents are to be sent should also be clearly mentioned.

19.3.24 Details of Tests

In accordance with NIT and recommended offer details of tests if any to be carried out the documents to be submitted by the contractor and the charges payable for such tests as mutually agreed should be spelt out in the purchase order. If the tests are required to be witnessed by the user's representative, the same shall be clearly incorporated in the purchase order.

19.3.25 Export Licence

19.3.25.1 The seller shall be responsible for obtaining and maintaining export licences, permits as also for complying with all the law, orders, regulations or other instructions issued by the Govt. in the country of manufacture/supply.

19.3.25.2 The buyer shall furnish the end user certificate wherever required only as per the format enclosed.

19.3.26 Assign or Sublet to Third Party

The seller shall not give, bargain, sell, assign or sublet or otherwise dispose of the contract or any part thereof, or the benefit of advantage of the contract or any part thereof to any third party.

19.3.27 Inspection

19.3.27.1 The type of inspection required whether quality surveillance covering inspection of raw material, sub-assemblies, bought out components, stage inspection and/or pre-shipment inspection should clearly be prescribed in accordance with the tender specification.

19.3.27.2 The contractor shall

- 1) Allow reasonable facility and free access to the contractor's factory/works/records to purchaser's inspector for the purpose of inspection or for ascertaining the progress of manufacture and delivery.
- 2) Provide the drawings, tooling, gauges, instrument, etc. required for carrying out the inspection work.
- 3) Produce an inspection plan to the purchaser's satisfaction notifying him when check point on the plant are imminent.
- 4) Not supply or deliver the equipment unless and until a shipping release or an authorization for despatch is obtained in the format provided by the purchaser. Failure to comply will not only result in withholding of payment to the supplier or contractor but also hold the contractor liable for payment of compensation to the purchaser due to delay in clearance of the equipment from the carrier.

19.3.27.3 Even though the inspection is carried out by the Purchaser or their authorized representative at their cost, the charges if any for arranging inspection, payable by the purchaser should be mutually settled and incorporated in the order.

19.3.27.4 After satisfactory inspection and tests, the acceptable goods shall be stamped, labeled, marked or sealed according to the circumstances in such a way as to make subsequent identification of accepted lots easy for the consignee/user. For goods not meeting the contract requirements the rejection inspection notes shall be issued immediately. A time limit shall be fixed for issue of inspection documents. Facsimile of inspection stamps and their position should be put on the inspection notes to help identifying the inspected goods at the consignee's end.

19.3.27.4.1 Departmental instructions should be followed in this regard. Departmental instructions should invariably prescribe that paying authority will keep a record of specimen signature of authorised inspecting authorities for verifying the same with the signature of the inspection note while authorizing payment. Inspection note in the form prescribed by the Department shall be issued in significance of the preliminary acceptance of the goods. The number of copies of inspection notes and their distribution for different authorities will be as prescribed by the Department. The inspection notes issued by DPS contain the signature and name of Assistant Purchase Officer who issued the same to ensure its authenticity. In order to avoid misuse of the inspection reports, the Assistant Purchase Officers who are authorised to issue the blank inspection notes should be very careful before issue of another shipping release format in lieu of lost one. He/She should thoroughly examine the fate of the original shipping release issued and satisfy himself/herself the genuineness of the circumstances before issue of a duplicate shipping release format. All the shipping release issued should contain the purchase order details and any corrections therein should be attested.

19.3.27.4.2 The completed inspection note issued shall invariably bear the name, stamp with designation and other details of the officer authorised to sign and issue inspection document. Each inspecting officer shall be supplied with acceptance stamps, lead seals, pliers, rubber stamps, stencils, labels, stickers, holograms etc. according to the requirements for sealing and marking the inspected goods in terms of the contract. He will be responsible for safe keeping of these articles and shall ensure that they are not misused by unauthorized persons. Unserviceable

seals, pliers, stamps, stickers, holograms etc. shall be returned to the concerned issuing official. Department shall lay down detailed guidelines covering these aspects.

19.3.27.4.3 For reasons of security and to avoid irregular or incorrect issue, the inspection notes should be machine numbered and wherever possible, different colour copies marked for each user. An account of inspection notes issued with serial number wise details shall be maintained in an appropriate register. The Department will develop a foolproof system to avoid any fraudulent and unauthorized use of inspection notes.

19.3.27.4.4 In case of goods to be imported from abroad, in a few cases, where it is absolutely necessary pre-despatch inspection at supplier's premises is arranged. All expenses including to and fro airfare for the inspecting authority deputed for inspection shall be borne by the Department and not at the cost of the Supplier. In most of the cases, the Purchaser substitute pre-despatch inspection with manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, their past performance should also be kept in view and an appropriate decision taken. For checking the reputation and background of the supplier, the services of TLM, Paris or the Indian Embassies located in that country from where the goods are procured can be used for a report on the technical and financial competence of the firm. Further trustworthy publication like 'Thomas Register', 'Dun and Brad Street Register', etc. are also available in USA and Europe which provide authentic technical and financial data and details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose.

19.3.27.4.5 In respect of contracts where payment is being released before final inspection and acceptance, the pre-despatch inspection clause should not normally be waived. In exceptional cases, competent authority should approve the waiver of PDI only after careful consideration taking into account the technical/financial competence of the firm, their past performance, market standing of the firm, etc.

19.3.27.4.6 Purchaser has the right to reject the goods on receipt at site during the final inspection though the goods have already been preliminarily inspected and cleared by the Purchaser's Inspector. However, such rejection should be strictly within the contractual terms and conditions and no new condition should be adopted while rejecting the goods during final inspection.

19.3.27.4.7 Goods accepted by the Purchaser at the initial inspection and in final inspection in terms of the contract shall in no way dilute Purchaser's right to reject the same later, if found deficient in terms of warranty clause of the contract.

19.3.27.4.8 In case a written complaint is received from the supplier disputing rejection of goods by the Purchaser's Inspecting Officer, the same should be jointly investigated by a team consisting of an authorised representative of the Purchase, a senior representative of the Inspecting Agency, a representative of the user who will be conversant with the goods and an authorised representative of the supplier. Detailed procedure to be followed in this regard and the format of the joint inspection report are to be prescribed by the Unit and the matter processed accordingly for further necessary action.

19.3.28 Packing

19.3.28.1 The supplier shall provide appropriate packing depending upon the nature of the supply and for the safe transportation and handling hazards.

19.3.28.2 The material should be so packed and protected as not to suffer deterioration, damages or breakages during shipment and storage in a tropical climate.

19.3.28.3 Each package shall be properly labelled to indicate the type and quantity of material it contains, the purchase order number, its dimension and weight and any other necessary data to identify the equipment and related to the contract.

19.3.28.4 In case any special type of packing is required to be carried out in terms of the tender specification the same should be clearly mentioned along with the charges if any payable as per the offer.

19.3.28.5 The seller shall be responsible for any loss or damage or expenses incurred by the Purchaser because of inappropriate packing. Packing containing articles classified as hazardous should be packed and marked in accordance with the requirements of the appropriate regulations governing their despatch by sea or air. The seller shall also comply with the detailed packaging and despatch instructions, which accompany the contract. The responsibility of sending despatch documents will rest with the seller. Detailed shipping instructions issued from time to time by the Purchaser will apply.

19.3.29 Mode of Transport

19.3.29.1 As per DPS standard terms and conditions the supplier should take the entire responsibility to arrange for safe door delivery of the material at purchaser's site. This implies that the supplier should take all the necessary precautions including transit insurance, if any, to ensure safe transportation enroute for delivery at purchaser's site. The purchaser however will pay only safe delivery charges if it is separately payable.

19.3.29.2 As per the terms of the offer the lump sum charges payable if any, for safe door delivery of the material at purchaser's site should be mutually settled and mentioned in the purchase order if the offer of the firm has not included the same.

19.3.29.3 In case any other mode of transport (air) is desired in specific cases, the same shall be clearly specified in the contract and the party who will bear the charges for transportation shall be clearly mentioned.

19.3.29.4 In case it is proposed to conclude the contract on Ex-works or FOR Station of despatch basis, necessary provision should be incorporated in the contract informing the contractor for booking the consignment on railway risk and failing to do so the contractor will be responsible for transit loss/damage.

19.3.30 Warranty

19.3.30.1 The materials supplied shall be free from all defects and faults in material, workmanship and manufacture. They should be of highest grade and consistent with the

established and generally accepted standard for material of the type used and in full conformity with the specification, drawing or sample and shall, if operable, operate properly. The contractor should furnish a clear written warranty certificate along with the supply.

19.3.30.2 As per DPS general terms and conditions of contract the period of warranty is 12 months from the date of delivery and acceptance. For plant and machinery the warranty is 12 months from the date of satisfactory erection and commissioning. In case of any deviation in the period of warranty the mutually settled period of warranty shall be incorporated in the purchase order with the approval of competent authority.

19.3.31 Training

In accordance with NIT and the recommended offer, the scope of training, other details of training such as the number of persons required to be trained, duration of training, the place of training (whether at contractor's work or at purchaser's site or any other training institution), when the training is to be provided whether prior to shipment or after shipment and the charges payable if any by the purchaser should be mutually settled and clearly mentioned in the contract. A certificate from the user regarding satisfactory completion of the training shall be made as a document for admission of payment against delivery or final payment to the contractor as the case may be.

19.3.32 Erection, Commissioning & Performance Testing

19.3.32.1 In terms of the NIT whether full scope erection and commissioning of the equipment at purchaser's site is to be carried out by the contractor or only the supervision of erection and commissioning is to be provided by the contractor shall be clearly specified in the contract. The terms of erection and commissioning or for supervision of erection and commissioning as the case may be and the charges payable by the purchaser as mutually settled with the supplier shall be mentioned in the contract.

19.3.32.2 In case the price quoted by the recommended bidder includes erection and commissioning/supervision of erection and commissioning, the break up of the cost towards erection and commissioning/supervision of erection and commissioning should be ascertained from the supplier and separately mentioned in the contract along with the applicable service tax payable. If no mention is made in the tender regarding reimbursement of service tax, it should be presumed that that rate quoted is inclusive of service tax on erection & commissioning charges. This should be clearly brought out in the purchase order.

19.3.32.3 A suitable clause under workman compensation act should be incorporated to indemnify the department from any claim.

19.3.32.4 The utilities to be provided by the purchaser either free of charge or on chargeable basis, in accordance with NIT shall be clearly specified.

19.3.32.5 A certificate shall be issued by the user regarding satisfactory completion of erection and commissioning and performance testing which should be made as a document for settlement of final payment as well as payment of erection and commissioning charges if any.

19.3.33 Payment Terms

19.3.33.1 Terms of Payment

The payment terms as per the DPS standard terms and conditions (Form No. DPS P 11) are:-

- 1) Full payment within thirty days of receipt, inspection and acceptance of the material at purchaser's site.
- 2) In case of plant, machinery and equipment 80% payment against receipt and preliminary inspection at purchaser's site and balance 20% after final acceptance.

As per Para 9.8 to 9.11 of Manual of Purchase Policies & Procedures issued by the Ministry of Finance, the following payment terms are admitted. These payment terms can be considered for incorporation in the NIT/tender documents on case to case basis with the approval of Director, P&S/authorities who are authorized to exercise the powers on behalf of the Director, P&S.

19.3.33.2 Terms of Payment for Domestic Goods:

Where the terms of delivery is FOR Despatching Station, the payment terms, depending on the value and nature of the goods, mode of transportation etc. may be 60% to 90% on proof of despatch and other related documents and balance on receipt at site and acceptance by the consignee.

Where the terms of delivery is CIP destination/delivery at site/FOR destination, usual payment term is 100% on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.

Where the goods to be supplied also need installation and commissioning by the supplier, the payment terms are generally as under:

- 1) For a contract with terms of delivery as FOR dispatching station 60% on proof of despatch along with other specified documents, 30% on receipt of the goods at site by the consignee and balance 10% on successful installation and commissioning and acceptance by the consignee.
- 2) For a contract with terms of delivery as CIP destination/Delivery at site/FOR destination 90% on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10% on successful installation and commissioning and acceptance by the consignee.

NOTE: Generally (especially for goods requiring installation and commissioning at site by the supplier), the desirable terms of delivery are CIP destination or Delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, unless otherwise decided Ex-works or FOR Despatching station terms should be avoided.

19.3.33.3 Terms of Payment for Imported Goods:

Cases where Installation, Erection and Commissioning (if applicable) are not the responsibility of the Supplier 100% net FOB/FAS price is to be paid against invoice, shipping documents, inspection certificate (where applicable), manufacturer's test certificate, etc.

Cases where Installation, Erection and Commissioning are the responsibility of the Supplier 80% - 90% net FOB/FAS price will be paid against invoice, inspection certificate (where applicable), shipping documents etc. and balance within 21 - 30 days of successful installation and commissioning at the consignee's premises and acceptance by the consignee.

Payment of Agency Commission against FOB/FAS Contract Entire 100% agency commission is generally paid after all other payments have been made to the supplier in terms of the contract.

19.3.33.4 Advance Payment to Supplier

Ordinarily, payments for supplies made or services rendered should be released to the supplier only after the supplies have been made or services have been rendered. However, it may become necessary to make advance payments in the following types of cases:-

- 1) Advance payment demanded by firms holding maintenance contracts for servicing of Air-conditioners, computers, other costly equipment, etc.
- 2) Advance payment demanded by firms against fabrication contracts, turn-key contracts, etc.

Such advance payments should not exceed the following limits:-

- 1) Thirty per cent of the contract value to private firms;
- 2) Forty per cent of the contract value in a State or Central Government agency or a Public Sector Undertaking.
- 3) In case of maintenance contract, the amount should not exceed the amount payable for six months under the contract.
- 4) Whenever Advance Payment is made, it should be based on definite milestone completion and payment of such advance should not be more than the value of work done on each occasion. The Inspecting Authority, with the approval of the Competent Authority, should issue necessary certificate to that effect.

In exceptional cases, the Ministries or Departments may, in consultation with their Financial Advisers, relax the ceilings mentioned above. However, while making any such advance payment, adequate safeguards in the form of bank guarantee etc. should be obtained from the supplier. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on case to case basis.

19.3.33.5 In exceptional case if the recommended supplier sought any deviation in the above payment terms, the same as mutually considered for acceptance between the buyer and seller should be submitted for concurrence of finance and approval of the competent authority.

19.3.33.6 Full/part payment against

- 1) Delivery of the material at purchaser's site

OR

- 2) Collection of material from the supplier's premises by the stores can be considered only after pre-despatch inspection by the user or his authorized representative at the supplier's works and on the basis of a shipping release or an inspection report from the user with the approval of competent authority.

19.3.33.7 Waiver of Inspection:

In case the inspection is to be waived especially in cases where payment is against delivery, the same can be considered only on the recommendation of indenting officer recording the reasons duly concurred in by the Group Director with the clearance of finance and approval of Director, P&S.

19.3.33.8 Any payment made prior to collection from the supplier's premises or delivery of the material at Purchaser's site would be treated as advance payment and it should be fully secured by bank guarantee for equivalent value valid till two months beyond the date for the satisfactory completion of the contract.

19.3.33.9 Payment terms are of great importance both for the Purchaser and the supplier as payment plays a very important role in deciding the cost of an item or service being contracted for. In some cases, suppliers request for payment against part supply. Such requests can be considered by competent authority after careful consideration that such payment will not be an additional benefit to the supplier and the part quantity received can be used independently without looking for the supply of the balance quantity.

19.3.33.10 Normally no advance payment should be offered in the tender enquiry. However if it is decided to provide advance payment the percentage should be incorporated upfront in NIT/Tender and could be upto the percentage laid down in the rule with bank guarantee for equal amount with the approval of the competent authority.

19.3.33.11 Advance payment exceeding 50% in case of indigenous payment and advance payment for foreign supplier beyond Rs. 30000/- would require approval of Department of Atomic Energy There could be contract with stage payments not exceeding 50% on achievement of milestones. These should be clearly notified upfront in NIT/Tender with the concurrence of IFA and approval of Director, P&S. The stage payment approved should be less than the value of work done or raw materials procured and against bank guarantee.

19.3.33.12 Further as per CVC guidelines, mobilization advance should be interest bearing. However, in DAE Purchase Contracts, due to operational requirement, nature of the item, limited suppliers based on stringent technical requirements, urgency, etc. it may not be possible to

impose such conditions. In such cases necessary record of circumstances and facts may be kept to that effect.

19.3.33.13 It will be mandatory for the suppliers to indicate their bank account details and other relevant e-payment details so that payments can be made through ECS/RTGS mechanism instead of payment through cheques.

19.3.33.14 The total amount of advance and stage payments should not normally exceed 30% of the total value of the order in respect of private firms and 40% in respect of PSUs. The advance and each stage payment should be fully secured by bank guarantee for equivalent value executed by any one of the authorised banks valid two months beyond the contractual date for completion of the order as per DPS format.

19.3.33.15 Payment terms in NIT/Tender documents

In view of the above, payment terms as per DPS-P-11 should normally be incorporated in the NIT/tender documents of small value orders and in respect of high value order with long delivery period, items procured are of special nature, complicated technology and developmental contracts etc. a relaxed suitable and reasonable payment terms as above may be considered for incorporation in the NIT/tender documents which will help to bring more competitive offers, give equal opportunity to the tenderers to quote and the Purchaser can evaluate the tender on equitable basis. DPS should generally stick to the payment terms offered in the tender documents which will send a right message in the market and the supplier will fall in line in due course.

19.3.34 Interest for Delay in Supply beyond the Contractual Delivery Date

Wherever advance payment/stage payment is sought for by the contractor and admitted in the purchase order against bank guarantee for equivalent value, in the event of any delay in supply beyond the contractual delivery date for reasons attributable to the contractor, interest charges at the rate fixed by the Department shall be levied for the period beyond the contractual delivery date, on the amount of balance advance payment to be adjusted.

19.3.35 Payment of Air Freight Charges

Goods that are required to be air lifted are to be despatched through Air India/Indian Airlines only on a 'Charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to Air India/Indian Airlines in Rupees.

19.3.36 Performance Bond

In respect of Contracts wherever the Guarantee/Warranty clause is applicable, a provision for submission of bank guarantee from any one of the authorized banks for 10% of the contract value as per the format has to be incorporated in the Contract and the bank guarantee should be valid for a period upto two months beyond the warranty period.

19.3.37 Place of Delivery & Consignee

19.3.37.1 The name and address of the consignee to whom the ordered stores are required to be delivered should be clearly specified in the contract.

The supplier shall send all the relevant despatch documents well in time to the Purchaser to enable the Purchaser clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. The usual documents involved and the drill to be followed in general for this purpose are as follows:

19.3.37.2 The supplier shall notify the Purchaser within 24 hours of despatch, consignee/PAO (others concerned), the complete details of despatch and also supply following documents (indigenous supply) by registered post/speed post (or as instructed in the Contract) :-

- 1) Supplier's delivery challan indicating inter alia description and specification of the goods, quantity, unit price, total value.
- 2) Packing list.
- 3) Insurance certificate, if any.
- 4) Railway receipt/Consignment note.
- 5) Manufacturer's guarantee certificate and in-house inspection certificate.
- 6) Stores copy of the inspection certificate issued by Purchaser's inspector.
- 7) Any other document(s) as required in terms of the contract.

19.3.38 Paying Authority

The name and address of the paying authority to whom the bills are required to be submitted for payment along with the relevant documents should be clearly specified in the contract.

19.3.39 Arbitration

In the event of any question/dispute or difference arising out of or in connection with any of the terms and conditions of the purchase order and the governing general conditions of the contract (DPS-P-11) (except as to any matter the decision of which is specially provided by the general conditions) and the parties to the contract are not in a position to settle the dispute mutually, the matter shall be referred to the sole arbitration of the Director, Purchase and Stores, DPS or some other person appointed by him. The award of the arbitrator shall be final and binding on the parties to the contract. The arbitration proceedings would be subject to the provisions of the Arbitration & Reconciliation Act 1996 and Rules thereunder. The arbitration clause should be incorporated with the consent of the Contractor.

19.3.40 Liquidated Damages

19.3.40.1 As per DPS Standard Terms & Conditions, the Purchaser reserves the right to levy the liquidated damages, for delay in supply beyond the contractual delivery date at the rate of 2% of the value of the stores the delivery of which is delayed, for each month or part of a month.

19.3.40.2 In case the recommended bidder seeks deviation either in the percentage of LD leviable or insists for a ceiling on the total percentage of LD leviable, the mutually settled terms should be clearly specified in the contract.

19.3.40.3 Regarding levy of liquidated damages a copy of O.M.No. 2(5)/2000/D (Supply-II) dated 5th November 2004 issued by MOD, Deptt. of Defence Prod. & Supplies, New Delhi is enclosed as Annexure-I. However as per para 8.14.1 of Manual on Policies and Procedures for Purchase of Goods issued by Ministry of Finance, “there may be situation when charging full liquidated damages may not be justified as the reasons for delay in delivery by the supplier may be largely due to circumstances well beyond under his control but nevertheless these may not be considered adequate to waive off liquidated damages altogether or there may be such deficiencies in service for which quantification may not be feasible and no other remedy may be available. In such cases, at the sole discretion of the Purchaser, token liquidated damages upto 10% of the normal liquidated damages may be imposed by the competent financial authority with the approval of IFA. Stipulations to this effect, prescribing the kind of deficiencies and the scale of token liquidated damages chargeable should be clearly brought out in the tender documents. This safe guard should be consistent with the provisions of security deposit.”

19.3.41 Risk Purchase

19.3.41.1 In the event supplier fails to fulfill the contractual obligations as per the terms & conditions of the Contract, the Purchaser has an option of completing the Contract at the risk and expenses of the Contractor. While initiating risk purchase at the risk and expenses of the supplier, the Purchaser must satisfy himself that the supplier has failed to deliver and he has been given all the opportunities as per the Contract to execute the Contract and also adequate and proper notice. Wherever risk purchase is resorted to, the supplier is liable to pay the additional amount spent by the govt. if any as compared to the contracted amount. All the factors including the method of recovering such amount should also be considered while taking a decision to invoke the risk purchase.

19.3.41.2 Risk purchase at the cost and expense of the supplier may not be always a practical proposition as it may not be feasible to enforce recovery without legal action. In respect of import contracts, it should be carefully examined the pros and cons before invoking this clause.

19.3.41.3 In the case of item of proprietary nature or there is only one qualified firm to supply the item and there is remote possibility of procuring the same item from an alternative source, it will be essential that instead of having risk and cost clause in such contract, the contract should have a Security Deposit clause to cover any such default.

19.3.42 Product Support

The following should be confirmed from the recommended bidder and

incorporated in the purchase order especially in respect of equipment/instrument/system of high value or specific nature:-

The Contractor should provide :

- 1) The necessary product support during the assured life cycle of the equipment/instrument/system
- 2) Assured supply of information on product/technological improvement, modification and upgrades.
- 3) Obsolescence management and life time purchase
- 4) An illustrated spares price catalogue with base price and pricing mechanism for long term.

19.3.43 Commitment of Resources

19.3.43.1 The purchase order should incorporate the condition that the Contractor should allocate/earmark the committed resources (manpower, machinery, finances, etc.) for satisfactory execution of the Contract within the time schedule stipulated in the Contract.

19.3.43.2 The delivery schedule should have committed intermediate milestones, which when not achieved by the Contractor shall give a right to the Purchaser to short close the order and seek remedies as per the terms and conditions of the Contract.

19.3.44 Secrecy

19.3.44.1 The Contractor shall take all reasonable steps necessary to ensure that all persons employed in any work in connection with the Contract have full knowledge of the Official Secrets Act and any regulations framed thereunder.

19.3.44.2 Any information obtained in the course of the execution of the Contract by the Contractor, his servants or agents or any persons so employed, as to any matter whatsoever, which would or might be directly or indirectly of use to any enemy of India must be treated as secret and shall not at any time be communicated to any person.

19.3.44.3 Any breach of the aforesaid conditions shall entitle the Purchaser to cancel the Contract and to purchase or authorize the purchase of the stores at the risk and cost of the Contractor in accordance with DPS General Terms & Conditions of the Contract, in addition to any other penal action the Department may take at its discretion.

19.3.45 Restricted Information Categories under Section 18 of the Atomic Energy Act 1962 and Official Secrets under Section 5 of the Official Secrets Act 1923.

Any contravention of the above mentioned provisions by the Contractor, sub-contractor, consultant, adviser or the employees of the Contractor invite penal consequences under the aforesaid legislation.

19.3.46 Prohibition Against Use of the Name of any Institution of Department of Atomic Energy without Permission for Publicity Purpose

The Contractor or sub-contractor, consultant, adviser or the employees engaged by the Contractor shall not use the name of any Institution of Department of Atomic Energy for any publicity purpose through any public media like press, radio, TV or internet without the prior written approval of the Purchaser.

19.3.47 Compliance with Security Requirements of the Purchaser

The Contractor shall strictly comply with the Security Rules & Regulations of the Purchaser in force and shall complete the required formalities including verification from Police and any other authorities and obtain necessary prior permission for entry into the Purchaser's premises wherever authorised by the Purchaser.

19.3.48 Confidential Information

The drawings, specifications, prototype, samples and such other information furnished to the Contractor relating to the supply/works/sub-system/equipment etc. are to be treated as confidential which shall be held by the Contractor in confidence and shall not be divulged to any third party without the prior written consent of the Purchaser. The Contractor, therefore, binds himself, his successors, heirs, executors, administrators, employees and the permitted assignee or such other persons or agents directly or indirectly concerned with the works/supply to the confidential nature of the drawings, specifications, prototype sample, etc. It is a further condition of the Contract that the Contractor shall not, without prior written permission from the Purchaser, transmit, transfer, exchange, gift or communicates any such confidential information and also the components, sub-assemblies, product, by-products, etc. pursuant to the fabrication undertaken by the Contractor to any third party.

19.3.49 Patents & Patent Rights Indemnification

All specifications, drawings, patents and such other relevant information furnished to the Contractor by the Purchaser shall be the property of the Purchaser. If, during the process of execution of the Contract, any improvement, refinement or technical changes and modifications are effected by the Contractor, such changes shall not affect the title to the property of the Purchaser and all the information, specifications, drawings, etc. including the improvement/modifications effected by the Contractor shall continue to be the property of the Purchaser. The Purchaser shall also have the absolute rights to assign, transfer, sublet, use and transmit all such information and details to the Purchaser's consultants, agents and collaborators and the Contractor shall not have any claim or right whatsoever in respect of the Purchaser's drawings, specifications, patents/prototype, etc. even where improvement, refinements, modifications, etc. were effected by the Contractor.

19.3.50 Laws Governing the Contract

19.3.50.1 The Contract shall be governed by the laws of India for the time being in force.

19.3.50.2 Marking of all the stores supplied must comply with the requirement of Indian Acts relating to merchandise marks and all the rules made under such acts.

19.3.51 Jurisdiction

The courts within the local limits of whose jurisdiction the place from which the purchase order is issued is situated only shall, subject to Arbitration Clause, have jurisdiction to deal with and decide any matter arising out of this Contract.

19.3.52 Indemnity

19.3.52.1 The prices stated in the contract shall be deemed to include all amounts payable for the use of patents copy right, registered charges, trade marks and any other industrial property rights.

19.3.52.2 The Contractor shall at all times indemnify the Purchaser against all claims including claim by any third party which may be in respect of stores for infringement of any rights protected by patent registration of design or trade marks and shall take all risks of accident or damage which may cause a failure of the supply from whatever cause arising and entire responsibility for the sufficiency of all the means used by him for the fulfillment of the Contract.

19.3.53 Force Majeure Clause

19.3.53.1 Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable.

19.3.53.2 DPS Standard Terms and Conditions do not provide for any force majeure clause. In case the recommended supplier insists for incorporation of the force majeure clause the following force majeure clause can be incorporated in the purchase order:-

“Neither party shall bear responsibility for the complete or partial non-performance of any of his obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the present contract) if the non-performance results from such force majeure circumstances such as but not restricted to flood, fire, earthquake, civil commotion, sabotage, explosions, epidemics, quarantine restrictions, strikes, lock outs, freight embargoes, acts of the Purchaser either in its sovereign or contractual capacity, hostility, acts of public enemy and other acts of god as well as war or revolutions, military operation, blockade, acts or actions of State authorities or any other circumstances beyond the parties' control that have arisen after the conclusion of the present contract”.

19.3.53.3 In such circumstances, the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time or action of these circumstances and their consequences.

19.3.53.4 The party for which it has become impossible to meet the obligation under this contract due to force majeure condition, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than twenty one days from the moment of their beginning unless otherwise directed by the Purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical and shall seek all reasonable alternative means for performance not

prevented by the Force Majeure event.

19.3.53.5 Certificate of Chamber of Commerce (Commerce & Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances. If the impossibility of complete or partial performance of an obligation for more than sixty days, either party here to reserve the right to terminate the contract totally or partially upon giving prior written notice of 30 days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.

19.3.53.6 There may be a force majeure situation affecting the Purchase Organization only. In such a situation the Purchase Organization is to take up with the supplier on similar lines as above for further necessary action.

19.3.54 Termination of Contract

19.3.54.1 In respect of a Contract running for a longer duration there must be a provision in the Contract reserving the Purchaser's right to terminate the Contract by giving adequate advance notice to the Contractor.

19.3.54.2 The Purchaser, without prejudice to any other remedy for breach of contract by written notice of default sent to the supplier, may terminate the Contract in whole or in part:

- 1) If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extensions thereof granted by the Purchaser.
- 2) If the supplier fails to perform any other obligation(s) under the Contract.
- 3) If the supplier becomes bankrupt or otherwise insolvent.
- 4) If the supplier, in the judgement of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
“Corrupt practice” means the offering, giving, receiving or soliciting of any things of value to influence the action of a public official in the procurement process or the execution of a contract to the detrimental of the borrower and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the borrower of the benefits of free and open competition.

19.3.55 Other Terms & Conditions

It should be specifically mentioned in the contract that the contract shall be governed by the other terms & conditions as contained in form no. DPS-P-11 or DPS-P-12, which form part of the tender documents.

19.3.56 Despatch of Stores after Expiry of Delivery Period

19.3.56.1 In terms of the contract conditions, on expiry of the contract delivery period, the supplier shall not despatch the stores till such time an extension in delivery period 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 have a right to cancel the Contract. It shall be no defence that the consignee has taken delivery of the stores despatched by the supplier without getting an extension letter and therefore the Contract has been kept alive.

19.3.56.2 The Purchaser can reject the supply made by the firm in case it is not required by the user and tell them accordingly viz. that the supply stands rejected for the reason that they have been made after the expiry of the delivery date and simultaneously return the despatch documents RR/LR to the firm.

19.3.56.3 The Purchaser may accept the stores in case it is still required by the user and extend the delivery date subject to applicability of denial clauses and right to claim damages for delay in supply.

APPENDIX

INDEMNITY BOND

We, M/s. _____ indemnify the Purchaser and keep the Purchaser indemnified to the extent of the value of free issue materials to be issued till such time the entire contract is executed and proper account for the free issue materials is rendered and the left over/surplus and scrap items are returned to the Purchaser. We shall not utilize the Purchaser's free issue materials for any job other than the one contracted out in this case and also not indulge in any act, commission or negligence which will cause/result in any loss/damage to the Purchaser and in which case we, the Contractor shall be liable to the Purchaser to pay compensation to the full extent of damage/loss and undertake to pay the same. We, the Contractor, shall be responsible for the safety of the free issue materials after these are received by us and all through the period during which the materials remain in our possession/control/custody. The free issue materials on receipt at the Contractor's works shall be inspected by us for ensuring safe and correct receipt of the material. We, the Contractor shall report the discrepancies to the Purchaser within 5 days from the date of receipt of the material. We, the Contractor shall take all necessary precautions against any loss, deterioration, damage or destruction of the FIMs from whatever cause arising whilst the said materials remain in our possession/custody or control. The free issue materials will be inspected periodically at regular intervals by the Contractor for ensuring safe preservation and storage. We, the Contractor, shall also not mix up the materials in question with any other goods and shall render true and proper account of the materials actually used and return balance remaining unused material on hand and scrap along with the final product and if it is not possible, within a period of one month from the date of delivery of the final product covered by this purchase order. We, the Contractor, hereby also indemnify the Purchaser to compensate the difference in cost between the actual cost of the free issue material lost/damaged and the claim settled to the Purchaser by the insurance company. The decision of the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy, Mumbai, as to whether the Contractor has caused any loss, destruction, damage or deterioration of the free issue materials while in his possession, custody or control from whatever cause arising and also on the quantum of damage suffered by the government, shall be final and binding upon the Contractor.

ANNEXURE - 1

No.2 (5)/2000/D (Supply-II) GOI, MOD, Deptt. Of Defence Prod. & Supplies New Delhi, the 05th Nov. 2004

OFFICE MEMORANDUM

Sub: Guidelines for levying liquidated Damages for delayed supplies against contracts placed by Supplies Division of the Department of Defence Production.

Consequent upon issue of OM No. 3(4)/2000/D(S-II) dated 07 Jun 2004 which inter-alia provides that the deduction on account of LD may be made which should not exceed 5% of the value of the supply order, it has been decided with the approval of RM that the following guidelines will be adopted in future for levy of LD/token LD.

CONDITION	RULE POSITION
(i) Delay in supplies resulted in monetary loss actual/demonstrable and firms were fully responsible for the delay.	Full LD leviable as calculated in terms of the stipulations of para 12(8) (a) of the general conditions included in schedule 'B' to the supply order which should not exceed 5% of the value of the Supply Order, in terms of departmental instructions contained in order No. 3(4)/2000/D(S-II) dated 03 Jan 2003.
(ii) Delay in supplies resulted in monetary loss actual/demonstrable but the firm was responsible only for part of the delay and remaining part of the delay was beyond its control.	Full LD, for the period for which contractor is responsible for the delay subject to LD not exceeding 5% of the value of the Supply order. In terms of departmental instructions contained in order No. 3(4)/2000/D(S-II) dated 03 Jan 2003.
(iii) Delay in supplies resulted in monetary loss actual/demonstrable and entire delay was due to circumstance beyond the control of the supplier(s)	LD may be waived full.
(iv) Monetary loss actual/demonstrable cannot be certified and inconvenience has been caused.	Token LD equal to 10% of full LD calculated in terms of (i) above.
(v) Monetary Loss actual/demonstrable cannot be certified and no inconvenience has been caused.	LD may be waived fully.

2. LD will be calculated on the basis of total value of the stores including elements of statutory duties and taxes viz. sales tax, customs duty, excise duty, etc. as indicated in the Supply Order.
3. This OM supercedes the existing orders bearing No. 4(11)/85/D (Supply-II) dated 20.09.85 and 23.11.87 on the subject.
4. This issue with the concurrence of IF (DS) vide their Dy. No. 1028/DF/DS/04 dated 12 Oct. 2004.

Sd/-
(R.K. Jain)
Director (Supply-II)

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE AND STORES
CENTRAL PURCHASE UNIT

VIKRAM SARABHAI BHAVAN,
ANUSHAKTINAGAR,
MUMBAI 400 094.

APPLICATION NO: DPS/

DATE:

EXCISE DUTY EXEMPTION CERTIFICATE IN TERMS OF NOTIFICATION
NO.10/97 CENTRAL EXCISE DATED 01-03-1997 ISSUED BY THE MINISTRY
OF FINANCE, DEPARTMENT OF REVENUE OF GOVERNMENT OF INDIA

-
1. Name of the Ministry/Dept. : Department of Atomic Energy
 2. Name of the Department : Directorate of Purchase and Stores
 3. Name of the R&D Unit for whom the item is meant
 4. Brief description of scientific and tech. inst. apparatus, equipments, accessories, spare parts : AS FOLLOWS:

SL.NO.	DESCRIPTION	QTY	UNIT	RATE
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5. Name of the manufacturer/supplier : M/s.
6. Purchase Order No. and date :
7. Approx. cost in Rupees excluding statutory levies :
8. The purpose for which required : Research purpose

Certified that the above mentioned institution is a public funded research institution under the department of atomic energy and the goods, in respect of which excise duty exemption is claimed under this notification are required for the research purpose only.

()
DEPUTY DIRECTOR, P&S

Certified that the above mentioned institution is a public funded research institution under the Department of Atomic Energy and the goods, in respect of which excise duty exemption is claimed under this notification are required for the research purpose only.

Deputy Secretary, Deptt. of Atomic Energy, Govt of India

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE AND STORES

Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai - 400 094.

REF: DPS/

DATE:

CERTIFICATE FOR IMPORTED GOODS TO AVAIL CUSTOM DUTY @ 9.356%
ADVALORAM TERMS OF NOTIFICATION NO. 51/96-CUSTOM DTD. 23/7/1996
AS AMENDED NOTIFICATION NO. 28/2003 DTD. 1/3/2003

1. Name of the Research Institution :
2. Name of the Department : Department of Atomic Energy
3. Name of the Orgn. responsible for the procurement : Directorate of Purchase and Stores
4. Brief description of scientific and tech. inst. apparatus, equipments, accessories, spare parts :
5. The purpose for which required : Research work
6.
 - a) Is the equipment made in India : No
 - b) Cannot be made in your Institution's workshop : No
 - c) If your answer to "a" and "b" is yes, then what is the special reason for the import of the equipment in question? : Not applicable
7. Name of the manufacturer/supplier : M/s.
8. Whether imported directly or through DGS&D or agents : Directly
9.
 - a) If through DGS&D give Indent No. and date : Not applicable
 - b) If order is placed directly or Through Agents give import licence no. and date : It is certified that as per the Export & import policy for the year 2008-2009 announced by the Govt. of India, Ministry of Commerce, The items referred to in the purchase order mentioned below is importable without any restriction and

the items are not falling under the negative list chapter XV of the Import & Export Policy. Hence no Import Licence is required for the import of this item.

10. Purchase Order No. and date : DPS/
11. Probable date of receipt of equipment at the ports :
12. Port of Entry :
13. Country of Origin :
14. Approx. cost in Rupees : Rs.
(Rupees
FE Value : : @

Certified that the Institution indicated at sr. no.1 above, is a public funded Research Institution under the Administrative control of Dept. of Atomic Energy and the goods indicated at sl. 4 under the above mentioned Notification are required for the research purpose only and qualifies for assessment of customs duty @9.356 % advalorem.

Dy. Director, P&S

Certified that the Institution indicated at sl. 1 above, is a public funded Research Institution under the Administrative control of Dept. of Atomic Energy and the goods indicated at sl. 4 under the above mentioned Notification are required for the research purpose only.

Dy. Secretary
Dept. of Atomic Energy
Government of India

Ref: DPS/

Dated _____

M/s.

END-USE STATEMENT

1. We hereby certify that “_____” to be procured from M/s. _____ against our Purchase Order No. DPS/ _____ Dt. _____ will be used for _____

2. We also certify that the items/s will not be used in designing, developing, fabricating or testing of any chemical, biological, nuclear or weapons of mass destruction or activity related to it.

3. It is also certified that we will not re-export this item prior to obtaining permission from the concerned authorities, as may be required.

Director, P&S

Book No.

Sr. No. _____

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE AND STORES

Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai - 400 094.

OCTROI EXEMPTION CERTIFICATE

REF: DPS/

DATE:

To,

The Town Duty Officer,
Brihanmumbai Municipal Corporation,
Municipal Head Office,
Mumbai 400 001

Sub: Import of _____
Quantity _____
Contract No. _____
Placed on M/s. _____

It is certified that import of articles under reference is for the purpose of fulfilling the above mentioned contract for and on behalf of the President of India represented through the Department of Atomic Energy, Directorate of Purchase and Stores and are for bonafide use of Government of India, Department of Atomic Energy.

Exemption from the payment of Octroi Duty is therefore requested to this above firm, for the consignment as per Section 194 (1) of M.M.C. Act.

It is also certified that a serially numbered certificate signed by the authorized Gazetted Officer of Department of Atomic Energy, Directorate of Purchase & Stores and his specimen signature have already been sent to Brihanmumbai Municipal Corporation.

The above articles will be included in the monthly statement of the "Article Received" against the Octroi Exemption Certificate issued by the Department of Atomic Energy, Directorate of Purchase & Stores which will be submitted to Brihanmumbai Municipal Corporation.

PARTICULARS OF IMPORT:

1. Name of the Supplier
2. Description of Article
3. Quantity & Value of the Article
4. Date of issue of Certificate
5. Sr. No. of Certificate issued

Asstt. Purchase Officer
Asstt. Stores Officer

CHAPTER - 20

DIFFERENT TYPES OF CONTRACTS

20.1 Types of Contracts Entered by DPS

Apart from regular purchase orders placed for supply of various categories of items, DPS also enters into different types of contracts for various other activities which are listed below:

1. Contract for supply of drugs, medicines, consumables, dental items and other dietary items for Hospital.
2. Rate Contract for recurring/common user items.
3. Contract for transportation of goods.
4. Contract for clearance & handling of import & export cargo from airport, seaport, foreign post office and courier.
5. Contract for marine transit insurance cover for import & export cargo.
6. Contract for consolidation of air consignments.
7. Contract for Annual Service & Maintenance.
8. Buy Back
9. Repair Contract/Order

20.2 Procurement of Drugs & Medicines

20.2.1 As per the policy of the Government in respect of procurement of medicines as per the list enclosed, purchase preference has to be granted exclusively for the products of Pharma Central Public Sector Enterprises and their subsidiaries. The salient features of the purchase preference policy are as under:

- 1) Purchase Preference policy in respect of a maximum of 102 medicines would be applicable to purchases made by the Ministries/Departments, PSUs, autonomous bodies, etc. of the Central Government. It will be valid for a total period of 5 years from August 2006.

- 2) This would also be applicable to purchase of 102 drugs made by State Governments under health programme which are funded by Government of India (eg. purchases under rural health mission, etc.).
- 3) PPP (Purchase Preference Policy) will be extended only to Pharma CPSEs and their subsidiaries where CPSEs own 51% or above share holding.
- 4) It would be applicable to a maximum of 102 medicines as per list enclosed. The list of 102 medicines would be reviewed and revised by the Department of Chemicals & Petrochemicals as and when required taking care not to include any item reserved for SSI Units.
- 5) The Purchasing Department/PSU/Autonomous Body, etc. of the Central Government may invite limited tenders from Pharma CPSEs and their subsidiaries or purchase directly from them at NPPA certified/notified price with a discount upto 35%.
- 6) The purchasing Department would purchase from Pharma CPSEs and their subsidiaries subject to their meeting good manufacturing practices (GMP) norms as per schedule M of the Drugs & Cosmetics Rules. If no Pharma CPSE is forthcoming to supply these 102 medicines the Purchasing Department would be at liberty to purchase from other manufacturers.
- 7) If the Pharma CPSEs or their subsidiaries which have the benefit of PPP, fail to perform as per the purchase order, they would be subject to payment of liquidated damages or any other penalty included in the contract.
- 8) The medicines covered under Drugs & Price Control Order would be supplied at the rates fixed by National Pharmaceutical Pricing Authority (NPPA) rates minus discount upto 35%.
- 9) In case of medicines not covered under DPCO, prices would be got certified from NPPA, only for the limited purpose of supply to Central Government Department and the Public Sector Undertakings, autonomous bodies, etc. On the certified price, Pharma CPSEs and their subsidiaries would provide discount upto 35%.
- 10) The Purchase Preference Policy (PPP) as contained in Department of Public Enterprises O.M. No. DPE.13 (12) 2003-Fin. Vol.II dated 18.7.2005 would not be applicable to Pharma CPSEs.
- 11) Pharma CPSEs and their subsidiaries would strengthen marketing capabilities for larger market share in the open market during the currency of purchase preference policy.

20.2.2 For supply of drugs & medicines rate contracts are entered into for a duration of 1 to 2 years and the supplies are drawn as and when required basis by placing a requisition against the rate contract.

20.2.3 While the rate contract will be governed by the general conditions of contract of DPS, the following additional conditions shall be incorporated in the RCs:

- 1) The drugs & medicines supplied against each requisition should preferably be from one batch and in any case not more than three batches.
- 2) The shelf life of the drugs & medicines shall be the maximum as specified for the item by the manufacturer.
- 3) The drugs & medicines shall be supplied from the latest batch having longer shelf life/expiry date. If due to shortage/urgency items with shorter shelf life/expiry date are supplied the purchaser reserves the right to accept or reject such items. In case of acceptance, such items shall be replaced by the contractor if the full quantity supplied could not be consumed within the expiry date.
- 4) Each carton/container supplied shall be embossed/stamped with the name of the Unit like BARC CHSS, etc.
- 5) The Contract should specify that if the supply is not made within the specified time in the purchase requisition the purchaser reserves the right to procure the drugs of similar nature from open market and the extra expenditure incurred will be recovered from the supplier/manufacturer along with the administrative cost as admissible.
- 6) In case the manufacture of the requisitioned pharmaceutical item contracted for is to be discontinued, it is the responsibility of the manufacturer to intimate the purchaser well in advance, say, 2 months so that the purchaser can consider raising a requisition for quantities required for sufficient stock. The supplier shall also intimate equivalent product which can be supplied, for consideration of the purchaser without any extra cost.
- 7) A copy of the analytical report for each batch of drugs based on the formulation submitted by manufacturer and approved by Drug Control Authority/Food & Drug Control Administration shall be submitted along with each lot of supply. In case the successful bidder/supplier fails to submit the above document to the consignee along with the drug/medicine the supplies are liable for rejection. However, in case of acceptance, purchaser will be free to get the analytical test done by any of the FDA approved laboratory and expenditure incurred towards getting such test carried out will be recovered from the contractor's bill.

20.2.4 Fall clause

It is a condition of the contract that the prices charged for the item to be supplied by the contractor shall in no way exceed the lowest price at which the contractor sells the stores of identical description to any other person/organisation during the currency of the contract. If at any time during the currency of the contract, the contractor reduces the sale price of such stores or sells such stores or offers to sell such stores to any other person/organisation at a price lower than the prices chargeable under the contract, he shall forthwith notify such reduction of sale to the Director, Purchase & Stores and price agreed to under the contract for the item supplied after the

date of coming into force of such reduction/sale shall stand correspondingly reduced. To comply with the above condition the contractor shall furnish the following certificate along with each bill for payment to the paying authority:-

'I/We certify that the stores of description identical to the stores supplied herein against the purchase requisition based on the rate contract to the Directorate of Purchase & Stores have not been offered/sold by me/us to any other person/organisation upto the date of the bill, at a price lower than the price charged to the Directorate of Purchase & Stores under the contract'.

20.2.5 Packing

The drugs & medicines shall be properly and securely packed by the contractor to withstand the handling during the transportation and the method of packing shall be in accordance with the established standard of packing applicable to similar merchandise. Package label should indicate name and address of the manufacturer, packer's or distributor's name if any, manufacturing licence number, date of manufacturing, batch number and date of expiry.

20.2.6 Termination of Contract

The contract should include a condition that the purchaser reserves the right to terminate the contract by giving one month advance notice to the contractor.

20.2.7 Parallel Contract

20.2.7.1 The contract should also include a provision that the purchaser reserves the right to enter into a parallel contract for similar items with other suppliers.

20.2.7.2 The duration of the Contract, payment terms, etc. shall be incorporated in the contract in accordance with the tender as well as the offer as mutually settled.

20.2.8 Warranty

The drugs & medicines supplied shall be as per the formulation/standard approved/specified by the Drug Control Act and Food & Drug Control Administration Regulation or as per the Regulation of any such statutory authorities. The contractor shall be held responsible for the consequences of supplying any substandard, spurious and adulterated drugs and medicines not conforming to such regulation/act.

20.2.9 Compensation for delay in Supply

If the supplier/contractor fails to supply the ordered quantity of drugs & medicines against each requisition within the stipulated delivery period, the purchaser will recover from the contractor a flat rate of 2% of the delayed portion of supply per month or part thereof or as mutually agreed between the Purchaser and Contractor from the supplier's bill towards compensation for the delay.

20.3 Rate/Running Contract

20.3.1 A rate contract is an agreement between the purchaser and the supplier to supply the stores/items at specified prices during the period of the contract. RC is in the nature of a standing offer and neither any quantity nor any anticipated drawal are guaranteed. The supplier is bound to supply any quantity at a specified rate during the currency of the RC. As the RC is a standing offer, either party can revoke it at any time after giving a reasonable notice and opportunity.

20.3.2 Running Contract is a Contract concluded with one or more suppliers for a specific period for the supply of specified stores at the specified rate with specified quantity.

20.3.3 Rate/Running Contracts are concluded for items for which there is a regular and recurring demand and common user items required by various projects/units the price of which is not subject to appreciable fluctuation.

20.3.4 A Rate/Running Contract enables the procurement officer to procure the indented items promptly and with economy of scale and also cuts down the order processing and inventory carrying cost. The RC system takes care of supply chain management and enables efficient transactions both for the purchaser and supplier.

20.3.5 Rate/Running Contract should be concluded after inviting open tender.

20.3.6 The period for which the RC is proposed to be awarded, an indication on the anticipated total value of the purchase but not a commitment based on the previous years consumption, qualification criteria if any should be indicated in the NIT in addition to the DPS general tendering and contract conditions.

20.3.7 Rate/Running contract should be awarded to the lowest suitable/ reliable/reputed firms after ascertaining their capacity, technical and financial capabilities and their past performance after obtaining the approval of the competent Purchase Committee and competent authority.

20.3.8 Merits of Rate Contract

20.3.8.1 Advantages to the Purchaser

1. Competitive and economical price due to aggregation of demands.
2. Save time, efforts, man hours and related costs involved in time consuming as well as repetitive tendering process. It thus reduces lead time for procurement.
3. Availability of quality goods with full quality assurance backup.
4. Enables procurement as and when required and thus reduces inventory carrying cost.
5. Advantageous to even small users and those located in remote areas.
6. Provides one single point contract to procure such items.

20.3.8.2 Advantages to the Supplier

1. Reduces marketing cost and efforts.
2. Eliminates repetitive tendering and follow up actions with multiple authorities.
3. Provides single point contract to government supplies.
4. Aggregation of government demand leads to economic production.
5. Leads to most competitive prices being offered.
6. Leads credibility.
7. Promotes quality discipline.

20.3.8.3 Conditions under which Rate Contracts need not be concluded:

1. In case of goods of low value and which are required by the users in small quantities.
2. In respect of scarce/critical/perpetually short supply goods.

20.3.9 Period of Contract

A period of a rate contract should normally be One Year for stable technology products. However, in special cases, shorter or longer period may be considered. As far as possible, termination period of rate contract should be fixed in such a way as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts. Attempts should also be made to suitably stagger the period of rate contracts throughout the year.

20.3.10 Criteria for Award of Rate Contract

20.3.10.1 Rate contract shall be awarded to the firms who are registered for the goods in question and fulfill the laid down eligibility and qualification criteria including availability of ISI mark, Service Centres across the country etc. Suitable stipulations are to be incorporated in the tender enquiry documents to this effect. In respect of new items, being brought on Rate contract for the first time where there is no registered supplier, the requirement of registration can be relaxed with the approval of the competent authority. The award of such rate contracts will, however, be subject to supplier's satisfactory technical and financial capability.

20.3.10.2 Some of the tenderers (who are otherwise registered for the subject goods) may also be holding current rate contracts and/or held past rate contracts for the required goods. Their performance against such earlier/current rate contracts shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut off date is to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their tenders) to enable the Purchaser to judge their performance and achievement against the past/current rate contract. These criteria are to be evolved and decided by the Purchase Organisation during

procurement planning stage for incorporation in the corresponding tender enquiry documents.

20.3.11 Special Conditions Applicable for Rate Contract:

Some conditions of rate contract defer from the usual conditions applicable for purchase orders. Some such special conditions are given below:

1. Earnest Money Deposit is not applicable.
2. In the schedule of requirement, no quantity is mentioned; only the anticipated drawal may be mentioned without any commitment.
3. The Purchaser reserves the right to conclude more than one rate contract for the same item.
4. The Purchaser as well as the Supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally 30 days.
5. The Purchaser has the option to renegotiate the price with the rate contract holders.
6. In case of emergency, the Purchaser may purchase the same item through purchase order with a new supplier.
7. Supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the rate contract terms are to be issued for obtaining supplies through rate contract.
8. The Purchaser and the authorised Users of the rate contract are entitled to place supply orders upto the last date of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms and conditions of the rate contract.
9. The rate contract will be guided by “Fall Clause”.

20.3.12 Parallel Rate Contracts

20.3.12.1 In case it is observed that a single supplier does not have enough capacity to cater to the entire demand of an item, the rate contract issuing authority may enter into more than one rate contract with different suppliers for the same item. Such rate contracts are known as parallel rate contracts.

20.3.12.2 Techniques for conclusion of rate contracts are basically identical to that of the purchase order. Identical tender documents may be utilized for conclusion of rate contracts subject to inclusion therein the special terms and conditions as applicable for rate contracts. In the normal course, the rate contract is to be awarded to the responsive tenderer (L-1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive

bidders, reasonableness of the prices quoted by the responsive bidders etc., it may become necessary to award parallel rate contracts also. For this purpose, a reasonable price band above L-1's price is to be decided and parallel rate contracts awarded to the responsive tenderers falling within that price band. Efforts should be made to conclude parallel rate contracts with suppliers located in different parts of the country and taking into account the location where the materials are required. For the sake of transparency and to avoid any criticism, all such rate contracts are to be issued simultaneously.

20.3.12.3 Price negotiation with the tenderers should be severely discouraged. However, in case the price quoted by the lowest responsive tenderer (L-1) is not reasonable and acceptable, the price may be negotiated with L-1 only and, if it reduces the price to the desired level, rate contract may be concluded with L-1.

20.3.12.4 There may be a situation, where parallel rate contracts are needed but though the price of L-1 is reasonable, the number of responsive tenderers falling within the reasonable price band is inadequate. To take care of such situation, DPS may resort to negotiation and counter offering as indicated below:

1. To start with, the rate contract may be awarded to L-1 tenderer. Then the price of L-1 is to be counter offered to the higher quoting responsive tenderers under intimation to L-1 asking them to send their revised tenders in sealed covers to be opened in public at a specified place, date and time (as per standard procedure). L-1 may be specifically informed that it may, if it so desires, reduce its price and send its revised tender accordingly as above. The tenderers who accept the counter offer rate or rate lower than that are to be awarded parallel rate contracts. If L-1 lowers its rate, in its revised offer, same may also be accepted with effect from that date and its rate contract amended accordingly.
2. There may also be a situation where parallel rate contracts are necessary, but even the price of the lowest responsive tenderer (L-1) is not reasonable. In that case, price negotiation may be conducted with L-1 in the first instance. If L-1 agrees to bring down the prices to the desired level, rate contract may be concluded with it and that price counter offered to other responsive tenderers under intimation to L-1 for further action in identical manner as indicated in 1 above. If, however, L-1 does not agree to reduce its price in the first instance itself, then the price, which has been decided as reasonable may be counter offered to all the responsive tenders (including L-1) for further action on the above lines.

20.3.12.5 In situations where new comer firms or firms with unfavourable reports happen to quote an unreasonably low price, such offers may not be ignored. However, if such offers are made it may not be desirable to treat such offers as L1 for negotiation and a proper evaluation shall be made to decide the technically acceptable and reasonable L1 with the approval of competent authority for the purpose of negotiation.

20.3.13 Essential Conditions of Rate Contract

The rate contract should essentially incorporate the following:-

- 1) The details/nomenclature of the items and the applicable specifications.
- 2) The unit rate for each item.
- 3) Any other charges payable by purchaser.
- 4) The statutory levies applicable (Excise duty, VAT, CST).
- 5) Period of contract.
- 6) Payment terms.
- 7) Security deposit clause in case of firms not registered with DPS, NSIC & DGS&D or the monetary value of registration is less than the anticipated total value of drawal/purchases during the period of the rate contract.
- 8) The contract should specify the delivery time/period for making supplies from the date of issue of supply order/requisition.
- 9) Right to termination and revocation of RC.

20.3.14 Standing Order

As per the provisions, RC is in the nature of a standing offer and a legal contract comes into being only when a supply order/requisition is placed on the rate contract holder by the authorised person. Being just a standing offer merely embodying various terms of the offer the contract holder may revoke it at any time during its currency. Similar rights can be exercised by the purchaser. Accordingly the contract should have a provision for termination of the contract at any time during its currency by giving a reasonable advance notice. Reasonable opportunity should be given to the supplier to represent against any revocation/cancellation of Rate Contract.

20.3.15 Right to enter into a Parallel Contract

The tender should incorporate a condition that the purchaser reserves the right to enter into parallel contract/s with other firms for the item/s covered under RC.

20.3.16 Selection of Firms

RC should be normally concluded only with registered firms based on capacity assessment by inspecting authority. In respect of new items being bought on rate contract for the first time, RC can be awarded to unregistered firms also on the basis of favourable technical capacity and financial capabilities. Past performance of a firm will be a major consideration while awarding a Rate Contract. The following aspects should be kept in mind:-

- 1) No new RC should be placed with firms having backlog which is likely to continue for major portion of the year.
- 2) Performance of the contractor for the last 3 years should be taken into consideration.

- 3) If the contractor does not have current RC, performance against earlier two immediate rate contracts should be considered.
- 4) If the RC holder is a defaulter in furnishing drawal report, this should be looked into, if the defaulter is bidding.
- 5) The minimum performance level / performance criteria should be specified in the bid documents.

20.3.17 Persons authorised to operate the RC

The contract should incorporate the details of the persons who are authorised to operate the contract and issues the supply order/requisition for drawal of supply as and when required.

20.3.18 A supply order may be placed upto the last date of the currency of the rate contract but should not be placed after expiry of the rate contract. No extension of validity period of the rate contract itself is required when deliveries against outstanding supply orders continue even after expiry of the validity period. The rate contract will remain alive for purpose of delivery for all the stores ordered during the currency of the rate contract until deliveries have been completed.

20.3.19 Cartel Formation

Sometimes, a group of tenderers quote identical rates against a rate contract tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Registrar of Companies, Competition Commission, National Small Industries Corporation, etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Department may also bring such unhealthy practice to the notice of the concerned Trade Associations like FICCI, ASOCHAM, NSIC, etc. requesting them inter alia to take suitable strong action against such firms. DPS may also encourage new firms themselves to get registered for the subject goods to break monopolistic attitude of the firms forming cartel.

20.3.20 Fall Clause: A fall clause as given below shall be incorporated:-

20.3.20.1 Fall Clause is a price safety mechanism in rate contracts. The Fall Clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or any organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 15 days time to intimate their revised prices, if they so desired, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction in their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the Purchase keeps special watch on the performance of such rate contract holders who reduce their prices on one

pretext or the other. If their performances are not upto the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them etc.

20.3.20.2 It is a condition of the contract that the prices charged for the item to be supplied by the contractor shall in no way exceed the lowest price at which the contractor sells the stores of identical description to any other person/organisation during the currency of the contract. If at any time during the currency of the contract, the contractor reduces the sale price of such stores or sells such stores or offers to sell such stores to any other person/organisation at a price lower than the prices chargeable under the contract, he shall forthwith notify such reduction of sale to the Director, Purchase & Stores and price agreed to under the contract for the item supplied after the date of coming into force of such reduction/sale shall stand correspondingly reduced. To comply with the above condition the contractor shall furnish the following certificate along with each bill for payment to the paying authority:

'I/We certify that the stores of description identical to the stores supplied herein against the purchase requisition based on the rate contract to the Directorate of Purchase & Stores have not been offered/sold by me/us to any other person/organisation upto the date of the bill, at a price lower than the price charged to the Directorate of Purchase & Stores under the contract'.

20.3.20.3 Other conditions shall be as per DPS Standard Terms & Conditions.

20.3.21 Security Deposit

Depending on the anticipated overall drawal against the rate contract and also anticipated number of parallel rate contracts to be issued for an item, DPS shall consider obtaining security deposit of reasonable amount from the rate contract holders. A suitable clause to this effect is to be incorporated in the tender enquiry documents. Security deposit shall however, not to be demanded in the supply orders issued against rate contracts.

20.3.22 Renewal of Rate Contracts

It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts, due to some special reasons, timely steps are to be taken to extend the existing rate contracts with the same terms and conditions etc. for a suitable period with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extensions, are to be left out. Period of such extensions should generally be not more than 3 months. While extending the existing rate contracts, it shall be ensured that the price trend is not lower.

20.3.23 Placement of Supply Orders

Supplies are to be obtained against a rate contract by placing on the rate contracted firm supply order/purchase requisition containing the quantity of the goods to be supplied and incorporating the prices and other relevant terms and conditions of the rate contract. The officials placing such supply orders/purchase requisitions should be duly competent and authorised to do so. The supply order generally contains the following important details:

1. Rate Contract Number and Date/Purchase Requisition No. & Date.
2. Quantity
3. Price
4. Date of Delivery by which supplies are required
5. Full Address of the Purchasing Unit with telephone number, fax number, e-mail address etc.
6. Complete and correct designation and full postal address of the consignee along with telephone number, fax number and e-mail address.
7. Nearest Railway siding of the consignee.
8. Despatch instructions.
9. Designation and Address of the Inspecting Officer.
10. Designation and Address of the Paying Authority to whom the bills are to be raised by the supplier.

NOTE:

Copies of supply orders/purchase requisitions should be endorsed to all the officers concerned.

20.4 Contract for Marine Transit Insurance Cover for Import & Export Cargo

20.4.1 All the goods imported from overseas suppliers against contracts placed by DPS are covered by an open marine transit insurance policy. Similarly whenever the goods are exported to the overseas suppliers for repair, modification/up gradation or for replacement, they are also covered under the same open insurance policy.

20.4.2 The contract for marine transit insurance cover is awarded to the lowest acceptable bidder after inviting competitive bids.

20.4.3 The marine transit insurance contract/cover should incorporate the following:

- 1) The period of the policy.
- 2) Types of cargoes to be covered under the policy:

All types of cargoes including perishable such as radioactive and cargoes requiring cold storage, imported/exported by air/sea/post/courier.

The goods imported by DPS are despatched to the ultimate destination as indicated in the respective purchase order. Hence the transit insurance should also cover inland transport by rail/road/air/post/courier, etc. Hence insurance should be valid for transportation of goods from a warehouse anywhere in the

world to a warehouse of destination as specified in the respective purchase order. Risks to be covered in these cases are inclusive of decaying of goods even in transit storage.

- 3) The premium rate.
- 4) Additional premium for war and SRCC, if any.
- 5) Service Tax applicable.
- 6) Transit duration on landing of the consignment at the destination port/Airport/foreign post office. Generally 30 days in case of air consignments and 60 days in case of sea consignments shall be covered under the policy.
- 7) Additional premium for extending the transit duration on landing of the consignments at the destination port (extended storage).
- 8) Survey fees: Survey fees for all the cases shall be borne and paid by the underwriter where the consignments received in damaged condition or suspected damaged condition and whether insurance claim is admitted or withdrawn.
- 9) Minimum premium payable.
- 10) Settlement of non-standard claims as admissible as per the insurance cover but not less than 75% of the claim amount.
- 11) Risks to be covered. All risks cover as per ICC 'A' plus war and SRCC.
- 12) Basis of declaration of insured value. FOB value of the goods plus 10% (towards freight).
- 13) Advance deposit account. Generally an advance deposit account for Rs. 5 lakhs is maintained with the insurance company and premium will be adjusted against the same.
- 14) Period to settle the claim.
- 15) Coverage of risks. Insurance would be covered from the time the goods leave the warehouse or place of storage at the place named in the purchase order/policy for the commencement of transit continue during the ordinary course of transit and terminate either on delivery to the consignee or other final warehouses or place of storage at the destination named in the purchase order/policy including inspection of the material at the destination but within the period limited as per clause 6 above.
- 16) Export & Re-export. The insurance coverage is from the time the goods leave the warehouse or place of storage at the place named in the statement/policy for commencement and shall cover till it reaches the destination warehouse mentioned in the statement including inspection of the material but within the period limited to as per clause 6 above.

- 17) Time limit to lodge the provisional claim on the underwriter: Normally within 30 days from the date of landing of the consignment in case of Air shipment and 60 days in case of Sea shipment.

20.4.4 In respect of consignment costing Rs. 5 crores and above C&F value advance intimation shall be sent by the Purchase Unit to the insurance company for arranging the transit insurance against the open marine transit insurance cover.

20.4.5 In respect of all other imported consignments less than the above value, a fortnightly statement shall be sent by DPS Headquarters and other Regional Units to the insurance company and the insurance is deemed to have been covered based on these statements.

20.4.6 It should be made clear in the policy/contract that all the consignments imported/exported pertaining to DPS (Headquarters and all other Regional Units) by any mode shall be invariably covered by the insurance cover as per the statements furnished by the DPS Headquarters and Regional Units from time to time during the currency of the policy.

20.4.7 Premium

20.4.7.1 Premium is required to be debited from the deposit and the bills based on each statement should be forwarded to the Pay & Accounts Officer, DPS through the Officer-in-charge of Transport & Clearance Section who will make the payment for recouping the deposit. It will be the responsibility of the underwriter to bring to the notice of DPS the amount debited from the advance deposit and to forward insurance premium bill within a period of 7 days from the date of receipt of the statement from DPS.

20.4.7.2 In case of failure to do so and for the same reason the advance deposit amount falls to nil/short the consignment insured during that period will have full cover of transit insurance. Payment (recoupment of the insurance premium bill) will be made by DPS normally within 10 working days after receipt of the bill in the office. The insurance company shall furnish a statement of the balance amount available in the deposit while raising their premium bill against DPS fortnightly statement.

20.4.7.3 Since the Government Department is exempted from payment of stamp duty the department will not admit any claim from the insurance company towards stamp duty.

20.5 Contract for Transportation of Goods

20.5.1 DPS enter into contracts with the transport companies after inviting competitive bids for collection of goods from the firms located in and around Mumbai including the industrial belt upto Thane, Belapur, Navi Mumbai, Kalamboli and Taloja as well as from the Central Stores Unit, Trombay and transportation and safe delivery to other Units like NFC, Hyderabad, IGCAR/KARP, Kalpakkam and RRCAT, Indore, VECC, Kolkata and various Heavy Water Plants.

20.5.2 While issuing the transport contract the following details should be incorporated:-

- 1) Period of contract.

- 2) All inclusive charges for transportation of material (a) in full tempo load (3 MT) (b) in full truck load (9 MT) for different destinations.
- 3) The security deposit clause.
- 4) Price Variation clause (as indicated in Chapter Price 'Variation').
- 5) Total responsibility for safety of the material is with the carriers when the material is under their custody and they should make good any loss suffered by the Department.

20.5.3 The Duties and Responsibilities of the Contractor:

20.5.3.1 The contractor shall be prepared in all respects to provide sufficient number of vehicles as and when requisitioned by the authorised officers at short notices. In the event of the contractor's failure to provide the vehicles whenever required and in case any additional expenditure is incurred by the government as result of such failure all such losses shall be reimbursed by the contractor.

20.5.3.2 The vehicles should be roadworthy and registered within certain number of years with valid documents and permits as per the statutory regulations.

20.5.3.3 The hiring authority reserves the right to return the vehicle without any payment if the vehicle provided is found to be not suitable for the job and without any valid documents/permits. Any loss suffered by the government on this account will be borne by the contractor.

20.5.3.4 It shall be the contractor's responsibility to obtain town/octroi duty exemption certificate and other relevant certificate from the consignor wherever necessary at the time of collection of consignment and in the event of failure to do so the contractor shall be solely responsible for payment of octroi and/or any other charges which are normally exempted for government departments.

20.5.3.5 The same vehicle in which the stores are loaded at the point of loading should reach the final destination and there shall not be transshipment enroute.

20.5.3.6 The consignment shall be lifted as and when required basis and shall be delivered at the destination within the specified period failing which 2% of the transportation charge shall be recovered from the transport contractor as LD for every day or part thereof or as mutually agreed between the Department and the Contractor.

20.5.3.7 No material other than the one handed over by the consignee should be loaded in the vehicle during transportation. In other words the government material entrusted to the contractor should be transported exclusively.

20.5.3.8 Whenever required, escort detailed by the department will accompany the vehicle and necessary space arrangement shall be made for them in the truck without extra cost.

20.5.3.9 The hiring shall commence from the time the vehicle is reported to the authority

concerned at the stipulated date, time and shall end the moment they are released after completion of the stipulated job. In other words, the dead mileage from the contractor's depot to the place of work and return trip from the place of completion of job to the contractor's depot shall be in the contractor's account.

20.5.3.10 The contractor shall abide by all the instructions that may be given to him from time to time. The contractor shall be bound to act with due diligence and shall be responsible to pay due compensation towards any loss/damage that the consignor/consignee might suffer in consequence of the neglect, want of skill or misconduct of the contractor or his servant or agent.

20.5.3.11 The contractor shall be responsible for all losses or damages due to any cause whatsoever from the time of receipt of the consignment and during the period it is held by him till the time it is delivered to the consignee at the specified point. The assessment of losses/damages referred to above shall be determined by the Department and shall be final and binding on the contractor.

20.5.3.12 The Department shall not be responsible for payment of compensation to the contractor for any injuries, death of his servants/agents or third party as they may suffer during the performance of the contract or damage to the vehicle under whatsoever circumstances. It is the sole responsibility of the contractor.

20.5.4 Transportation at Contractor's Risk

The contract should clearly specify that it is the responsibility of the contractor to satisfy himself of the status/condition of the material delivered to him. He should also ascertain the details of the material entrusted to him for transportation such as the nature of the material, its value, its sound condition, packing, etc. As per the policy, the government will not insure the material or pay for any insurance charges separately. The contractor is fully responsible for the collection, proper transportation and safe delivery of the material handed over to him. In the event of any loss or damage to the material when it is under the custody of the contractor, the contractor shall make good the entire loss suffered by the government. All necessary precautions in this regard must therefore be taken by the contractor. To safeguard his interest and the safety of the government material the contractor may consider taking a suitable transit insurance coverage for the material at his own cost.

20.5.5 Right to Enter Parallel Contract

The contract should include that the department shall have the right to enter into parallel contract with any other transport contractor of his choice.

20.5.6 Subletting of the Contract

The contractor shall not sublet, transfer or assign the contract or any part thereof without the previous written approval of the government.

20.5.7 Registers to be kept by the Contractor

The contractor shall maintain such registers and/or records as per the statutory requirement of the government.

20.5.8 Summary Termination

In the event of the contractor going into liquidation or winding up their business or making arrangements with their creditors or failing to observe any provisions of the contract the purchaser shall have the right to terminate the contract forthwith without prejudice to other rights and remedies. The department will also be entitled to claim from the contractor any cost or expenses or losses that the department may incur by reason of breach of the contract or part thereof.

20.5.9 Persons Authorised to Hire Vehicles

The contract should also mention the authorities who are authorised to hire the vehicles.

20.5.10 Receipt of Consignment

Whenever consignments are delivered in an outwardly sound condition consignee shall issue a clear receipt. However, in respect of consignments tendered for delivery in damaged condition or where loss or damage is suspected, open delivery shall be demanded and taken and loss/damage as assessed by the department shall be final for the purpose of compensation.

20.5.11 Arbitration & Other Conditions as per DPS Standard Terms & Conditions.

20.5.12 Paying Authority

The paying authority to whom the bills are required to be submitted along with the required certification should be mentioned in the contract.

20.6 Contract for Clearance & Handling of Import & Export Cargo

20.6.1 To handle the clearance of the goods imported against purchase orders as well as export of the goods to the overseas suppliers as and when required after completion of the customs formalities, DPS enters into contract normally for a period of two years with a Custom House Agent who are well experienced in completing the required documentation and other custom formalities and handling the custom clearance.

20.6.2 The contract with the Custom House Agent for customs clearance activities should be entered into on the lowest suitable bidder after inviting competitive bids. Apart from the DPS standard terms and conditions of the contract, the contract should essentially include the following details:-

20.6.2.1 The rate as per the firm's offer and mutually agreed should be mentioned.

20.6.2.2 The period of Contract should also be clearly mentioned in the contract.

20.6.2.3 Duties & Responsibilities of the Contractor

20.6.2.3.1 The contractor shall perform all the duties that are necessary for custom clearance of the consignments imported from overseas suppliers by sea, air and post as well as for export of goods as and when required after completion of all other documentation required as per import, export & custom regulations.

20.6.2.3.2 The responsibility of the clearing agent will commence from the time he collects the documents in respect of each job and will cease only upon clearance and delivery of the imported consignments. In respect of export of goods his responsibility commence from the time he collects the goods meant for export till they are actually exported after completing the required custom formalities.

20.6.2.3.4 The clearing agent shall maintain a close liaison with the concerned officers in the Purchase Unit as well as other officials at the seaport/airport and customs, steamer agents, air carrier and any other authorities to carry out the work entrusted to them with full sense of responsibility.

20.6.2.3.5 The clearing agent shall arrange collection of all the required documents and obtain any other clarifications and information needed from the concerned officers on day-to-day basis and complete the custom clearance formalities as expeditiously as possible within the statutory free period allowed and avoid delay in clearance and consequent payment of demurrage charges.

20.6.2.3.6 In the event of any discrepancy, shortage/damage noticed in the consignments at the time of clearance they shall be responsible for applying and conducting the necessary survey (survey by carrier, survey by port authorities as well as insurance survey) within the statutory time limit prescribed and obtain the required survey reports and intimate the Purchase Unit to lodge the necessary claim within the prescribed time.

20.6.2.3.7 The clearing agent shall also pursue all claims such as claim for refund of custom duty, claim for short landing, damage or shortage, etc. with the customs and port authorities, even after the bill of entry, etc. are finalised and custom clearance is arranged, till such time the claims are settled.

20.6.2.3.8 Where clearance is arranged on kucha bill of entry finalisation of bill of entry should be completed by CHA within the time limit prescribed by custom.

20.6.2.3.9 All refunds against our claims when received by the clearing agent shall be handed over to the Purchase Unit immediately on receipt of such refund.

20.6.2.3.10 Short landing: Wherever cargos landed short, the clearing agent should file 'not found' remarks with the port authorities, Airport Authority of India/airlines agent within the stipulated period and obtain the short landing certificate and forward it to the Purchase Unit for lodging the claim with the steamer agent/airlines within the prescribed time. The clearing agent shall not be entitled to any additional remuneration for services rendered in obtaining short landing certificate. It is the responsibility of the clearing agent to intimate the

Purchase Unit regarding short landing of the cargo within 24 hours from the time of landing of aircraft/vessel.

20.6.2.3.11 The clearing agent shall take all steps to prevent loss and damage to goods received by them on behalf of DPS while handling clearance and despatch/delivery to consignees.

20.6.2.3.12 It is incumbent on the clearing agent to examine carefully all packages carried by steamer/aircraft/post and if they happen to notice any damage or loss of goods at the time of clearance from the dock/aircraft/post office, they should promptly apply for a survey to the port authorities, steamer agent/airport authorities or airlines or postal authorities as the case may be and pursue action to obtain survey report and forward the same to DPS.

20.6.2.3.13 The clearing agent shall also lodge a formal claim for loss or damage to goods on the steamer agent/airlines/post office under advice to DPS.

20.6.2.3.14 The clearing agent shall make good to DPS any loss suffered due to their negligence or failure to take appropriate timely action or exercise proper care in clearance and delivery of the goods to the consignee.

20.6.2.4 Insurance

Unless specifically instructed by DPS in any particular case no cargo insurance of any nature will be done by the clearing agent on consignments custom cleared and delivered. In cases where consignments are directed to be stored in clearing agent's godown with the approval of Director, P&S, the clearing agent will be responsible for its safe custody and till the consignments are finally despatched and delivered to the consignee. The clearing agent will insure the goods if directed to do so by the Purchase Unit. The premium for insurance will be paid by the clearing agent initially and reimbursement may be claimed subsequently in their bill.

20.6.2.5 The clearing agent is responsible for handling and custom clearance of the consignments from the port till it is loaded on the truck or any other mode of transport for final despatch to the consignee/indenter in respect of outstation despatch. As regards local delivery, the clearing agent is responsible till they are delivered to the consignee at the specified address and necessary receipt is obtained.

20.6.2.6 In all cases where cargos are allowed to be held in clearing agent's transit depot shed/godown on the specific written instructions of the Purchase Unit, the payment to the clearing agent will be made after the final despatches/deliveries are made to the consignee/indenter and despatch/delivery particulars are duly furnished to the Purchase Unit in the prescribed form.

20.6.2.7 Goods Held in Clearing Agent's Custody

20.6.2.7.1 The clearing agent shall be responsible for all losses/damages due to any cause whatsoever from the time they received the shipment and during the period it is held by them till the time the cargo is put on truck/rail or delivered to the consignee as the case may be. The

clearing agent in any case continues to be responsible for final despatch/delivery or shipment of the consignment held at their godown or at DPS godown in accordance with instructions issued by the Purchase Unit.

20.6.2.7.2 DPS also reserves the right to divert the despatch/delivery of cargos at the airport or held by the clearing agent at their godown or at DPS Stores to another clearing agent if in the opinion of the Director, P&S such action is considered necessary in the interest of the Department. Such transfer will be at the risk and expense of the clearing agent.

20.6.2.8 Delivery by Road

20.6.2.8.1 Loading on the lorry, transportation and unloading at the consignee premises when required will have to be done by the clearing agent. The consignee should be contacted in advance and delivery arrangement finalised.

20.6.2.8.2 The clearing agent shall be held responsible in case delivery/despatch is effected wrongly and consequent loss and expenditure thereof.

20.6.2.8.3 They should also be held responsible for delay in effecting delivery/despatch and delay in forwarding the relevant documents to the consignee/indentor pertaining to the delivery/despatch and any loss suffered in consequent thereof will be recovered from the clearing agent.

20.6.2.9 Payment of Statutory Charges

The clearing agent will pay wharfage/demurrage charges/delivery order charges/container detention charges, destuffing charges and any other statutory charges irrespective of value and subsequently claim the same in their bill.

20.6.2.10 Payment of Customs Duty

The Purchase Unit will arrange for payment of all customs duty/charges on the imported cargos as well as exports handled by the clearing agent. Customs duty amount upto an amount mutually agreed (say upto Rs. 20,000/-) shall be paid in advance by clearing agent and claimed subsequently as a separate bill for reimbursement by the Purchase Unit.

20.6.2.11 The clearing agent will have to maintain the following records:-

- 1) A register/record giving full particulars of stores entrusted for clearance, cleared and delivered/despatched.
- 2) A register/record for all bill of entry filed by them consignment-wise.
- 3) A register/record for refund of customs duty paid in advance, in excess and for draw back of customs duty on export.
- 4) A godown register in respect of cargo kept in CHA's godown.

- 5) A register/record giving full particulars of stores entrusted for export.
- 6) Any other records or statement as desired by DPS.

20.6.2.12 The clearing agent will have to produce the above records for inspection by the Officers in the Purchase Unit as and when required.

20.6.2.13 The clearing agent shall furnish every month job-wise statement showing the details of clearance/delivery/despaches effected during the previous month in respect of import and statement showing the details of the consignments exported during the previous month.

20.6.2.14 Clauses regarding subletting and termination of contract shall be included as per para 20.5.6.1 & 20.2.6.1 above.

20.6.2.15 Disproportionate & Unreasonable Expenditure

If any item of direct expenditure incurred by the clearing agent during the course of handling the custom clearance and export of the consignments and claimed for reimbursement by the Department, is considered unreasonable and out of proportion to the services rendered the same will be disallowed and the decision of the Department in this regard is final and binding on the contractor.

20.6.2.16 Penalty for Non-Delivery of Consignment

In cases where it has been established that the consignment has been taken delivery from the customs by the clearing agent but has not been delivered to the consignee, the Purchaser (DPS) reserves the right to recover due compensation from the clearing agent towards loss of consignment. The value of such undelivered consignments will be assessed on the basis of its landed cost and custom duty and all other charges/expenses incurred on the consignment plus penalty at the discretion of the Purchaser. In cases however where the consignment has been cleared with concessional custom duty, the duty normally payable on merit shall be taken into account for assessing the total value of the lost consignment.

20.6.2.17 Failure of Performance

If during the tenure of the contract it has been found that the contractor has not been discharging his functions to the satisfaction of DPS, DPS reserves the right to terminate the contract. In such an event, apart from forfeiture of the security deposit the Purchaser is entitled to other remedies as per the DPS General Terms and Conditions of the Contract. In such cases of termination, the clearing agent should arrange to hand over to DPS all incomplete documents for further action if any at the risk and cost of the contractor. The clearing agent shall reimburse to DPS all expenditure incurred for completion of such incomplete portion of work left out by the clearing agent. No payment will be made by the Purchaser for such incomplete work.

20.6.2.18 Submission of Bill

The paying authority to whom the bills should be submitted for the job handled

along with the certificates/endorsements required and the authorities competent to issue such endorsements/certificates should be clearly specified in the contract.

20.7 Buy Back

20.7.1 The Buy Back arrangement has been introduced in the Purchase Procedure of DAE vide Office Memorandum No. 10/3(3)/2000-SUS-827 dated 5th February 2004 so that the new items can be purchased at a discounted price by exchanging the obsolete/used items available with the project/unit. This is more relevant in the present days of transaction when the trade and industry are willing to take back the obsolete/used goods when new items are purchased from them. Further this system would also benefit the Project/Unit by disposing of the old/obsolete/used items without having to store them for a longer time but at the same time fetching higher revenue for the Project/Unit than the value realised by normal disposal action.

20.7.2 The procedure for the buy back and the minimum utility period beyond which the items can be disposed of under the buy back arrangement are detailed below:-

20.7.2.1 Buy Back arrangement i.e. purchase of new items at a discounted price in exchange of the obsolete/used serviceable items can be resorted to for such of those items which are normally taken back by the suppliers under this scheme, i.e. items like electronic/electrical goods, computers and the peripherals, printers, typewriters, instruments, fax machine, photocopiers, air-conditioners, refrigerators, measuring and testing equipments, old battery, grinding wheels and balls, microscope and water coolers. The intention to go in for buy back arrangement will be indicated on top of the indent with a caption as “purchase under buy back arrangement” by the indent approving authority while raising the indent on the Purchase Unit and this proposal should have the recommendation of Survey Committee and approval of the Head of the Department concerned.

20.7.2.2 In respect of office or such similar equipments where upgradation is a functional necessity, its feasibility should be considered before these are proposed for disposal under buy back arrangement.

20.7.2.3 Indent for purchase of item under buy back arrangement shall be raised on the concerned Purchase Unit by the Project/Unit with the approval of the competent authority who has been delegated powers for raising indents. Such indents shall be accompanied by a certificate that approval of the Survey Committee constituted within each of the Project/Unit duly approved by the Head of the Department concerned recommending exchange of obsolete/used items with new items proposed to be purchased has been obtained and kept in sealed cover. The Survey Committee should also indicate in its report an approximate price for the obsolete/used items which will be considered as discount for the obsolete item with a view to determine the reasonableness of the rebate quoted by the bidders/suppliers for exchange of the obsolete/used item. There shall be no objection to exchange the obsolete/used items against new items purchased even if the discount offered by the bidders and suppliers for the obsolete/used items is lower than the estimated price fixed by the Survey Committee and the discount offered by the supplier be treated as the market price for the obsolete/used item.

The items proposed for disposal under buy back arrangement scheme should have been put to use for a minimum period as indicated below and should not be brand new one :-

Sr.No.	Description of the item	The minimum utility period beyond which items can be disposed of under Buy-Back arrangement (in terms of years)
1.	Electronics & Electrical goods (desert coolers, small rating motors upto 5 KW, welding rectifiers, emergency lights, soldering machines, furnaces, geysers/ovens/hot plates, hand tools, wet grinders, X-ray film developers, mixers, voltage stabilizers, fans, electrical generators upto 20 KVA, small transformers, electrical meters, Relays, starters, telephone exchanges, electrical switches, etc., closed circuit television camera, TV monitors, telephone instruments, PA system amplifiers)	8
2.	Computers and Peripherals, Keyboards, Mouses, hard Disks a) For Scientific use b) For Office use	5 7
3.	Printers/Monitors/Modems a) For office use b) For Scientific use	7 5
4.	Typewriters	10
5.	Instruments – Analytical, electrical, communication, mechanical and process control	10
6.	Fax machine	5
7.	Photocopier	5 years or 50% of the life span quoted by the firm in terms of the number of copies taken out whichever is earlier.
8.	Air-conditioner-Window, Package & Split Type	10
9.	Fridges, Deep Freezers	7
10.	Measuring & Testing equipment (Electrical, Electronic, Mechanical & Non-destructive)	8
11.	Batteries – a) Automobile b) Station	2 8
12.	Grinding Wheels & Balls	5
13.	Microscopes	7
14.	Water Coolers	7
15.	Laser Tubes for Laser Machines	2

20.7.2.4 The indent raised for procurement of the new item should contain the details of the obsolete/used item, such as description of the item, its make/model wherever applicable, year of purchase, the quantity proposed for exchange and location where it is lying for inclusion in the invitation to tender by the Purchase Unit to enable the bidders/suppliers to quote the right price for the exchange of the obsolete/used item.

20.7.2.5 The bidders/suppliers can be permitted to see the physical condition of such obsolete item before submitting an offer wherever necessary.

20.7.2.6 The mode of purchase in respect of indent for purchase under buy back arrangement will be decided by the Director, Purchase & Stores, Head of the Project/Unit who have been authorised to exercise the powers of Director, P&S by DAE, based on the gross indent value of the new item proposed to be purchased and there is no necessity to invite separate tenders for disposal/exchange of the obsolete and used item for disposal. The original supplier from whom the obsolete/used equipment was purchased should be contacted if existing while inviting tenders for disposal of obsolete goods under buy back arrangement even if the supplier is not registered with DPS/Purchase Unit concerned.

20.7.2.7 While inviting tenders by the Purchase Unit, all the bidders should be instructed to quote separate price i.e. (i) for supply of new item without exchange of obsolete item (ii) the discounted price applicable if the obsolete/used item of similar type of the department is given to the supplier in exchange and the purchaser shall have the right to place an order either at the actual price without exchange of obsolete item or at the discounted price with exchange of obsolete item. The sealed cover containing the reserve price should be opened alongwith the tender.

20.7.2.8 When the bidders quote separate prices for supply of the new items and the discounted price of exchange of the obsolete and used items, the obsolete and used items should be disposed of/given only to the bidders whose quotation has been accepted by the competent authority in the Project/Unit for the purchase of the new items based on the lowest technically suitable offer although the rebate offered by this supplier for taking back the obsolete item may be lower than some other bidders. However, a lowest priced bid even without buy back arrangement should be accepted if such an offer is technically suitable. The obsolete item should be kept in the same condition by the user as it was shown to the supplier and no parts or components should be retrieved or salvaged from it.

20.7.2.9 The obsolete items should be taken back by the suppliers/bidders concerned on 'as is where is basis' after delivery of the new equipment ordered from the supplier. In case the exchange of the obsolete item calls for payment of any statutory levies, such as sales tax, all such levies should be borne by the supplier concerned.

20.7.2.10 After the obsolete and used items are delivered/handed over to the suppliers from whom new items have been purchased by raising RCIV, necessary entries shall be made in the Stores records that the items have been disposed of based on S&R (Surplus & Redundant) report and PO terms approved by Head of the Department and no separate approval is necessary from any authorities as per DAE OM 10/3(3)/2000-SUS/827 dt. 05-02-2004, the minor modification is that the rate fixed by the survey committee duly approved by the competent authority should be kept in a sealed cover and a certificate to the effect that 'the item has been examined by the survey committee and recommended for disposal as exchange of obsolete/used item with new item

proposed to be purchased and approved by the competent authority' indicated in the indent for processing the same under buy-back procedure.

20.8 Contract for Consolidation of Airfreight Consignments

20.8.1 Consolidation of air freighting consignments from abroad means buying of air cargo space in bulk and selling it on retail. In air freighting, the higher the weight of the cargo tonnage, the lower will be the per unit cost of price.

20.8.2 Consolidation works on this principle and the consolidation agent collects all piece-meal consignments from several consignees and bargains for a competitive rate from the airlines and apportions part of the reduction obtained to the consignees concerned.

20.8.3 Thus instead of each consignment being forwarded independently, goods for the same destination are forwarded as one shipment under a single Master Airway Bill. This enables the consolidation agent to offer more favourable rates as the greater the weight of the shipment the lesser the rate per kilo of freight.

20.8.4 DPS concludes contracts for consolidation of air consignments in respect of imports from the overseas suppliers from various countries of the world to airports at Mumbai, Chennai, Kolkata and Hyderabad after inviting competitive bids.

20.8.5 While concluding the contract for air consolidation the following important aspects should be incorporated in the contract:-

- 1) The freight rate applicable per shipment or per kg for different slabs of package weight and other additional charges payable such as documentation, handling charges, pick up/inland transportation and other statutory fees, fuel surcharge/wharf surcharge, delivery order charges, airline handling charges, cartage charges, etc. as quoted in the bid and mutually settled should be clearly specified in the contract.
- 2) The period of the Contract. Generally the contracts are concluded for a period of two years.
- 3) The responsibility of the contractor:-
The contractor shall be responsible to collect the equipment/stores concerned wherever necessary depending upon the terms of the contract, despatch them safely and securely by air to the specified airport in India and forward the shipping documents such as Cargo Arrival Notice, Master Airway Bill, Manifest, House Airway Bill together with copies of Invoice, packing list and specifications of the item wherever available to the concerned Officers of the Purchase Units in Mumbai, Chennai, Kolkata and Hyderabad within 24 hours of landing of the aircraft by hand delivery.

In the event of delay in submission of documents and the resultant delay in clearance of the consignments, the demurrage charges incurred by the Department should be reimbursed by the contractor.

- 4) The description in the consolidated manifest enclosed with the Master Airway Bill should tally with every House Airway Bill to avoid any objection from Customs. The demurrage charges payable on this account should be reimbursed by the contractor to the Department.
- 5) Whenever it comes to light that the delay in clearance of the consignment is due to non availability of the invoice and the contractor's associate has not asked for invoice from the overseas supplier as per the order, the resultant demurrage charges should be reimbursed by the contractor.
- 6) The contractor shall give advance intimation by fax/email regarding the flight details of the consignment such as flight number, expected date and time of arrival at the concerned airport in India, Master/House Airway Bill Number and date and the relevant purchase order reference, description of stores, weight and dimensions of the packages, freight amount payable, etc. to the concerned officers in the respective Purchase Units.
- 7) The contractor shall arrange to deliver the delivery order bearing 'R' number for the consignment arrived within 24 hours of the arrival of the flight to the concerned Officer in the respective Purchase Unit.
- 8) The freight charges and other admissible charges will be paid by DPS/concerned Regional Units on submission of freight bill in accordance with the rates stipulated in the contract.
- 9) The contractor will progress, chase the cargo, check and satisfy the correctness of the stores, number of packages, marking of the consignment and date wherever applicable, consignees name and addresses, packing list, etc. in order to ensure speedy and prompt custom clearance at the destination airport in India.
- 10) Airfreight the consignment to the specified airport in India after collection of the said stores from the supplier wherever required in terms of the purchase order by the earliest available flight and prepare separate House Airway Bill in respect of each consignment. The House Airway Bill will be the authentic negotiable document evidencing shipment based on which the payment will be made by the bank to the supplier if all other documents as per order are furnished.
- 11) The overseas associates of the contractor should endeavour to prepare a separate manifest (list of consignment) whenever volume of consolidated shipment to the Department is reasonably large.
- 12) If delay in consolidation beyond 4 days takes place after collection of the consignment the department will deduct as damage at the rate of 1% of the total airfreight charges payable on a shipment for each day of such delay. For this purpose the time/period will be reckoned from the date of collection of cargo till the date of issue of House Airway Bill, both days inclusive.
- 13) The Department at its discretion will levy compensation, in case the contractor fails to perform any of the scope of the work as defined which in the opinion of the

Department has lead to set back in project schedule upto a maximum of 5% of the value of the contract computed annually.

- 14) In respect of short landing of the consignment, it is the responsibility of the Contractor to inform the Purchase Unit by fax/email immediately on arrival of the flight and to ensure that in the event of total non-traceability of the shorthanded cargo, to obtain a short landing certificate from the carrier at the earliest for submission to the underwriter.
- 15) The contractor shall be liable for consequential damages where overseas supplier's instructions for handling/loading are not complied with and the cargo not handled in the manner desired leading to uneconomical freight rate payment.
- 16) The contractor shall be responsible and accountable to the Department for proper safety, care, handling and storage of cargo while in their custody/possession or control or that of their agent and the cost of any insurance in this regard shall be to their account.
- 17) The contractor shall indemnify the Department against any loss, damage, shortage or deterioration of cargo while in their custody, control or possession or that of their agent or any other account whatsoever.
- 18) In case of loss or misplacement of consignments the Contractor shall take all reasonable measures to minimise the loss and to ensure that the Department's rights against the carrier, port authorities and insurance companies are properly reserved and protected.
- 19) The contractor shall keep himself fully conversant and familiar with the laws, rules, regulations and procedures of airport authorities, customs, and insurance authorities for carriage of air consignments and keep themselves in close and regular touch with the carriers or their agents and the airport authorities on the incoming consignment.
- 20) The Purchase Orders are placed with the overseas suppliers on ex-works/FOB/FCA Airport terms on freight to collect basis.
- 21) In case where the purchase orders with the suppliers are on FOB/FCA Gateway Airport basis all charges incurred upto point of gateway airport are included in the foreign supplier's invoice. Hence only the airfreight from the gateway airport to the destination Indian airport shall be payable to the contractor as per the rate accepted in the contract.
- 22) Where the delivery terms stipulated in the purchase orders are other than FOB/FCA, the charges applicable for ex-works consignments shall also be admitted as per the rate in the contract. For this purpose House Airway Bill should clearly show separately the amount of airfreight and other allied charges payable as per the contract.
- 23) In the event of expiry of the contract, for a period of six months from the date of

cessation of air consolidation contract, the contractor can accept and consolidate the cargos of DPS from the contracted parties and the payment will be made as per the terms of the contract. However, after expiry of six months from the date of cessation of the contract, contractor should not accept DPS cargos from the suppliers. If the cargos are accepted and brought after six months payment will be made by the Department at the rate and other terms and conditions then in force or as per the expired contract rate whichever is lower.

- 24) Part shipments shall not be allowed under any circumstances whatsoever. The shipment shall be strictly as per the supplier's invoice.
- 25) Cargo arrival notice and all other documents should be submitted in triplicate to the consignee to avoid delay in clearance of the consignment.
- 26) Consolidation rates are applicable only to normal/general cargos and are not applicable for perishables, medicines, over dimensional cargos, hazardous cargos, etc. However the rates for these categories of cargos should not be more than IATA rates. The dimension of the normal cargo is 125 (L) x 88 (W) x 65 (H) inches.
- 27) Dangerous goods fees as charged by the airlines will be payable extra for dangerous goods shipment.
- 28) In respect of over dimensional consignments the freight charges applicable will be as per IATA rates. In respect of consignment consisting of more than one package, even if one of the packages is ODC, entire consignment shall be treated as ODC and freight charges will be applicable as per IATA rates.

20.8.6 Fall Clause

The contractor confirm and undertake that the rates for the services rendered under the contract shall be less than IATA rates and shall not exceed the lowest rate at which the services are rendered by the contractor to other customers. If at any time during the currency of the contract any reduction in rate is applied to any other customers for whom similar services are rendered by the contractor, such reduced rates will automatically be applicable to the services rendered to Department.

20.8.7 Arbitration

As per DPS Standard Terms & Conditions of the Contract.

20.8.8 Security Deposit & its Forfeiture

20.8.8.1 A Security Deposit for an agreed amount is payable which shall be deposited by the contractor within a fortnight by way of bank guarantee or demand draft drawn in favour of Pay & Accounts Officer of the concerned Purchase Unit.

20.8.8.2 The Department will not be liable for payment of any interest on Security Deposit or any depreciation thereof.

20.8.8.3 The Security Deposit is liable to be forfeited or appropriated towards any loss that may be sustained by the Department as a result of breach of any of the terms and conditions of the contract. The Security Deposit shall be returned after expiry of the contract on due and satisfactory performance and on completion of all obligations by the contractor under the terms of this contract.

20.8.8.4 In the event of a breach of any of the terms and conditions of the contract the Department shall have (without prejudice to other rights and remedies) the right to terminate the contract forthwith and/or forfeit the entire or part of the amount of the Security Deposit towards adjustment of any sum due for any damages, losses, charges, expenses or costs that may be suffered or incurred by the Department due to the contractor's negligence or unsatisfactory performance of any service under the contract.

20.8.8.5 The decision of the Department in respect of such damages, losses, costs or expenses shall be final and binding on the contractor.

20.8.8.6 In the event of the Security Deposit being insufficient or if the Security Deposit has been wholly forfeited, the balance or the total sum then due, shall be deducted from any sum then due or which at any time thereafter may become due to the contractor under this or any other contract with the Department. Should this sum also be not sufficient to cover the full amount recoverable the contractor shall pay to the Department on demand the remaining sum due.

20.8.8.7 The Security Deposit in full or any part thereof as has not been forfeited as aforesaid shall be refunded on satisfactory completion of the contract by the contractor and submitting a no demand certificate.

20.8.8.8 The Contractor shall provide the Department every quarter with a statement reflecting the saving that has been possible to achieve through the use of consolidation services by indicating the respective consolidation tariff rate vis-à-vis the IATA normal airlines rates with respect to each and every shipment that has been handled through this contract.

20.9 Contract for Annual Service & Maintenance

20.9.1 After expiry of the warranty period, contract for servicing and maintenance of the equipments/instruments are finalised by the respective Units for a period of one or two years.

20.9.2 DPS finalise the contract for service and maintenance of the equipments which are in use in DPS, such as computers, server, printers, air conditioners, photocopiers, fax machines, water coolers, etc.

20.9.3 The service & maintenance contracts are entered into with the authorised service agents of the manufacturers either on single tender basis or after inviting competitive bids depending upon the merits of the case.

20.9.4 The service contract can be in the nature of comprehensive which includes service,

maintenance and replacement of defective parts for the smooth and trouble free performance of the equipments/instruments during the period of the contract or only for service and maintenance of the equipment/instrument in which case the user has to pay separately for parts which are required to be replaced in the equipment/instrument at actual.

20.9.5 The following essential details shall be included in the contract for service and maintenance:-

- 1) The rate for service and maintenance of each equipment/instrument per annum.
- 2) Service tax as applicable.
- 3) The complete details of service and maintenance to be carried out.
- 4) The period of the contract.
- 5) The number of minimum services to be rendered during the contract period and frequency/intervals between each service.
- 6) The details of equipments/instruments to be serviced, their location and persons to be contacted.
- 7) The contract should include a condition that apart from the normal servicing and maintenance, emergency and break down calls from the User/Purchase Unit should be attended immediately within 24 hours without any extra cost during the entire contract period.
- 8) In case of a contract only for service & maintenance, if any of the parts/components are found defective and are required to be replaced, the contractor should furnish the details of such parts to be replaced along with the quantity and the unit price for each item for consideration and approval of the Purchase Unit prior to undertaking the replacements.
- 9) The contract should specify that the contractor shall strictly comply with the security rules and regulations of the Department in force and shall complete the required formalities including verification from Police and any other authorities and obtain necessary prior permission for entering into the Department premises for the purpose of servicing and maintenance under the contract.

20.9.6 Payment Terms

20.9.6.1 Payment terms mutually settled shall be incorporated in the contract.

20.9.6.2 Normally payment should be released for the actual number of machines serviced for the amount proportionate to the number of services to be completed as per the contract, after completion of each service, on the basis of a certificate by the user.

20.9.6.3 In case it becomes inevitable to make advance payment, the same can be paid for a period not exceeding six months against bank guarantee for equal amount valid for that period.

20.9.7 Paying Authority

The details of the paying authority to whom the bills for the service and maintenance carried out are to be submitted along with the documents/certifications required should be clearly specified in the contract.

20.10 Repair Contract

20.10.1 Some of the imported equipment/instruments may need repair after the warranty period and the nature of the repair may be such that the original supplier or their Indian agent is not in a position to carry out the repair at Purchaser's site and the equipment/instrument is required to be sent to the overseas supplier for undertaking the necessary repair.

20.10.2 In such circumstances the Contract for repair of equipment/instrument at overseas supplier's premises shall be formulated and processed in the same manner as the Contract for procurement.

20.10.3 Preparation of Indent

The repair indent should clearly specify the type of equipment along with its make, model and serial number, quantity, details of repairs required, history of previous major repair, name of the original manufacturer, details of the original purchase of the equipment (such as PO reference number & date, date of supply, etc.), total technical life and assessed cost of the repair. The amount can be assessed or obtained through a non-obligatory budgetary quote from the manufacturer/authorized agent. The indent should also contain an approval from the Unit Head/Group Director for sending the equipment for repair without any security. While approving, the competent authority should also take into account the chances of receiving back the equipment after repair in the prevailing embargo condition. The market standing of the firm in the international market, their technical and financial capabilities, their past performance etc. to be taken into account before the material is sent to overseas firm for repair/replacement without any security. The services of TLM, Paris/Indian Embassy in the country of the firm may be utilized if necessary to ascertain the above details.

20.10.4 Selection of Vendor

20.10.4.1 The repair should be carried out by original equipment manufacturer only. In case due to export restrictions/export licence the original manufacturer is not in a position to undertake the repair, quotation should be invited from other firms who have an agreement with the OEM or who are approved by OEM.

20.10.4.2 On receipt of an indent duly approved by the competent authority a single tender to the original manufacturer or limited tender to other firms who are approved by the OEM (in case the original manufacturer is not in a position to undertake the repair due to export restrictions) should be issued.

20.10.5 The invitation to tender should include the following essential details:-

- 1) The description/details of the equipment needing repair.
- 2) Make, model & serial number of the equipment and date of its manufacture, name of the manufacturer.
- 3) Quantity.
- 4) Details of original purchase of the equipment (reference number & date of purchase order, date of shipment, reference number & date of supplier's invoice).
- 5) Details of defects/repair required.
- 6) Period of usage.
- 7) Any additional data/information like photograph, etc. indicating the type of malfunctioning of the equipment.

20.10.6 The invitation to tender should include that the firm shall be accountable for the performance of the equipment after repair. The requirement of warranty/guarantee and performance bank guarantee should also be included.

20.10.7 The firm should be requested to submit the quotation regarding the charges for repair and replacement of defective parts to make the instrument/equipment functional/operational to the desired level and the time schedule for completion of the repair and return of the equipment.

20.10.8 On receipt of the quotation the same shall be referred to the indenting officer/user for scrutiny, recommendation, reasonableness of the charges quoted, funds availability and for approval of the competent authority and thereafter a repair order should be issued in favour of the overseas supplier.

20.10.9 The repair order should incorporate the following essential conditions:-

1. All the details mentioned at Sr. No. 1 to 5 above in Para 20.10.5.
2. The charges for repair and replacement of parts as quoted by the firm.
3. Time schedule for completion of repair and return.
4. Payment terms as per firms quote or as mutually settled.
5. Warranty/guarantee.
6. Performance Bank Guarantee.
7. In case it is desired by the User to inspect the equipment after completion of the repair at the firm's premises prior to despatch a suitable clause regarding

PDI should be incorporated and shipping release issued by the User should be made as a document for releasing payment to firm.

8. The contract should specify that the Department will make necessary arrangement to send the defective equipment/instrument duly packed to the specified Airport/Seaport in the country of overseas firm through the authorized Consolidation Agent. Necessary marine transit insurance will also be arranged by the Department through their underwriter. The firm shall make necessary arrangement for taking delivery of the consignment from the specified airport/seaport in their country after completing all the required customs formalities at their cost.
9. Other clauses relating to packing, marking, consignee, paying authority, despatch through Consolidation Agent in respect of airfreight or Govt. of India freight forwarder in respect of sea shipment, advance intimation about shipment, etc. shall be incorporated as per details given in Chapter - 26 'Import & Customs Clearance'.
10. If during the process of repair, it is found that the equipment is incomplete, damaged or require additional repair or spare parts over and above anticipated and quoted, the Contractor will intimate the Department the details of the missing parts of the equipment and the additional parts to be replaced along with the additional costs payable for repair and installing the new and replacing the defective parts not covered by the original tender/quotation and obtain the prior approval from the Department before undertaking the repair.
11. If available, the Department will provide the spares for replacement along with the equipment.

CHAPTER - 21

PRE - AUDIT

21.1 Introduction

21.1.1 Purchase Procedure of DAE has a unique provision for pre-audit of purchase files and certification by finance before release of the purchase orders. All the proposed purchase orders where value exceeds Rs. 20,000/- are sent to finance for pre-audit and certification of the purchase orders. The checks to be exercised in finance before certification are as follows:-

21.1.2 In any purchase decision, the core issue to be decided by the competent authority is whether the offered items meet the essential tender requirement, prices being charged are reasonable and procedures followed are proper, fair and transparent.

21.1.3 The responsibility and accountability of every authority delegated with financial powers to procure any item or service on govt. account is total and indivisible. Govt. expects that the authority concerned will have public interest upper most in its mind while making procurement decision. This responsibility is not discharged merely by selection of cheapest offer but must conform to the following yardsticks of financial propriety:-

- 1) Whether offers have been invited in accordance with the governing rules and after following fair and reasonable procedures in prevailing circumstances.
- 2) Whether the authority is satisfied that the selected offer will adequately meet the requirements for which it is being procured.
- 3) Whether the price of the offer is reasonable and consistent with the quality required.
- 4) Above all, whether accepted offer is the most appropriate one taking all relevant factors into account and keeping with the standards of financial propriety.

21.1.4 Purchases shall be made in most economic manner in accordance with the definite requirements of public service.

21.2 Standards of Financial Propriety

21.2.1 Canons of financial propriety are to be strictly followed. Every Officer incurring or authorizing expenditure from public money should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing offices. The emphasis is generally laid on the following:-

1. Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public money, as a person of ordinary prudence would exercise in respect of expenditure of his own money.
2. The expenditure should not be more than the occasion demands.
3. No authority should exercise its powers of sanctioning expenditure to pass an order, which will be directly or indirectly to its own advantage.
4. Expenditure from public money should not be incurred for the benefit of a particular person or a section of the people unless -
 - a) Claim for the amount could be enforced in a court of law,
 - OR
 - b) The expenditure is in pursuance of a recognized policy or custom.
5. The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.

21.2.2 The purchase order is proposed after taking into account efficiency, economy and transparency in public procurement.

21.2.3 The purchase order is finalized after competitive bidding and all the suppliers are given fair and equitable treatment.

21.2.4 The provisions of GFR particularly relating to procurement of goods, contract management and canons of financial propriety are being followed.

21.3 Check on Indent

21.3.1 The indent is approved by the competent authority who is delegated with the powers to approve the indent.

21.3.2 Specifications are of general nature to invite enough competition. Specifications in terms of quality, type, etc. should bring out the specific needs of the organization. The specification so worked out should meet the basic needs of the organization/project without including specifications of non-essential features which may result in unwarranted expenditure. No make or brand to be indicated in the indent unless it is proprietary.

21.3.3 The quantity of goods to be procured should be clearly brought out taking into account the actual requirements at that time for the specific needs of the project/organization.

21.3.4 The indenter should clearly bring out the correct estimated cost of the items to be procured. The estimate cost should be comparable with the tendered cost.

21.3.5 The indent should contain a certificate from the indenting group regarding the availability of funds. The head of account details under which the item is part of the approved project,

expenditure will be met within the sanctioned cost and availability of the budget provision for entering into commitment should be indicated. If approved budget provision does not exist in the budget, approval of competent authority has to be obtained from the appropriation angle, simultaneously ensuring inclusion of provision in the Annual Budget Estimates.

21.3.6 In case of single tender/proprietary item, technical justification for processing the file on single enquiry basis is furnished and approved by competent authority. If the estimated cost exceeds Rs. 2.00 crore approval of MF should be obtained for processing the file on single enquiry basis.

21.3.7 The measurements are indicated in the metric system.

21.4 Check on Tender Enquiry

21.4.1 The mode of purchase as per Purchase Procedure has been followed based on the estimated cost of the items indicated in the indent. In case of deviation, approval of competent authority should be obtained furnishing justified reasons for deviation.

21.4.2 The field had been adequately covered.

21.4.3 In LT whether only registered firms are contacted and in the case of unregistered firms approval of authority who has been delegated powers has been obtained. The firms have furnished IT-PAN details. Duties and taxes and shop registration details are furnished.

21.4.4 Offers have been invited following a fair, transparent and proper procedure.

21.4.5 The probable suppliers indicated by indenting group are also contacted.

21.4.6 If the estimated cost is less than Rs.2.00 lakh, a minimum of 5 suppliers in the field were contacted.

21.4.7 If the estimated cost is more than Rs. 2.00 lakh a minimum of 10 suppliers in line were contacted, unless the number of suppliers in line is less than that number.

21.4.8 In case of public tender, the tender should be published in Indian Trade Journal.

21.4.9 Publication of tenders in the newspapers as per the new advertisement policy published by the Ministry of Information & Broadcasting in October 2007 has been followed.

21.4.10 Sample approval/proto type/mock up if required had been indicated in the NIT.

21.4.11 In the case of variable price whether the tender enquiry includes the base date on which the firms should offer their prices.

21.4.12 Where purchase of large quantity of stores is involved, whether the delivery required is stipulated on specific instalment delivery. This is advantageous in case of contracts with PVC as PVC is to be limited against each supply.

- 21.4.13 Any specific commercial terms like special packing, warranty obligations, training, testing, etc. required by Indenting Officer are taken care of in the NIT stage.
- 21.4.14 Different indents received at the same time for a particular item from the same or different Groups/Units should be combined for issue of tender.
- 21.4.15 Inspection procedure for the goods ordered and criteria of conformity are indicated in the tender documents.
- 21.4.16 Qualification criteria of the tenderers are indicated in the NIT/Tender documents.
- 21.4.17 Wherever applicable FIM details and conditions are indicated in the NIT/Tender documents.
- 21.4.18 Required delivery schedule/place of delivery and consignee are clearly indicated in the NIT/Tender documents.
- 21.4.19 Reasonable validity period of the tender is called for taking into account the item, market conditions and minimum time required for finalisation of the procurement.
- 21.4.20 In addition to the standard conditions as per DPS-P-11/P-12 and NIT any other special conditions which do not find a place there, but required for this item is included in the NIT/Tender document.
- 21.4.21 Tender documents were made available in the website to enable the suppliers to download the tender documents and submit the tender.
- 21.4.22 Advance intimation sent to the probable suppliers.
- 21.4.23 Reasonable time had been given for submission of tender.
- 21.4.24 Any other specific requirements which will have an effect on the cost have been brought out in the NIT/tender documents.

21.5 Check on Opening of Tender

- 21.5.1 Last date, place and time for sale of tender, submission of tender and opening of tender were indicated in the NIT and the same had been strictly followed.
- 21.5.2 Tenders were opened by the authorized officers and each tender had been numbered serially, initialled and dated by the officers who opened the tender and an Accounts representative was associated with the tender opening.
- 21.5.3 Price, any other parameters in the offers which have a bearing on the price and delivery period should be circled and initialed.
- 21.5.4 The details regarding the number of tenders received and opened were reconciled and noted in the noting portion of the file and signed by the officers who opened the tender.

21.5.5 The tenders were received only from the tenderers to whom the tender documents were issued or who have downloaded from the website.

21.5.6 Alteration/correction of tenders if any had been encircled and initialled legibly by the officers opening the tender and the number of alterations/corrections in each page has been indicated at the end of the page. If there is no alteration/correction, the same has been indicated at the end of the page.

21.5.7 Proper remarks had been made in the hand written quotation, the price and any other terms, which has a bearing on the price, had been circled and signed by the tender opening officers. Necessary approval of competent authority obtained for accepting hand written quotation.

21.5.8 Late and delayed tenders are not opened but remarks were made in the noting column.

21.5.9 In case of public tenders whether the firm had submitted EMD or their valid registration details with NSIC or DGS&D or DPS are furnished or the tender is in foreign currency. The tenders received without EMD or the registration certificates are rejected.

21.5.10 In case of any deviation noticed the tender opening officers have recorded the same in the quotation and in the file.

21.6 Check on CST

21.6.1 CST had been checked and its correctness for arithmetical accuracy confirmed.

21.6.2 Conditional discounts offered are not taken into account for comparison purpose in the CST.

21.6.3 All the loading such as duties & taxes, safe delivery charges, interest for advance payment called for, full customs duty for imported items, etc. are taken care.

21.6.4 Ranking had been correctly marked.

21.7 Tender Examination

21.7.1 The tender has not contained vague and ambiguous statements to avoid specific replies to the queries in the NIT. In cases where the terms and conditions are not very clear whether clarifications were obtained from the firm. However, no clarification should have been sought and obtained from the firm or accepted or unilaterally submitted by the firm which has an effect of changing the essentials of the tender or its inter- se position or to give an unintended benefit to the tenderer.

21.7.2 In case of unregistered firms, their technical/financial capabilities had been examined and confirmed.

21.7.3 The tendered rate is comparable to the estimated cost. In case of variation, whether

justification for acceptance of tender at a rate much in variation with the estimated cost has been furnished with the approval of the competent authority

21.7.4 Specification of the accepted tenderer is not much in variation with the tendered specification and the minor variation if any accepted is not having any financial impact. The supplier agreed to all other technical requirements of user.

21.7.5 Reliability of the firm whose tender is accepted for placement of order based on their past performance is checked.

21.7.6 In case of rejection of any lower tenders whether technical justifications for the rejection of each offer had been furnished and the competent authority approved the recommendation and the rejections are in order.

21.7.7 The rejection should be on technical justification and tenders especially received against limited tenders generally cannot be rejected based on past performance.

21.7.8 Whether approval of various committees as per the delegated power had been obtained.

21.7.9 In case of negotiation approval of competent authority for conducting negotiation exists.

21.7.10 Minutes of the meeting duly signed by the negotiating officers and firms' representatives are available in the file.

21.7.11 The commercial terms included in the contract is as mutually agreed between the buyer and seller.

21.7.12 In respect of FE orders, offers which do not disclose any information with regard to the catalogue price for spares and accessories, terms of agency agreement, agency commission payable as per the agreement with their principals are ignored or justification furnished for consideration with the approval of the competent authority in exceptional circumstances.

21.7.13 In case orders are placed on the Indian suppliers in Indian rupee for an imported item it should ensured that the firm is technically competent to take care of after sale service or is in a position to arrange competent persons for repair of the equipment during the life of the machine. They are also in a position to supply spares. Their past performance has been taken into account. The payment terms in such cases should normally be after receipt and acceptance of the material. In case there is any deviation in the payment terms, the Govt. interest has been taken care before accepting such payment terms.

21.7.14 Validity of the offer to be ensured.

21.7.15 In case DGS&D RC exists for the item, the justification for not placing the order on the basis of RC is furnished with the approval of competent authority.

21.8 Check on Contracts

21.8.1 Whether terms & conditions of the Contract are as mutually agreed between buyer & seller.

21.8.2 Name and address of the firm has been correctly brought out.

21.8.3 In case order is to be placed on the authorized dealer/sole-selling agents of the manufacturers as indicated by them in the tender whether the order is being placed on the correct firm.

21.8.4 Specification and other technical details as per the tender and as mutually agreed after technical clarification have been correctly brought out.

21.8.5 The quantity being ordered is as per the indent/tender or as mutually agreed.

21.8.6 In case of reduction in quantity concurrence of the firm for acceptance of the order for the reduced quantity at the same rate and at the same terms and conditions as tendered had been obtained.

21.8.7 If there is an increase in quantity whether approval of the competent authority with the concurrence of finance has been obtained and certified by Purchase that revised tender may not fetch better offers.

21.8.8 Efforts made and the outcome for obtaining quantity discount is recorded in the file.

21.8.9 The unit column has been correctly indicated as per the tender.

21.8.10 The rate indicated in the purchase order is as per the tender/mutually agreed between buyer and seller.

21.8.11 The price column as mutually agreed whether ex-works, ex-works duly packed, FOR station of despatch, FOR destination or safe delivery at purchaser's premises is correctly indicated in the purchase order.

21.8.12 If any discount offered by the firm, the same has been correctly brought out in the purchase order and also the details of payment against which the discount to be availed is indicated in the purchase order.

21.8.13 Taxes and duties as applicable within the original committed delivery period and the percentage at present applicable are indicated correctly.

21.8.14 Sample approval/proto type/mock up wherever required is brought out in the purchase order and the same is also part of the payment terms.

21.8.15 Efforts made with the firm for “safe delivery” at Purchaser's premises and its outcome are recorded.

21.8.16 In case the terms are ex-works or FOR station of despatch, provision is made in the

contract for safe transportation of the material to the purchaser's premises (example transportation of the material at railway's risk, etc.).

21.8.17 Provision is included for proper packing of the material for withstanding the handling/transportation.

21.8.18 The charges accepted for packing and forwarding are reasonable.

21.8.19 In case of high value orders if the P&F charges are admitted on percentage basis whether the actual amount works out to be reasonable taking into account the nature of the materials procured, the quality of packing, materials required and used for packing, labour involved for packing, volume and weight of the packages, mode of transport and the distance of transportation, etc.

21.8.20 In case training of the Purchaser's engineers/technicians/operators is part of the contract, details regarding the number of persons to be trained, period of training, place of training, details of the training regarding operation, repair or maintenance etc., who should bear the charges for travel, stay, etc. for the trainer or trainee are clearly brought out.

21.8.21 A clause is included in the purchase order that the seller shall indemnify the buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the contract, whether such claims arise in respect of manufacture or use.

21.8.22 A clause “transfer or sub-letting of the entire contract or any part thereof is not permitted without the previous consent of the buyer” is included as a term in the contract.

21.8.23 A provision for non-disclosure of contract documents wherever necessary is included.

21.8.24 The correctness of the force majeure clause is to be examined.

21.8.25 In long term contracts a provision for termination/short closing is included.

21.8.26 The delivery date has been correctly worked out. A definite date of delivery is to be brought out. Delivery date like immediate, ex-stock, weeks, months, etc. are to be avoided. If the delivery date is to be calculated after fulfilling certain conditions like from the date of approval of drawing, opening of L/C, receipt of advance payment, etc. the same has to be provisionally brought out in the purchase order and a firm date of delivery after the incident happened has to be indicated by means of an amendment to the contract.

21.8.27 In case supply is accepted in instalments, the number of instalments including quantity to be delivered against each instalment, periodicity, the date on which each instalment is to be delivered and the final completion date of the contract, etc. are brought out correctly.

21.8.28 In case the materials are to be delivered at various destinations depending on the Project or Unit for which the order is placed, it is to be checked whether correct place of delivery and the name and address of the consignee are indicated in the purchase order.

21.8.29 Mode of transportation and the precautions to be taken for safety of the material has

been correctly brought out in the purchase order.

21.8.30 In respect of duties and taxes, the purchase order should contain a clause, as “ED extra as applicable on the date of supply within the original committed delivery period and the present rate is _____”.

21.8.31 “VAT/CST extra as applicable on the date of supply within the original committed delivery period and the present rate is _____”.

21.8.32 Provision for submission of octroi exemption certificate is included in the contract.

21.8.33 Whether provision of ED exemption certificate as per 10/97 notification for applicable items relating to R&D procurement is incorporated.

21.8.34 In case CENVAT reversal is accepted whether the same is in order as per NIT/offer.

21.8.35 Applicability of Service Tax is to be checked.

21.8.36 Customs Duty at reduced rate and providing CD exemption certificate for applicable items has been brought out in the purchase order. CD exemption certificate is to be issued only against the end product ordered as per the terms of the purchase order.

21.8.37 Submission of Security Deposit for satisfactory performance of the contract is part of contract conditions. If the same is waived valid reason is given in the noting and approved by the competent authority.

21.8.38 If free issue material is part of the contract, the following are to be satisfied:

- 1) Whether issue of FIM is part of NIT
- 2) Whether the description of the item and quantity now proposed in the order is the same as that indicated in the NIT.
- 3) Provision has been made to safeguard the government material during transit and during the period the material is under the custody of the contractor.
- 4) Provision is made in the Contract that the Contractor should obtain an insurance policy covering all the required risks at his cost and President of India acting through Director, Purchase & Stores should be made as the beneficiary and the insurance policy is valid/renewed till satisfactory completion of contract.
- 5) The insurance policy covers transit risk also.
- 6) An indemnity bond to be furnished by the supplier making him solely responsible for compensation towards loss/damage to the material is part of the contract.

- 7) The maximum percentage of wastage admissible is indicated.
- 8) Free issue material accounting and return of the balance free issue material along with scrap items is brought out in the purchase order.
- 21.8.39 Paying authority has been correctly indicated in the purchase order.
- 21.8.40 Payment terms as mutually agreed are incorporated.
- 21.8.41 In case of deviation in payment terms, approval of competent authority is obtained.
- 21.8.42 Wherever advance payment has been agreed whether PDI clause is incorporated and bank guarantees from authorized bank for equal amount valid upto two months beyond the satisfactory completion of the contract has been called for. Whether advance payment agreed is against completion of certain milestones and the quality/quantity of work done is not less than the value of the advance payment made except advance payment made along with the order acceptance.
- 21.8.43 If pro-rata payments have been agreed whether part supplied items can be used independently and pro-rata payment is part of NIT or offer of the firm.
- 21.8.44 In case payment is agreed against documents through bank whether all the required documents as per the terms and conditions have been brought out in the order for submission against payment.
- 21.8.45 It should be ensured that payment through bank is made only against a negotiable instrument.
- 21.8.46 Provision for pre-despatch inspection is included in the contract. In the case of PDI waiver, whether govt. interest has been taken care and approval of the competent authority for waiver of PDI is obtained.
- 21.8.47 A clause for advance intimation to the consignee by the supplier regarding details of the material being despatched and transportation details is incorporated in the Contract.
- 21.8.48 Guarantee clause wherever applicable for satisfactory performance of the stores supplied is part of the contract.
- 21.8.49 Performance bank guarantee clause for satisfactory performance of the equipment during warranty period has been incorporated and in case of waiver proper justification for the same has been furnished and approved by the competent authority after taking Government interest into account and the BG is valid for a period upto two months after completion of warranty period.
- 21.8.50 A clause indicating that the replacement of defective material should be at the premises of the Purchaser without any additional cost to the Purchaser in respect of indigenous procurement and on CIF basis in respect of imported consignments has been included.
- 21.8.51 If there is a price variation clause whether the same has been included as mutually

agreed and with the approval of the competent authority. A formula for working out the price variation and the maximum ceiling for the price variation are part of the contract. The base date on which PVC to be calculated is indicated in the purchase order as per NIT.

21.8.52 Liquidated damages clause as mutually agreed between the buyer and the seller is part of the contract.

21.8.53 In case erection and commissioning is the responsibility of the contractor whether a condition for satisfactory erection and commissioning is part of the contract and all the precautions to be taken by the contractor during erection including third party liability has been brought out in the contract.

21.8.54 Charges for erection and commissioning is shown separately as service tax is payable on erection and commissioning charges and IT on this account is to be deducted.

21.8.55 If it is not separately brought out service tax is payable on the indivisible contract value and IT to be recovered from the total amount payable.

21.8.56 In case the firm does not separately claim the service tax it should be presumed that the rate quoted by them is inclusive of service tax.

21.8.57 Arbitration clause as per DPS-P-11/P-12 is included with the acceptance of the firm. Court of jurisdiction for settling disputes has been brought out correctly.

21.8.58 Indian agents of foreign firms quoting on behalf of their principals should submit a copy of the agency agreement indicating the details of agency commission payable along with the enlistment details with DGS&D to accept the tender as a valid tender.

21.8.59 The Indian agent cannot submit the offer for more than one principal and where the foreign firm directly submitted an offer, their Indian agent cannot participate in the same tender on behalf of another foreign firm.

21.8.60 Opening of LC only on confirmation regarding receipt of export licence in cases where export licence is needed.

21.8.61 Only irrevocable LC is acceptable. Confirmation should be generally discouraged and in case the firm insists for confirmation the charges for confirmation are to be borne by the supplier.

21.8.62 Bank charges payable respectively by the buyer and the seller are correctly brought out.

21.8.63 Documents required to be submitted for honouring the LC has been correctly brought out as per the contract terms.

21.8.64 Agency commission payable in Indian rupee has to be correctly brought out in the purchase order.

21.8.65 In high value order a shipping authorization clause is included.

- 21.8.66 Insurance clause is correctly brought out.
- 21.8.67 Consignee and port of entry have been correctly brought out.
- 21.8.68 Approval of competent authority for air lifting of the material is obtained.
- 21.8.69 In case of repeat order, whether all the conditions as per the procedure have been satisfied and in case of deviation, approval of competent authority for deviation is obtained.
- 21.8.70 Wherever required price/purchase preference has been taken care of.
- 21.8.71 When a LT/PT resulted in a single tender, adequacy of the coverage of the field and the reasonableness of the price are certified and the approval of the competent authority is obtained treating the same as single tender. In addition indentor should examine and certify that retender may not bring better offer.
- 21.8.72 If previous purchase references are available, whether the rates stipulated in the purchase order is comparable with the previous purchases.

CHAPTER - 22

ISSUE OF PURCHASE ORDER

22.1 Deviation Approval

22.1.1 Approval of the competent authority and concurrence of finance for deviations from the Purchase Procedure or standard terms and conditions, if any, such as waiver of Security Deposit, Performance Bank Guarantee, deviation in respect of repeat order conditions, payment terms, waiver of pre-despatch inspection, reduction of liquidated damages percentage/ceiling, etc., shall be obtained.

22.1.2 Certification of availability of funds should be obtained from the user wherever necessary.

22.2 Issue of Purchase Order in Different Forms and Value

Standard Form for issue of Purchase Order For Indigenous Purchase

Value of Purchase Order	Applicable Order Form
Upto Rs. 5.00 lakhs	DPS-P-23 (Contract Conditions as per Form No. DPS-P-22A)
Above Rs. 5.00 lakhs	DPS-P-45 (Contract Conditions as per DPS-P-11)

For Import of Stores

Value of Purchase Order	Applicable Order Form
Upto Rs. 5.00 lakhs	DPS-P-64 (Contract Conditions as per Form No. DPS-P-63)
Above Rs. 5.00 lakhs	DPS-P-16 (Contract Conditions as per DPS-P-12)

22.2.1 Different types of standard forms which are at present in use for issue of purchase order depending on their value are as follows:-

For Indigenous Purchase

For value upto Rs. 50,000/- Form No. DPS-P-23 (Contract Conditions as per Form No. DPS-P-22A) is being used.

For value above Rs. 50,000/- Form No. DPS-P-45 (Contract Conditions as per DPS-P-11) is being used.

For Import of Stores

For value upto Rs. 25,000/- Form No. DPS-P-53 (Contract Conditions as per Form No. DPS-P-52A) is being used.

For value above Rs. 25,000/- upto Rs. 2.00 lakhs, Form No. DPS-P-64 (Contract Conditions as per DPS-P-63) is being used.

For value above Rs. 2.00 lakhs, Form No. DPS-P-16 (Contract Conditions as per DPS-P-12) is being used.

22.3 Annexures to Purchase Order

22.3.1 The name and address of the firm, the delivery date, amount of security deposit, performance bank guarantee, etc. should be correctly specified. The specimen bank guarantee format should be properly filled up and attached to the purchase order.

22.3.2 All the appendix, the technical specifications/drawings and any other documents should be properly attached to the purchase order.

22.4 Signing and Issue of Purchase Order

22.4.1 After the draft purchase order is scrutinised and certified by Pre-Audit, the fair copy of the purchase order should be prepared incorporating the corrections/changes, if any, as per the observations of Pre-Audit.

22.4.2 The purchase order should be signed by the Officers who are authorised to the extent of the powers delegated to them.

22.4.3 After incorporating the date of issue and attaching the standard order acceptance form, the purchase order should be posted to the correct address of the Contractor by Registered Post with Acknowledgement Due.

22.5 Valid Contract

22.5.1 The contract is brought into existence upon communication of the acceptance by the Purchaser which must be done within the time limit specified in the tender by the tenderer.

22.5.2 The communication of an acceptance is complete as against the offerer when it is posted to the offerer (seller) so as to be out of the power of acceptor and posted to the correct address. The communication of acceptance is complete as against the acceptor (buyer) when it comes of the knowledge of the offerer (tenderer).

22.5.3 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 specified. If despatch of the intimation is delayed and the tenderer receive it after the expiry of the specified date of validity of the offer, the contract will not be a valid one and it will be open to the tenderer to refuse to accept the same.

22.5.4 All the officers in the Purchase Unit should therefore ensure that in all such cases the acceptance of offer/purchase order is sent sufficiently in advance so that the tenderer will definitely receive it before the expiry date of validity of the offer.

22.6 Letter of Intent

22.6.1 In circumstances like where the time left in the expiry of the offer is very short an advance acceptance of the tender/letter of intent, as per specimen in Annexure-I (for indigenous supply) & Annexure II (for import of stores), can be issued by fax followed by the signed copy by speed post/courier but this should be avoided as far as possible. The advance acceptance of tender/letter of intent must bear the same number which would be allotted to the formal acceptance of tender (purchase order). The advance acceptance should contain the mutually agreed cost and incorporate the following clause:

“The contract is concluded by this acceptance. A formal purchase order will follow”.

22.6.2 It should be ensured that the formal purchase order is issued at the earliest after issue of the advance acceptance of the tender.

22.6.3 Copies of the advance acceptance of the tender (letter of intent) and acceptance of the tender (purchase order) should be marked to the paying authority, consignee, the indenting officer and any other authority as required.

22.7 Acknowledgement of Contract

The supplier should acknowledge and unconditionally accept the contract within the specified date from the date of issue of the contract. While acknowledging the contract, the supplier may raise some issues and/or ask for some modifications against some entries in the contract. Such aspects shall be immediately looked into for necessary action and thereafter, supplier's unconditional acceptance of contract obtained.

22.8 Coordination

All the authorities who are entrusted with some responsibility and also to perform some duties in terms of the contract are to work in unison in a coordinated manner to ensure completion of the contract without any time overrun, cost over run and related legal complication. It is therefore, necessary for the Contracting authority to keep a proper watch and coordinate all such activities to avoid any bottleneck or problem in the passage of the contract.

22.9 Amendment to the Contract

22.9.1 Many a time, due to various reasons, changes and modifications are needed even in a duly concluded contract. Requests for such changes and modifications mostly emanate from the supplier. Immediately on receiving such a request, the contracting authorities shall examine the same and take action as necessary with the approval of the competent authority. Any amendment to contract terms requested by the supplier may have, inter alia, financial impact and/or technical impact and/or legal impact. Therefore, before agreeing to the request of the supplier, the contracting authority should scrutinize the issue on its merit to ensure that the requested amendment will not have any adverse effect on the contracting organization.

22.9.2 Financial concurrence should be obtained before issuing any amendment having financial implication/repercussions. Further, there may be an occasion where consultation with Legal Adviser/Law Ministry will be necessary before issuing the proposed amendment. DPS should process such issues as deemed fit, depending on the merit of the case.

22.10 Preservation of Rejected Quotations

The Purchase Unit should preserve the rejected quotations in a separate folder along with the relevant purchase file unless it is returned to the supplier.

ANNEXURE - 1

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S.Bhavan
Anushaktinagar
Mumbai - 400 094

Ref:
(Pl. indicate the same reference number which will be given for purchase order)

Date:

To

LETTER OF INTENT

Sub: Supply of _____
against Tender No. _____

Ref: (1) Your Quotation/Offer No. _____ Dt _____
(2) Record of Discussion/Further correspondence

Dear Sirs,

For and on behalf of the President of India,(authority who is signing the Contract), Directorate of Purchase & Stores, Department of Atomic Energy, hereby accept your offer for(mention brief description of item/scope of supply) at a total cost of Rs.....exclusive of taxes and duties, as per the terms and conditions mutually agreed and as per DPS standard terms and conditions contained in form DPS-P-11.

The contract is concluded by this acceptance. A formal purchase order incorporating complete details and terms & conditions will follow.

Kindly acknowledge receipt and confirm acceptance.

Yours faithfully,

()
Name
Designation
For & on behalf of the President of India
(The Purchaser)

c.c.: I/O
: P&AO
: SO

ANNEXURE - 2

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S.Bhavan
Anushaktinagar
Mumbai 400 094

Ref:
(Pl. indicate the same reference number which will be given for purchase order)

Date:

To

LETTER OF INTENT

Sub: Supply of _____
against Tender No. _____

Ref: (1) Your Quotation/Offer No. _____ Dt. _____
(2) Record of Discussion/Further correspondence

Dear Sirs,

For and on behalf of the President of India,(authority who is signing the Contract), Directorate of Purchase & Stores, Department of Atomic Energy, hereby accept your offer for..... (indicate brief description of the item/scope of supply) at a total cost of(mention the total cost in foreign currency and delivery term such as Ex-works/FCA/FOB) inclusive of agency commission (wherever applicable), as per the terms and conditions mutually agreed and as per DPS standard terms and conditions contained in form DPS-P-12.

The contract is concluded by this acceptance. A formal purchase order incorporating complete details and terms & conditions will follow.

Kindly acknowledge receipt and confirm acceptance.

Yours faithfully,

()
Name
Designation

For & on behalf of the President of India (The Purchaser)

c.c.: I/O
: P&AO
: SO

CHAPTER - 23

FOREIGN EXCHANGE TRANSACTION

23.1 Foreign Exchange

23.1.1 The term 'foreign exchange' is used to refer to both foreign currencies as well as to the process of converting one national currency into another. Any international trade transaction i.e. import or export, would result into conversion of rupee to foreign currency and vice versa. This is so because, the buyer can pay only his own currency and the seller would like to be paid in his home currency. The world over, this service of converting one currency into another is provided by banks. In India a special permission from the Reserve Bank of India (RBI) is needed and those banks and institutes who have been permitted to deal in foreign exchange are referred to as authorized dealers (AD). State Bank of India (SBI) is the largest AD in Indian foreign exchange market. Apart from authorized dealers, some firms or companies are also granted permission by RBI to undertake transaction involving purchase or sale of foreign currency only. These firms are known as Authorized Money Changers.

23.1.2 All the authorized dealers are members of FEDAI - FOREIGN EXCHANGE DEALERS ASSOCIATION OF INDIA. FEDAI formulates systems and procedures to implement the regulation on exchange operation to be followed by ADs. They have to strictly follow the rules and procedures enumerated by FEDAI while dealing in foreign exchange viz. quoting rates, collection of charges, etc. Thus the authorized dealers are deriving power from RBI to deal in foreign exchange according to the rules and regulations devised by FEDAI.

23.2 Merchant Transaction

The transaction of Authorized Dealer with the Customer is called Merchant Transaction.

23.3 Interbank Transaction

The transaction of authorized dealer with another authorized dealer is called interbank transaction. As 'foreign exchange' is a commodity bound for volatile fluctuations in price, the ADs always keep in their possession 'zero' stock or permitted level of stocks, which is left uncovered.

23.4 Exchange Rate

The price of any commodity is fixed by the Merchant after adding profit to the cost price. This is called exchange rate.

23.5 Buying Rate

Buying rate is arrived after taking the base rate at which he could dispose off it after adding profits, which is otherwise called 'exchange margin'. The rates for selling transaction are quoted taking the best rates at which he could acquire it and after loading exchange margin.

23.6 Base Rates

Base rates are taken from the quoting of other bank (s) as it is expected to cover the transaction on the rates. Authorised dealers are permitted to load exchange margin within the level stipulated by FEDAI.

23.7 Methods of Calculating Exchange Rate

Exchange rate in other words is called as the rate at which one currency is converted into other currency. The exchange rate can be quoted in two ways.

23.7.1 Direct method

A given number of units of local currency per unit of foreign currency.
Eg. US \$ 1 = Rs. 44.25

23.7.2 Indirect method

A given number of units of foreign currency per given unit of local currency.
Eg. Rs. 100 = US \$ 2.2060

23.7.3 India has switched over from indirect method to direct method with effect from 2nd August 1993.

23.8 Cross Rates

In case, the price of one currency is not quoted against the other currency the parity between them is obtained by using an intermediary currency. The rate thus obtained is called a cross rate and the principle applied for obtaining the cross rate is called the chain rate. For example: in Indian market US \$ is quoted at US \$ 1 = Rs. 35.85.

In case, the DM is quoted in the New York as

US \$1 = DM 1.7200/7220.

DM1 = ? Rs. If 1.7220 DM = US \$1 & US\$1 = Rs. 35.85

The answer would be 1 DM = Rs. 20.82

23.9 Purchase & Sale Transaction

23.9.1 All purchase and sale transactions are not alike and hence attract different rates. To illustrate, both onward remittance and payment of an import bill are sale transaction but work involved for the authorized dealer in the two cases is not the same. In the first case, the matter is relatively simple, as he merely recovers the rupee equivalent and issues a remittance by way of a TT, draft or mail transfer. Besides, while the rupee is recovered immediately, the corresponding amount is paid out only when the remittance reaches the beneficiary. In the mean time, he has the use of funds. In the case of an import bill, however, the work involved is not that simple. The bill has to be scrutinized on receipt of documents, recorded, acknowledged and presented to the drawer. Follow up has to be done regarding payment and correspondence from the foreign bank concerned. The papers have to be stored properly and track kept on the arrival of steamer, in order to avoid demurrage, etc. Thus the work involved is much more as compared to a simple remittance. ADs would therefore like to be compensated for the additional work involved.

23.9.2 This can be done by levy of a bill collection commission or by selling the currency a little costlier i.e. at a 'worse' rate' to the importer as compared to the rate of simple outward remittance.

23.9.3 Thus, other things being equal, this would result in two selling rates, the first called the TT (telegraphic transfer) and the second BS (Bill Selling rate).

23.9.4 For the reason explained earlier, exchange rate quoted for an export bill will be 'worse' than one quoted for an inward remittance. There is another relevant point to be considered in the case of an export transaction; the claim of the exporter normally takes the shape of a bill of exchange drawn by him on the buyer abroad. Such bill may be on sight basis or usance basis. The rate quoted would vary in the two cases, because of the difference in the quality and the nature of the instruments.

23.9.5 The basic principle involved is that an instrument involving little expense and risk will be more valuable i.e. it will command a better price for the seller than an instrument costing more to collect and involving greater risk.

23.9.6 There are important aspects in a transaction involving sale or purchase of foreign currency:-

- 1) Rate of conversion.
- 2) Date of delivery i.e. the date on which the transaction is to be completed.

23.9.7 The delivery under foreign exchange contract can be settled in one of the following ways:-

- 1) Ready or cash: The transaction to be settled on the same day.
- 2) TOM: The delivery of foreign exchange/currencies is to be made on the day next to the date of transaction.
- 3) SPOT: Delivery of foreign exchange would take place on the second working day

from the date of contract. On the date of settlement, however, both the centers of the currencies involved should remain open for business. Whenever there are holidays or weekends or otherwise, the market practice is to go for the next business day.

23.10 Forward Contract

23.10.1 The foreign exchange transaction is complete only when the actual exchange of currencies is taking as per the agreement of the party.

23.10.2 There could be a time lag between the agreement to exchange a foreign currency and the actual exchange of foreign currency which is off set by 'forward margin' to be loaded to the spot rate.

23.10.3 A forward contract is an agreement between the bankers and the customer to buy or sell the foreign currency by banker at a 'fixed rate' after a stipulated future date/period.

23.10.4 By entering into forward contract the customer is certain of exchanging currency at the exchange 'rate fixed' already irrespective of rate prevailing on the date on which actual exchange of foreign currency is taking place.

23.11 Exchange Control Regulation

- 1) Forward contract can be booked against genuine transaction for which the customer is exposed to risk.
- 2) Suitable documentary evidence is to be produced to AD.
- 3) Forward covers are only for firm commitment and not for anticipated transaction.
- 4) The period of cover available to the customer should match the underlying transaction for which contract has been booked.

23.12 Time Limit for Settlement of Import

- 1) Payment towards import should be completed not more than six months from the date of shipment.
- 2) However the amount-retained upto 15% of the import which have already taken place could be remitted even beyond six months from the date of shipment provided the earlier remittance was remitted through the same bank.
- 3) In some cases, ADs can make payment for import even beyond six months from the date of shipment provided:

- a) the AD is satisfied about the bonafide of the circumstances leading to the delay in payment.
- b) no payment of interest is involved for the additional period.

23.12.1 Interest on import bills for usance period upto six months at the 'prime rate' of the country in the currency of which the goods are invoiced can be effected.

23.13 Bill of Entry (Exchange Control Copy)

23.13.1 Bill of Entry is documentary evidence that the goods have actually been imported into India for which remittance was made. It is obligatory on the part of the importer to submit 'exchange control copy' of the bill of entry to the authorized dealer through whom the import remittance was effected.

23.13.2 Import upto a value of USD\$ 5000 or its equivalent can be imported through post parcel. 'Post Parcel Wrappers' are the documentary evidence for import of goods into India, which should be submitted to AD through whom the remittance was effected.

23.13.3 Goods for value upto US\$ 5000 at a time can be imported through courier.

Importer should submit 'courier wrapper' as documentary evidence for import in such cases.

CHAPTER - 24

LETTER OF CREDIT

24.1 Introduction

24.1.1 Import is regulated by the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce, Govt. of India. Authorised dealers, while undertaking import transactions, should ensure that the import into India are in conformity with the Export Import Policy in force and Foreign Exchange Management (Current Account Transaction) Rules, 2000 framed by Govt. of India and the directives issued by RBI under Foreign Exchange Management Act from time to time.

24.1.2 Importer should follow normal banking procedures and adhere to the provisions of Uniform Customs and Practices for Documentary Credits (UCPDC) while opening Letter of Credit for import into India.

24.2 Purpose

24.2.1 Documentary Letter of Credit is also known as Documentary Credit or Letter of Credit. A Letter of Credit is generally the most efficient method of overcoming the conflicting problems involved in international trade transactions between buyers and sellers as it provides each with a degree of security.

24.2.2 The buyer, who is anxious to receive specified goods within a certain time would, from choice, not pay for them until after he has received them and as late as possible; whereas the seller's main concern is to know whether he will receive payment in his own country and currency soon after despatching the goods (or even before shipment).

24.2.3 A Letter of Credit reaches a compromise between the different interest of the buyer and seller so that both can partially attain their preferences.

24.3 Letter of Credit

24.3.1 Letter of Credit is a written undertaking given by the buyer's bank (the issuing bank), on behalf of and at the request of its customer (the applicant), routed through the agency of a bank in the seller's country (the advising bank), to the seller (the beneficiary), that it (the issuing bank) guarantees to pay the seller for the goods within a specified time, provided that the conditions laid down in the documentary credit are fully satisfied.

24.3.2 These conditions generally relate to the production of documentation, which is most likely to include bill of lading/airway bill, certificate of origin, commercial invoice, etc.

24.4 Parties to Letter of Credit

24.4.1 Applicant

The party applying for the credit. He is normally the bank's customer. He is the buyer of the goods and is the importer.

24.4.2 Issuing Bank

The bank which is issuing the Letter of Credit is called issuing bank.

24.4.3 Advising Bank

The bank to which the credit is sent. It is the beneficiary's bank. Credit in favour of overseas beneficiaries is always routed through an advising bank which will confirm the authenticity of the documents to the beneficiary.

24.4.4 Beneficiary

The party to whom the credit is addressed. He is generally the supplier of the goods and the exporter.

24.4.5 Settlement Bank

The bank to which the beneficiary presents his documents for settlement. It can also be advising or issuing bank.

24.4.6 Presenter

The remitting bank or beneficiary which forwards the documents to the issuing bank to obtain the settlement is called the Presenter. The beneficiary may submit documents for payment direct to the issuing bank without routing through any other intermediary bank. In this case the issuing bank itself becomes the settlement bank.

24.4.7 Remitting Bank

The bank which submits the documents to the issuing bank for settlement is called the remitting bank.

24.5 Various Types of Letter of Credit

24.5.1 Documentary Letter of Credit

24.5.1.1 Irrevocable Credit: An irrevocable credit is a definite undertaking that the opening bank will effect the payment, provided the terms and conditions stipulated in the credit are complied with. It cannot be amended or cancelled without the agreement of all parties, i.e. the consent of the beneficiary, the bank that opened the credit and the party for whose account the credit was opened.

24.5.1.2 The bank issuing the irrevocable credit engaged with the beneficiary or bonafide holders of draft drawn under the credit payment, acceptance or negotiation will be fulfilled provided the terms and conditions of the credit are complied with.

24.5.1.3 Revocable Credit: A revocable credit should be issued only in special circumstances, generally between affiliated companies and may be amended or cancelled without prior notice to the beneficiary. Hence this credit is addressed to a bank and not to the beneficiary.

24.5.1.4 Confirmed Credit: Such credits are irrevocable only. The credit worthiness of a Letter of Credit is related to the strength of the bank which opens it. A reputed International bank may issue a Letter of Credit which can be easily negotiated throughout the world. In cases where the financial strength of the buyer's country or opening bank is weak, the advising bank in the country of the seller undertakes to honour the credit by adding its confirmation. In this way, the seller is assured that, on compliance with the terms and conditions of the credit, drawee will be paid by the confirming bank in the event of opener or the opening bank cannot do so. Since adding of confirmation entails heavy additional cost it should be well avoided while signing the contract.

24.5.2 Revolving Credit: Revolving credits are arranged where regular, continuing shipments are to be made by seller and the credit once utilized, is available again. It saves necessity of raising fresh credits for each shipment and bank costs also in case of Letter of Credit with long validity.

24.5.2.1 If the credits revolve in relation to time (eg. upto US\$ 10000 per calendar month) they are known as 'periodic' which may be either 'Cumulative': if the amount is not utilized during one period (eg. Month) it is carried forward and added to the following month/period. 'Non-cumulative': If the amount stipulated for the period is not utilized, then it lapses and cannot be taken up the next month in addition to the next month's quota.

24.5.3 'Red Clause' Credit: 'Red Clause' credit is pre-shipment finance facilitation by buyer given to the seller. The credit thus enables the beneficiary to draw advance against shipments, the advance being liquidated by the amount due on presentation of the document. Because of this, it will always be an irrevocable credit.

24.5.3.1 The issuing bank guarantees payment to the negotiating bank in respect of non-repayment of the advance, with interest. They, in turn, are indemnified by the opener in the same manner, with the clause designed to ensure that losses which may arise from exchange fluctuation will also be covered.

24.5.4 Transferable Credit: This credit enables the beneficiary to make the credit available, in whole or in part to one or more third parties (second beneficiaries). This can only be done if the credit clearly states it is 'transferable' (no other term is acceptable). This type of Letter of Credit is opened normally when seller is the 'middle man' who transfers part of the credit to the supplier who ships the goods. The difference remaining is the middleman's profit/commission. LC can be transferred once only, although the credit can be divided, by the original beneficiary, between two or more second beneficiaries, but they cannot be retransferred. Aggregate of transfers cannot exceed the amount of credit.

24.5.4.1 The transferable Letter of Credit is, however, very risky for the importer, as the

beneficiary may transfer the Letter of Credit to any unscrupulous person who may be a resident of an unfriendly country. Therefore, such Letter of Credit is opened by the bank only in bonafide cases.

24.5.5 Back to Back Credit: The beneficiary of an irrevocable Letter of Credit may not be the actual supplier of the goods (he could be a middle man as in the case of transferable credit). He will request his banker to open a further Letter of Credit (the 'Back to Back' Credit) favouring the supplier, based on the original credit.

24.5.5.1 The terms of the second credit will thus need to be tailored to ensure that the first beneficiary can meet the terms of the credit in his favour and he would substitute certain documents to meet the requirements of the first credit. The amount of the second credit will be lower, as will the unit prices of the goods (the difference the middleman's profit). In the second credit the last date for shipment must be earlier than the first credit and validity of the credit reduced to allow time for invoices to be substituted, inspection documents to be carried out, etc. within the validity of the first credit.

24.5.5.2 There are a number of problems which can occur and the banker issuing a Back to Back credit must ensure that all relevant precautions are taken.

24.5.6 Standby or Guarantee Credit: This one is similar to a Performance Bond or Guarantee, but in the form of a Letter of Credit. It thus assures the beneficiary that in the event of non-performance or non-payment of an obligation, the beneficiary may request payment from the issuing banker.

24.5.6.1 The claim would be a draft accompanied by the requisite documentary evidence of non-performance as stipulated in the credit.

24.5.7 Deferred Payment Credit: Used where, supplier wishes to allow the buyer, time to pay for the documents and thus provides the payment to the beneficiary after a specified period of time after presentation of the documents which the bank will deliver to the applicant/buyer in the meantime.

24.5.7.1 It is like an acceptance credit with exception that no drafts are drawn. It is thus considered inferior to the acceptance credit from the beneficiary's point of view because it does not get a banker's acceptance, which he could discount and raise finance.

24.6 Advantages

24.6.1 Letter of Credit is an accepted form of payment in most countries world wide, and an international code of practice. Their use has been established to clarify and protect the position of all parties.

24.6.2 The benefits to be gained by using this method of payment will vary depending upon the type of Documentary Credit used and the condition contained therein. The principal advantages which all Documentary Credits provide are given below:-

24.6.3 Seller/Exporter

24.6.3.1 Payment is guaranteed by at least one bank provided all conditions specified in the Documentary Credit are met.

24.6.3.2 Payment is obtained from a bank in the seller's country and not from the buyer.

24.6.3.3 Payment can be received promptly once the goods have been despatched.

24.6.4 Buyer/Importer

24.6.4.1 Payment only made if the goods are shipped within the time and manner specified in the Documentary Credit.

24.6.4.2 A period of credit is obtained to enable prompt payment to be made to the seller with later payment by the buyer.

24.6.4.3 The option is available to require an official statement regarding the quality, condition, weight, etc. of the goods before despatch.

24.7 International Code

24.7.1 In view of the complexity of Letter of Credit and different laws and regulations around the world, the International Chamber of Commerce (ICC) has developed, over a number of years, a code of practice for Letter of Credit which protects the interest of all parties involved without causing hindrance or restraints. The code of practice is the 'UNIFORM CUSTOMS & PRACTICE FOR DOCUMENTARY CREDITS' (UCP) ICC - 500.

24.7.2 The code of practice is applicable to international law and is written in the form of brief and concise rules understandable to the lay man. The rules specify the responsibility and definition of all the parties involved in a Letter of Credit and contains definition of the various terms in international use.

24.7.3 All Letters of Credit are subject to this code of practice and must bear the following clauses:-

'Subject to uniform customs and practice for documentary credit (1993 revision), International Chamber of Commerce Publication No. 500'. The great majority of Letters of Credit now issued bear this clause but care has to be taken to ensure that this clause is included.

24.8 The Important Clauses of UCP are given below:-

24.8.1 Article 3: Credit, by their nature are separate transactions from the sale or other contract(s) on which they may be based and banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) included in the credit.

24.8.2 Article 4: In credit operation all parties concerned deal in documents, and not in goods, services and/or other performance to which the documents may relate.

24.8.3 Article 5: Instructions for issuance of credit, the credits themselves, instructions for any amendments thereto and the amendments themselves must be complete and precise.

24.8.3.1 In order to guard against confirmation and misunderstanding, bank should discourage any attempt to include excessive details in the credit or in any amendments thereto.

24.8.4 Article 6: A beneficiary can in no case avail himself of the contractual relationship existing between the banks or between the applicant for the credit and issuing bank.

24.8.5 Article 7: Credit may be either revocable or irrevocable. All credits, therefore, should clearly indicate whether they are revocable or irrevocable. In the absence of such indication the credit shall be deemed to be revocable.

24.8.6 Article 8: A credit may be advised to a beneficiary through another bank (the advising bank) without engagement on the part of the advising bank, but that bank shall take reasonable care to check the apparent authenticity of the credit which it advises.

24.8.7 Article 10(a): Letter of Credit is a definite undertaking and guarantee of the issuing bank only. The other bank is involved only after adding his confirmation to the L/C. This understanding is binding upon all concerned after submission of the stipulated documents according to the terms and conditions mentioned therein. If the documents are not in order, the obligation of the issuing bank will not exist. Negotiating bank is negotiating without shouldering any of the duties of opening bank.

24.8.8 Article 10(b): A confirming bank gives the beneficiary and undertaking in addition to that of the issuing bank, on the same terms and conditions stipulated in the credit. It, therefore, steps into the shoes of the issuing bank and does not have any new role.

24.8.9 Article 10(c): This provision permits the advising bank, if required, to confirm a Letter of Credit or refuse to do so. It is, therefore, not mandatory on the advising bank to add his confirmation even if request to that effect is contained in Letter of Credit received from issuing bank.

24.8.10 Article 10(d): Beneficiary is not allowed to accept amendments to L/C partially. He is to accept an amendment either in full or reject it totally. Partial acceptance of an amendment is permissible with the concurrence of all parties concerned including issuing and confirming bank.

24.8.11 Article 11 (d): The authorization from the issuing bank to the nominated bank for negotiation is valid only against documents which are in conformity with the credit. This implies that nominated bank does not possess any authority to pay against discrepant documents but he can do so at his own risk or after taking approval of issuing bank. The latest situation means issuing bank is amending term to the extent of known discrepancies.

24.8.12 Article 12:

(a) When an issuing bank instruct the bank (advising bank) by any

teletransmission to advise the credit or an amendment to the credit, and intends to maintain confirmation to be the operative credit instrument, or operative amendment, the teletransmission must state 'full details to follow' (or words of similar effect), or that mail confirmation will be the operative credit instrument or the operative amendment. The issuing bank must forward the operative credit instrument or the operative amendment to such advising bank without delay.

- (b) The teletransmission will be deemed to be the operative credit instrument or the operative amendment, and no mail confirmation should be sent, unless the teletransmission states 'full details to follow'(or words of similar effect), or states that the mail confirmation is to be the operative credit instrument or the operative amendment.
- (c) A teletransmission intended by the issuing bank to be the operative credit instrument should clearly indicate that the credit is issued subject to UCP.
- (d) If a bank uses the services of another bank or banks (the advising bank) to have the credit advised to the beneficiary, it must also use the services of the same bank(s) for advising any amendments.
- (e) Banks shall be responsible for any consequences arising from their failure to follow the procedures set out in the preceding paragraphs.

24.8.13 Article 14: If incomplete or unclear instructions are received to issue, confirm, advise or amend a credit, the bank requested to act on such instructions may give preliminary notification to the beneficiary for information only and without responsibility. The credit will be issued, confirmed, advised or amended only when the necessary information has been received and if the bank is then prepared to act on the instructions. Bank should provide the necessary information without delay.

24.8.14 Article 15: Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as non-appearing on their face to be in accordance with the terms and conditions of the credit.

24.8.15 Article 17: Bank assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effects of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of goods represented by any documents, or for the good faith or acts and/or omission, solvency, performance or standing of consignor, the carrier or the insurers of the goods, or any other person whomsoever.

24.8.16 Article 18: Bank assumes no liability or responsibility for consequences arising out of delay and/or loss in transit of any messages, letters or documents, or for delay mutilation or other errors arising in the transmission of any telecommunication. Bank assumes no liability or responsibility for errors in translation or interpretation of technical terms, and reserves the right to transmit credit terms without translating them.

24.8.17 Article 19: Banks assumes no liability or responsibility for consequences arising out of the interpretation of their business by acts of god, riots, civil commotion, insurrections, wars or any other causes beyond their control, or by any strikes or lockouts. Unless specifically authorised, banks will not, upon resumption of their business, incur a deferred payment undertaking, or effect payment, acceptance or negotiations under credit which expired during such interruption of their business.

24.8.18 Article 20: Banks utilizing the services of another bank or other banks for the purpose of giving effect to the instructions of the applicant for the credit, do so for the account and the risk of such applicant.

24.8.18.1 Bank assumes no liability or responsibility to the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank(s).

24.8.18.2 The applicant for the credit shall be bound by and liable to indemnify the bank against all obligations and responsibilities imposed by foreign laws and usages.

24.8.19 Article 22 (a): All instructions for the issuance of credit and credit themselves where applicable, all instructions for amendments thereto and the amendments themselves, must state precisely the document against which payment, acceptance or negotiation is to be made.

24.8.20 Article 22 (c) : Unless otherwise stipulated in the credit, banks will accept as original documents produced or appearing to have been produced by reprographic systems, by or as the result of automated or computerized systems, or carbon copies. If marked as original, always provided that, where necessary such documents appeared to have been authenticated.

24.8.21 Article 23: When documents other than transport documents, insurance documents and commercial invoices are called for, the credit should stipulate by whom such documents are to be issued and wording or data contents. If the credit does not so stipulate, banks will accept such documents as presented, provided that their data contents make it possible or relate the goods and/or services refer to therein and to those referred to, in the commercial invoices presented, or to those referred to in the credit if the credit does not stipulate presentation of commercial invoice.

24.8.22 Article 24: Unless otherwise stipulated in the credit, banks will accept a document bearing a date of issuance prior to that of credit, subject to such documents being presented within the time limit set out in the credit and in these articles.

24.8.23 Article 29(a): For the purpose of this Article transshipment means a transfer and reloading during the course of carriage from the port of loading or place of despatch or taking in charge to the port of discharge or place of destination either from one conveyance or vessel to another conveyance or vessel within the same mode of transport or from one mode of transport to another mode of transport.

24.8.24 Article 29(b): Unless transshipment is prohibited by the terms of the credit, banks will accept transport documents which indicate that the goods will be transhipped,

provided the entire carriage is covered by one and the same transport documents.

24.8.25 Article 33: Unless otherwise stipulated in the credit, banks will accept transport documents indicating as the consignor of the goods a party other than the beneficiary of the credit.

24.8.26 Article 34 (a): A clean transport document is one which bear not superimposed clause or notation which expressly declares a defective condition of the goods and/or the packing.

24.8.27 Article 34 (b): Banks will refuse transport documents bearing such clauses or notations unless the credit expressly stipulates the clauses or notations which may be accepted.

24.8.28 Article 34 (c) : Banks will regard a requirement in a credit for a transport document to bear the clause 'clean on board' as complied with if such transport document meets the requirements of this Article.

24.8.29 Article 35, 36, 37: Insurance documents must be issued and/or signed by Insurance Companies or Underwriters or their Agents. The cover should start when the goods are shipped. The normal minimum amount of cover is the CIF or CIP value + 10%.

24.8.30 Article 41 (a) (b) (c): The description of the goods in the invoice must correspond with the description in the credit.

24.8.30.1 The invoice must be made out in the name of Letter of Credit Applicant.

24.8.30.2 Banks may refuse invoices covering amount exceeding the credit sum.

24.8.31 Article 44 (a): Partial drawing and/or shipments are allowed, unless the credit stipulates otherwise.

24.8.32 Article 44(b) : Shipment by sea, or by more than one mode of transport but including carriage by sea, made on the same vessel and for the same voyage, will not be regarded as partial shipments, even if the transport documents indicating loading on board bear different dates of issuance and/or indicate different ports of loading on board.

24.8.33 Article 45 : If drawings and/or shipments by instalments within given periods are stipulated in the credit and any installments is not drawn and/or shipped within the period allowed for that instalment, the credit ceases to be available for that any subsequent instalments, unless otherwise stipulated in the credit.

24.8.34 Article 46 & 47: Every credit must specify an expiry date.

In addition, if it calls for a transport document, it should also specify a period of time after the date of transport document for presentation of documents called for by the credit. Failing such stipulation, a 21 day period applies.

24.9 Stages involved in opening of Letter of Credit

24.9.1 The buyer and seller conclude a sales contract which allows for payment by documentary letter of credit and specifies the conditions to apply.

24.9.2 The buyer forwards an application for a documentary credit in favour of the seller to a local bank (the issuing bank). The buyer should specify in the application the terms and conditions contained in the sales contract and all other conditions which are to be included in the documentary letter of credit and which must be satisfied before payment.

24.9.3 If the application is approved, the issuing bank issues the documentary letter of credit as specified by the buyer and forward it to a bank in the seller's country (the advising or confirming bank).

24.9.4 The advising bank checks the authenticity of the documentary letter of credit (the L/C originated from the issuing bank) and forwards the original to the seller.

24.9.5 Where the advising bank agrees to confirm the documentary credit it attaches a letter of confirmation to the documentary credit and then both are forwarded to the seller.

24.10 Basic Details Contained in a Documentary Letter of Credit

- 1) Name and address of the issuing bank
- 2) Name and address of the applicant (buyer)
- 3) Name and address of the advising bank
- 4) Name and address of the beneficiary (seller)
- 5) Type of Credit (irrevocable, revocable or revolving, etc.)
- 6) Whether the advising bank is to be asked to add its confirmation
- 7) Date of issue
- 8) Date of expiry
- 9) Place of expiry
- 10) Period of time allowed for presentation of the document following the date of issuance of the transport document (this should be within the validity of the credit)
- 11) The amount and currency of the credit.
- 12) Whether part shipment allowed/not allowed.
- 13) On whom the bill of exchange/draft is to be drawn.
- 14) The type and term of bill of exchange/draft (sight or tenor).
- 15) The contract terms of shipment (eg. FOB, CIF).
- 16) The port or place of despatch.
- 17) The port or place of discharge.
- 18) Whether transshipment allowed/not allowed.
- 19) The precise details of the documents to be presented for payment.
- 20) A concise description which clearly describes the goods.
- 21) Any special instruction or additional condition to apply.
- 22) A statement that the documentary credit is subject to the UCP
- 23) Bank charges payable:
 - a) Inside India
 - b) Outside India

- 24) Negotiated document to be sent to (Name & address).
- 25) Name and address of the consignee.
- 26) RBI authorisation reference if any.

24.11 Documents to be furnished by Purchase Officer for Opening of L/C

24.11.1 The following documents should be furnished by the Purchase Officer to the Accounts Officer to enable him to open the necessary Letter of Credit with SBI:-

- 1) Letter of authority to the Accounts Officer to open the Letter of Credit with State Bank of India. This should inter-alia give the name and complete address of the party in whose favour L/C is to be established, the amount and period of validity of the Letter of Credit and other details as indicated in the earlier paragraph.
- 2) Application form No. 2 in duplicate duly signed by the Officer in Purchase who has been delegated powers.
- 3) An undertaking regarding assurance in favour of SBI duly signed by the Officer in Purchase who have been delegated powers.

24.11.2 The standard uniform application form 2 should be used by all the officers to avoid addition/deletion carried out by Accounts Officer. The normal correction/addition is appended separately.

24.11.3 Form No. 2 and undertaking letter are in the nature of an assurance from DPS to the State Bank of India and also in the nature of an indemnity and the same attract the provisions of Article 299 of the Constitution. As such these documents will be signed by the concerned Officer in Purchase who has been delegated powers to sign. Other documents can be signed by any other gazetted Officer in Purchase. In order to avoid legal complications involved in the documents attracting provisions of Article 299 of the Constitution, attestation of corrections in the above documents signed by Pay & Accounts Officer is not in order.

24.11.4 Draft Form No. 2 is placed at Annexure - 1.

24.12 Documents to be generally provided by the Seller -

- 1) Clean on Board Airway Bill (House Airway Bill in case of delivery to Consolidation Agent)/Clean Bill of lading.
- 2) Original Invoice.
- 3) Packing List.
- 4) Certificate of origin from seller's Chamber of Commerce.
- 5) Certificate of quality and current manufacture from OEM.

- 6) Dangerous cargo certificate, if any.
- 7) Original shipping release issued by Purchaser's authorized representative in case there is PDI.
- 8) Warranty Certificate.
- 9) Shipping authorization issued by the Purchaser.
- 10) Acceptance of PBG issued by the Purchaser.
- 11) Any other documents called for as per Contract.

24.13 Letter of Credit Mechanism

- 1) Buyer requests the issuing bank to open L/C.
- 2) Issuing bank conveys L/C through advising bank.
- 3) Advising bank advises the credit to the beneficiary.
- 4) Beneficiary after complying with terms and conditions against stipulated documents gets the value either from the advising bank or from the nominated bank as per the terms of L/C.
- 5) After passing on the value, negotiation bank claims reimbursement from the opening bank or nominated bank as per the terms of the L/C.
- 6) Ultimately opening bank recovers the amount from the applicant. It is the definite commitment of opening bank to reimburse to the negotiating bank whether applicant provides the value of negotiation or not.

24.14 Points to Remember

- 1) Normally the seller will give a notification within a specified period about the readiness of goods. Letter of Credit is to be opened by the buyer within specified days on receipt of notification of readiness from the firm. The Letter of Credit is to be valid for 90 days from the date of its opening, on extendable basis by mutual consent of both seller and buyer. The LC will be opened three months prior to the expiry of delivery period. In case of extension in such cases both LC and DP should be extended.
- 2) Documentary credit will contain all the details specified by the buyer in his application. It is therefore the responsibility of the buyer to ensure that his application is correct and complete and conform to the terms and conditions contained in the purchase contract.

- 3) When the buyer wishes other terms and conditions to be included in the documentary credit, which are not contained in the purchase contract, the seller may always reject the whole documentary credit if any of these additional conditions are unacceptable.
- 4) While the layout of the documentary credit can vary, all L/Cs should contain the same basic details and the buyer should ensure that his application provides all the necessary information. Any omission can result in delay and additional expenditure in the form of amendment to L/C.
- 5) All the L/Cs opened to be carefully diarised once a month ahead of the expiry date and in case of need, steps have to be taken to extend the L/C well before expiry date. This will save additional bank charges for one quarter.
- 6) The following points to be checked before initiating the case for extension of L/C :-
 - a) Extension of delivery date in the contract and the corresponding amendment in L/C for the latest date of shipment.
 - b) Extension of bank guarantee if any.
 - c) Onus of charges for L/C extension.
- 7) At times, request to add confirmation in the L/C is received from the supplier which is not provided in the contract. At the time of finalization of the purchase contract, it should be bargained with the supplier that the LC will not be confirmed as L/C is being opened and advised by SBI, which is a first class world renowned bank of India. If at all the supplier insists for L/C to be confirmed the confirmation charges should be to their account.
- 8) At the time of finalisation of contract, bank charges payable by buyer and seller within India and outside India should be clearly spelt in the Contract and accordingly mentioned in the L/C.
- 9) In case of extension of LC onus of charges for LC extension to be decided.

ANNEXURE - 1

**APPLICATION CUM GUARANTEE FOR
LETTER OF CREDIT ON FORM NO. 2**

(To be stamped as an agreement in accordance with the Stamp Act in force in the Province in which the document is executed. Not to be attested)

The Manager
STATE BANK OF INDIA (1)

Dear Sir,

I/We request you to establish with your "Branch/Correspondent in.....(3).....for my/our account by *Air mail/*Full Text/*Cable a Letter of Credit reading as follows:

To _____
_____ (4) _____

IRREVOCABLE LETTER OF CREDIT NO _____
(5) & (6)

Dear Sirs,

You are hereby authorized to draw on(13).....of.....for a sum not exceeding...(11) + (15).....(say.....) available by your drafts on them at ...(14).....sight drawn for.....% of invoice value and accompanied by:

- (1) Complete set of Clean on Board Bill of Lading/Airway Bill to order and bank endorsed. Bill of Lading/Airway Bill must show that goods have been shipped/Air freighted and marked freight paid/to pay. It shall incorporate Letter of Credit No.....
- (2) Insurance Policies or Certificates in duplicate covering Marine and War Risks, also Riots, Strikes, Civil Commotion and Malicious damage for the C.I.F. value plus...10....%

OR

Insurance Policies or Certificates in duplicate covering Marine Air Insurance as per institute Cargo Clauses (F.P>A./W.A./All Risks*) and perils as per Institute Strikes, Riots and Civil Commotion Clauses. War Risks as per Institute Clauses. Cover for C.I.F. value plus ...10...%

- (3) Signed Invoice in(19).....
- (4) Packing List in(19).....
- (5) Certificate of Origin.....(19).....
- (6) Quality/Conformity/Warranty/Guarantee Certificate.....(19).....
(19).....
(19).....
- (7) Shipping Specifications evidencing shipment of.....(20).....
from...(16).....to..... (17).....
 *Pro-rata shipment...(12).....Transshipment.....(18).....
- (8) Inspection Certificate(19).....
- (9)(21).....

This Credit is irrevocably valid in.....(9).....until(8) + (10).....

Drafts drawn under this Credit are to be negotiated and are to bear the following clause
 *Drawn under State Bank of India, F. Ex. Divn.. Overseas Branch, Mumbai Credit No. FED/ND.....dated.....

Purchasers are to note the amount of the drafts separately on the back hereof.

*Drafts drawn under this Letter of Credit are negotiable by the State Bank of India.....only.

We hereby guarantee to protect the Drawers, Endorsers and bonafide holder from any consequences which may arise in the event of the non-acceptance or non-payment of drafts drawn in accordance with this Credit.

In consideration of your opening a Letter of Credit as above, I/We hereby undertake to accept and pay in due course all drafts drawn within the terms thereof, and/or to take up and pay for all documents negotiated thereunder on presentation, and in the default of my/our so doing you may sell the goods before or after arrival and I/We undertake to reimburse you in writing to deposit with you such sum or security or further sum of security as you may from time to time specify as security for the due fulfillment of our obligations hereunder and any security so deposited with you may be sold by you on your giving reasonable notice of sale to us and the said sum or the proceeds of sale of the security may be appropriated by you in or toward satisfaction of our said obligations and any liability of our arising out of non-fulfilment thereof.

You are to have a lien on all goods; documents and policies and proceeds thereof any obligations or liabilities present or future incurred by you under or arising out of this credit.

*I/We approve of the negotiation of drafts drawn under this credit being confined to your branches.

The relative shipping documents have to be surrendered to me/us against payment.

The transmission of instructions under the above credit and the forwarding of documents are entirely at my/our risk. You are not to incur any liability beyond seeing that the drafts and documents purport to comply with the terms and conditions of this credit.

This Credit is issued Subject to the Uniform Customs and Practices for Documentary

credits (1993 Revision) International Chamber of Commerce Publication No. 500. (22)

1. The drawing under L/C are (not to exceed the aggregate sum of& the invoice will not be made for a value exceeding the draft amount. The FOB/C&F/C&I/CIF/FAS value of the invoice after deduction of agent's commission/rebate, if any must not exceed the L/C amount.
2. The transport document which is produced by reprographic system or as a result of automated or computerized systems or a carbon copy will not be accepted as an original document even if it is marked as original or appears to have been authenticated.
3. The transport document:
 - a) Must contain all the conditions of carriage on the original document.
 - b) Must not indicate the place of final destination as being different from the port of discharge.
 - c) Must not contain the indication 'intended' or similar qualification in relation the vessel or other means of transport of loading or port of discharge.
 - d) Must be issued by the carrier or his agent and not by any freight forwarder.
 - e) Must not contain a provision that goods may be carried on deck.
 - f) Bearing reference by Stamp or otherwise to costs additional to the freight charges are not acceptable.
 - g) Short form or blank back are not acceptable.
 - h) Bearing a date of issuance prior to that of the credit is not acceptable.
4. Negotiation under reserve on account of discrepancy (ies) not permitted without opening Bank's approval.

In case of non-payment of the bill(s): the bank has the right to crystallise our foreign currency liability into Indian Rupees on the 10th day of receipt of documents payable on demand or due date of usance draft/bill (as the case may be) at the Bank's prevailing Bill selling rate and to charge interest at prescribed penal rate(s).

If at any time and from time to time hereafter at our request you enhance the amount of the letter of credit or amend any to the terms thereof (including extension of the credit for shipment and or Negotiation of documents) then notwithstanding the amount and the terms specified in this application. Our guarantee shall cover and be deemed to cover the entire amount of the enhanced letter of credit issued by you and any other amendments effected there to and or liability will be for the entire amount of the letter of credit so enhanced and/or amended at our request. We shall continue to be bound by all other terms and conditions of the Application cum Guarantee, notwithstanding such enhancement/amendment from time to time as you may take at our request, in the value and terms of the letter of credit.

1. Goods to be imported are covered under Open General Licence Appendix.....(26).....List.....Page No.....Item No.....
OR
Import Licence No.
2. Items to be imported are not in the negative list.

3. All Bank charges within India/outside India are to be borne by Beneficiary/Openers. (23)

4.(24) & (25)

N.B. All alterations and additions to this Letter of Request are to be authenticated by the Applicant.

**Delete as necessary on both application form and credit form.*

(2)

Signature of Applicant
Under Official Seal

Place.....
Date.....(7).....

CHAPTER - 25

SWIFT-INCOTERMS:

GLOSSARY OF TERMS IN INTERNATIONAL BANKING

SWIFT

25.1 Introduction

The acronym SWIFT stands for SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL TELECOMMUNICATION. It allows member financial institutions worldwide to electronically exchange information amongst each other. Services offered by SWIFT are cost effective, reliable and secured. Messages are transmitted globally through high speed communication channel on standardised message formats for many international banking operations.

25.2 Evolution

In May 1973, 239 major international banks from 15 countries formed SWIFT as a cooperative society with its headquartering at Brussels, Belgium. Live operations commenced with effect from 9th May 1977. SWIFT provides access to large number of users spread all over the globe. The user base has been enlarged and its services are now available to non-banking financial institutions like dealers in securities, brokers, clearing and depository institutions, trusts, fiduciary services companies, etc. They are known as participants.

25.3 Major Benefits of Swift

SWIFT provides a quick, reliable and cheap medium for communication of financial messages which has a direct impact on customer service. Under SWIFT, both members are hooked; messages can be transmitted within seconds at nominal charges. Financial and non-financial messages can be transmitted which cover funds transfers between customers/banks, letter of credits/bank guarantees, customer account status, draft advises, foreign exchange transactions, etc. Message security is better as compared to other means of message transmission. Standardised message format eliminate ambiguity and facilitates automated handling at the source and at the destination. Message authentication is also automatic.

25.4 Functioning of Swift

25.4.1 SWIFT computers are linked by a high speed global communication network. All computers within the network have at least one standby processor which works as standby against computer failure. Likewise, all data transmission path within the network are duplicated

to ensure continued service in the event of single path failures. SWIFT has a regional processor (RP) in each host country through which all the messages meant for that country are routed. Each user in that country is required to install a computer based terminal (CBT) in his own premises.

25.4.2 Security features incorporated in the SWIFT network ensure that no unauthorised user can access the system. The network is available 24 hours a day, 7 days a week with all messages delivered within normal business hours irrespective of geographical destination. SWIFT ensures against loss or mutilation of messages during transmission.

25.4.3 Message text format are standardised in SWIFT which has eliminated interpretation problems and enabled automated processing. All transaction instructions are entered into the system on a specified format as per message type.

25.4.4 SWIFT assumes the responsibility for the functioning of the network, maintenance and security of the system. SWIFT also bears financial liability arising from loss or delayed delivery of messages provided it is due to SWIFT. The responsibility undertaken by SWIFT for delivery of financial messages of its members is only upto the regional processor (i.e. the SWIFT gateway) in the destination country.

25.4.5 SWIFT takes no responsibility for the security of any communication facility and transmission line between Regional Processor and user's CBT or for the security relating to the users' premises or terminal facility of the user. It is the users' responsibility to maintain their communication line between CBT and RP and terminal as per SWIFT requirement.

25.5 Incoterms

25.5.1 Since 1936 INCOTERMS, the term used in international documentary credit in respect of mode/style of delivery of goods, have recognised as practical, cost saving tools, used worldwide to smooth international trading practice. When both the parties i.e. buyer and seller, specify the delivery as being according to the INCOTERMS, there need be no disputes arising from that aspect of transactions.

25.5.2 Nowadays goods are usually delivered by the seller to the carrier before the goods are taken on board or some times even before the ship has arrived in the seaport. In such cases the terms like FCA, CPT, or CIP which do not attach the handing over of the goods for carriage to shipment on board are used instead of FOB, CIF and CFR. Whereas CFR and CIF are used only for transportation by sea and inland waterways, the CPT and CIP are used for transport by any mode including multimode transport.

25.5.3 In INCOTERMS 2000, the delivery and transportation of goods are grouped into four categories as under:-

- 1) 'E' Term Implies Ex-works, where under, the seller only makes the goods available to the buyer at the seller's own premises. The responsibility of providing the Carrier is that of the buyer.
- 2) 'F' Term FCA, FAS and FOB are various clauses of 'F' term under which

the seller is called upon to deliver the goods to a carrier appointed by the buyer. The responsibility of providing the carrier is that of the buyer.

- 3) 'C' Term CFR, CIF, CPT and CIP are various clauses of 'C' term under which the seller has to contract for carriage, but without assuming the risk of loss or damage of the goods or additional costs due to events occurring after shipment and despatch.
- 4) 'D' Term DAF, DES, DEQ, DDU and DDP are various clauses of 'D' term under which the seller has to bear costs and risks needed to bring the goods to the place of destination.

25.5.4 Ex-Works (or Ex-Factory, Ex-Mill, Ex-Warehouse, etc.)

It usually means that the prices quoted are for the price of goods at seller's premises. The buyer bears all costs and risks involved (including packing) in taking the goods from the seller's premises to the destination.

25.5.5 Ex-works (packing):

It usually means the price of goods plus packing. It is the responsibility of the buyer to bear all the costs and risks involved in taking the goods from the seller's premises to destination.

25.5.6 FAS

It is Free Along Ship. The seller has to place the goods alongside the vessel on the quay or in the lighters at the named port of shipment, during its loading period and pay all charges upto that point.

25.5.7 FOB

It is Free On Board and is widely used terms. FOB prices actually comprise FOB Port Town plus charges incidental to actual shipment of goods but minus ocean freight and marine insurance. The seller's responsibility ends the moment the contracted goods passes ships rail at the port of shipment named in the sales contract. This means that the buyer has to bear all costs and risks of loss or damage to the goods from that point.

25.5.8 FCA

It is "Free Carrier". "Free Carrier" means that the seller delivers the goods, cleared for export, to the carrier nominated by the buyer at the named place. This term may be used irrespective of the mode of transport, including multi-modal transport. "Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes. If the buyer nominates a person other than carrier to receive the goods, the seller is deemed to have fulfilled his obligations to deliver the goods when they are delivered to that person.

25.5.9 CRF & C&F

It is Cost & Freight named port of destination. The seller must pay the costs and price necessary to bring the goods to named port of destination, but the risk of loss or damage to the goods as well as other costs due to events occurring after the time of goods have been delivered on board is transferred from seller to buyer when the goods pass the ship's rail in the port of shipment.

25.5.10 CIF

It is Cost, Insurance & Freight to the named port of destination. Again one of the most commonly used terms. It is FOB price plus cost of ocean freight and marine insurance upto the port of destination. It is a preferred type of quotation because importer knows what exactly the goods will cost him at his port. In France CIF are also terms as CAF i.e. Cost, Assurance & Freight.

25.5.11 CPT

It is Carriage Paid To (named port of destination). It means that the seller delivered the goods to the carrier nominated by him and the seller must pay the cost of carriage necessary to bring the goods to the named destination. The seller will also provide the buyer necessary information (upon request) for arranging insurance.

25.5.12 CIP

It is Carriage & Insurance Paid to (named place of destination). The seller has the same obligation as under CPT but with the addition that he has to procure cargo insurance against buyer's risk or loss or damage during the carriage. This may be used for any mode of transport (unlike in CIF) including multimode transport.

25.5.13 DAF

It is Delivery at Frontier (named place). This term is primarily intended to be used when goods are to be carried by rail or road but can be used for any mode of transport. The term frontier must be named/defined by naming the point and place.

25.5.14 DDP

This is Delivery Duty Paid (named place). This term may be used irrespective of the type of transport involved and denotes the seller's maximum obligation. The goods are made available at his risk and cost to the buyer at his premises or any other named destination.

25.5.15 DDU

This is Delivery Duty Unpaid. Seller delivers the goods to the buyer at the port of destination. The seller has to bear the cost and risk involved in bringing the goods. The buyer has to get the goods unloaded and cleared for import by paying the applicable duty.

25.5.16 DEQ

This is Delivery Ex-Duty (Duty paid). The seller delivers the goods on the quay (wharf) at the named port of destination, cleared for importation.

25.5.17 DES

Delivered Ex-Ship. The seller makes the goods available to the buyer on board the ship uncleared for import at the named port of destination. The seller has to bear the full costs and risks involved in bringing the goods. The seller's obligation is fulfilled before custom border of the foreign country and it is the buyer to obtain necessary import licence at his own risk and expense.

25.6 Glossary of Certain Technical Terms in International Banking

25.6.1 Acceptance Draft

Bill of Exchange accepted by the drawee (acceptor) by putting his signature (acceptance) on its face in doing so himself to pay the bill upon presentation at maturity.

25.6.2 All risks

Extensive insurance cover, but usually excluding special risks (such as risk of war and strikes or perishing of the goods) UCP Article 39.

25.6.3 AWB

Airway Bill.

25.6.4 Bill of Exchange

Document issued in a legal form.

25.6.5 Promissory Note

Promissory Note wherein the issuer promises to pay a certain amount.

25.6.6 Bill of Lading (B/L)

Document giving title to the goods signed by the Captain or his Deputy or by the Shipping Company or its Agent, containing the declaration receipt of goods (cargo), the conditions on which transportation is made and the engagement to deliver goods at prescribed port of destination to the lawful holder of Bill of Lading.

25.6.7 Clean Bill of Lading

Bill of Lading which does not bear any superimposed clause or notation expressly declaring the defective condition of the goods and/or the packaging.

25.6.8 Claused Bill of Lading

Bill of Lading containing additional clauses limiting the responsibility of the Shipping Company.

25.6.9 Forwarder's Bill of Lading

Bill of Lading issued by a Forwarding Agent.

25.6.10 Full Set

All originals of the Bill of Lading, the insurance documents, etc.

25.6.11 On Deck Bill of Lading

Bill of Lading containing the notation that the goods have been shipped on deck.

25.6.12 Shipped on Deck

Notation in the Bill of Lading stating that the goods have been shipped on deck.

25.6.13 Certificate of Manufacture

Confirmation of a producer that the goods have actually been produced by him in his factory.

25.6.14 Clearing House/Inter-Bank Payment System (CHIPS)

An automation clearing facility set up in 1970 and operated by the New York Clearing House Association which processes international money transfers for its member which embraces over a hundred years financial institution mostly major US banks and branches of foreign banks.

25.6.15 Consular Invoice

Invoice with the certification of the Consulate of the importing country usually issued on a special form. This form is in use only in few countries.

25.6.16 D/A

Abbreviation for Documents against Acceptance.

25.6.17 Delivery Order

Order to deliver specified packages out of a combined consignment covered by one single bill consignment by air in the absence of Airway Bill. This is issued by Airlines or its agents on recovery of service fees and freight charges (if any). This is issued in favour of the consignee and is addressed to the Customs Department. The issue of Delivery Order means that the carriers or its agents have no objection for delivery of the goods to the consignee by the Customs.

- 25.6.18 D/P
Abbreviation for Documents against Payment.
- 25.6.19 FRANCO
Free From Duties, Transportation Charges and Other Levies. Used also as delivery condition. Eg. France (named place of delivery), which means that the seller must bear all transportation charges and duties upto the named place.
- 25.6.20 Inspection Certificate
Confirmation that the goods have been inspected prior to shipment issued by neutral organisations.
- 25.6.21 Negotiation
Action by which the advising bank buys the documents.
- 25.6.22 Notify Address
Address mentioned in a Bill of Lading or in an Airway Bill, to which the carrier is to give notice when goods are due to arrive.
- 25.6.23 On Board
Notation on the Bill of Lading indicating that the goods have been actually loaded into the ship named.
- 25.6.24 Packing List
List showing details of the goods contained in each case.
- 25.6.25 Performance Bond:
Guarantees for proper fulfilment of the contract terms.
- 25.6.26 Recourse
Right of claims against the joint and several guarantors (eg. endorsers, drawers) of a Bill of Exchange or Cheque.
- 25.6.27 Restricted Letter of Credit
Letter of Credit the negotiation of which is restricted to a bank specially mentioned.
- 25.6.28 Unrestricted Letter of Credit
Letter of Credit which may be negotiated through any bank at the

beneficiary's choice.

25.6.29 Revolving Credit

Documentary credit which, after utilisation, is automatically reinstated for a further drawing.

25.6.30 TPND

Insurance Clause covering theft, pilferage and non-delivery.

25.6.31 Warehouse to Warehouse Clause

Insurance Clause indicating that the goods are insured from warehouse of the seller upto the warehouse of the buyer.

25.6.32 Under Reserve

The beneficiary is obliged to repay the credit amount plus interest, charges and exchange rate difference if the issuing bank fails to provide the cover for one reason or the other.

25.6.33 Libor

London-Interbank Offered Rate is the rate of interest at which commercial banks offer deposit in the London Interbank market. Libors are available for Euro Dollar and other euro currencies. Although libor usually refer to 3 to 6 months, it can range from overnight to longer periods.

25.6.34 Balance of Payment

A financial statement prepared for a country summarising the flow of goods, services and funds between residents of that country and the residents of the rest of the world during a particular period.

25.6.35. Balance of Trade

The net of imports and exports of goods reported in the balance of payment.

25.6.36 Bank Rate

The key interest rate in the banking system of many countries. It is effectively the rate at which the Central Bank of a country lends to its own money market institution.

25.6.37 Call Option

The right, but not the obligation to buy an amount of foreign exchange at a specified price within a specified period.

25.6.38 Country Risk

A wide range of risk, including political as well as economical risk. Corporate goals of multinational and the national aspirations of the host countries may not be congruent. The essential element in country risk is the possibility of some form of government action preventing the fulfillment of the Contract.

25.6.39 Coupon

A fixed interest rate attached to a lending.

25.6.40 Covered Interest Arbitrage

A process of borrowing a currency converting it to a second currency where it is invested, and selling this second currency forward against the initial currency. Riskless profits are derived from discrepancies between interest differential and the percentage discount or premium between the currencies involved in the forward transaction. Covered interest arbitrage is based on disequilibrium in interest rate parity.

25.6.41 Covering

Protecting the cash value of future proceeds of an International Trade Transaction, usually by buying or selling the proceeds in the forward market. Although used interchangeably with the term 'hedging'. Covering is strictly speaking, protecting a future cash flow amount whereas hedging refers to denominated accounting assets or liabilities against pure translation losses.

25.6.42 Currency Arbitrage

Taking advantage of differences between exchange rates in different market involving the buying of one currency in one market and selling of it in another.

25.6.43 Currency Band

A band within which a currency is allowed to fluctuate on both sides of its official party. The central bank intervenes in order to maintain the value of the currency within the permissible range.

25.6.44 Currency Basket

Means of expressing the value of a financial asset or currency as a weighted average of more than one foreign exchange rate. The weight in this average are usually defined to be specific quantity of currencies. Hence the term currency basket.

25.6.45 Currency Swap

The simultaneous borrowing and lending operation in which parties transfer currencies from one to another at these spot rates and agree to reverse the exchange after a fixed

term at a fixed exchange rate.

25.6.46 Direct Quote

A rate of exchange quoted in terms of x unit of home currency to one unit of foreign currency.

25.6.47 Euro Currency

A time deposit in a bank account located outside the banking regulation of the country which issues the currency.

25.6.48 Euro Dollars

Dollars held in time deposits in banks outside United States. These banks may be foreign owned or overseas branches of US Banks.

25.6.49 European Currency Unit (ECU)

A currency basket composed of specific quantities of the currencies of European Money System Members.

25.6.50 Forward Rate

The rate quoted today for delivery at a fixed future date of a specified amount of one currency against another.

25.6.51 Hard Currency

A strong, freely convertible currency. A strong currency is one that is not expected to devalue within the foreseeable future.

25.6.52 Lombard Rate

German term for the rate of interest charged for a loan against the security of a pledged promissory note, particularly used by the Bundesbank, which normally maintains its Lombard rate at about 0.5% above its discount rate.

25.6.53 Purchasing Power

The hypothesis that, over time, the difference between the inflation rates in two countries tended to equal the rate of exchange of the exchange rate between the currencies of the countries concerned.

25.6.54 Roll Over

When a forward exchange contract is about to mature a new forward contract is entered into to extend the original maturity date.

25.6.55 Spot Rate

The price at which foreign exchange can be bought or sold for immediate delivery. In practice spot deals are settled in two working days after the transaction date.

25.6.56 Swap

A given currency is simultaneously purchased and sold, but the maturity of each of the transactions is different.

25.6.57 Value Date

The date on which payment is made to settle the deal. A spot deal on Wednesday will be settled on Friday, so Friday is the value date.

CHAPTER - 26

IMPORTS & CUSTOMS CLEARANCE

26.1 Introduction

26.1.1 DPS concludes contracts/purchase orders with overseas suppliers for import of different categories of equipment, instruments and other items required for R&D Units and Industrial Units of the Department of Atomic Energy.

26.1.2 In terms of Government policy, all import contracts should be entered into on FOB/FAS terms directly with the foreign suppliers in the currency of country of origin.

26.2 Important details/Conditions of Contract

26.2.1 While finalizing the purchase order/contract the following important details/conditions should be incorporated:-

26.2.2 Description & specification of the item.

26.2.3 Quantity required.

26.2.4 Unit Rate/lot price as quoted or mutually settled in the currency of country of origin.

26.2.5 Basis of price (the terms of price) - whether ex-works, FAS, FOB.

26.2.6 Delivery date.

26.2.7 Agency Commission

Wherever the foreign supplier is represented by an authorized Indian agent, the name and address of the Indian agent and the percentage of agency commission included in the price quoted should be ascertained from the foreign supplier (if the details are not available in the offer) and incorporated in the purchase order. The agency commission will be paid by the Purchaser directly to the Indian agent in equivalent Indian currency at the rate of exchange prevailing on the date of payment to the foreign supplier after customs clearance of the consignment or on completion of the installation and commissioning/training as per the terms mutually settled.

26.2.8 Inspection & testing

Wherever it is proposed by the User to carry out inspection and testing of the item ordered at the overseas supplier's premises prior to despatch, the Contract should clearly specify

that the stores covered under the purchase order shall be subject to pre-despatch inspection by the Purchaser's authorized representative/quality surveillance agency at the supplier's premises prior to despatch. The Contractor shall allow reasonable facility and free access to the inspector for the purpose of inspection. Generally, the expenses incurred towards deputation of the Purchaser's engineer for inspection will be borne by the Purchaser (Department). The contract should clearly specify that the stores shall be dispatched by the contractor only after pre-despatch inspection is carried out by the Purchaser's authorized representative and the shipping release is issued duly stamped and signed by him in the prescribed format. The supplier should give adequate advance notice of not less than 15 days to the Purchaser/User about the readiness of the material for inspection.

26.2.9 Packing

The Contractor shall pack the stores sufficiently and properly for transit by sea/air as the case may be so as to ensure their being free from loss or damage while in transit to the ultimate destination specified in the contract.

26.2.10 Marking

Each package delivered under this order shall be marked by the Contractor at his own cost on three sides of the package and such marking shall be distinct and shall indicate clearly the following:-

- 1) Name & address of the consignee.
- 2) Purchase Order Number & Date.
- 3) Brief description of the item.
- 4) Weight.
- 5) Dimension.
- 6) Package Number.
- 7) Country of Origin.
- 8) Port of Entry.
- 9) Ultimate destination.
- 10) Any special instruction for handling.

Each package shall contain packing note specifying the name and address of the Contractor, the number and date of the purchase order, name of the consignee, description of the stores and quantity contained in each package.

26.2.11 Mode of Despatch (by air, sea or post parcel)

Considering the nature and urgency of the requirement, the dimension and weight of the

consignment as well as the overall economy the right mode of shipment should be decided in case of imports and incorporated in the Purchase Order.

26.2.11.1 Airfreight

26.2.11.1.1 As regards airfreight, DPS periodically enter into rate contracts with different Consolidation Agents (Freight Forwarders) for pick up from foreign suppliers' premises, inland transportation and air freighting of consignments from Gateway Airport of different countries to major Indian Airports (such as Mumbai, Chennai, Kolkata and Hyderabad). As the freight rates accepted in DPS Consolidation Contract are much lower than the IATA rate, in respect of purchase orders for import where the mode of shipment/despatch is stipulated as airfreight the suppliers should be specifically instructed to despatch the stores through DPS authorised Consolidation Agent. In respect of Ex-works contract the Consolidation Agent will arrange for the pick up of the consignment from the overseas suppliers' premises and arrange for inland transportation and air freighting from the specified Gateway Airport to the Indian Airport. In respect of FCA contract the supplier should be instructed to hand over the consignment to our Consolidation Agent at the specified Gateway Airport for onward air freighting to the Indian Airports. The freight charges will be settled to the Consolidation Agent in terms of DPS rate contract with them in India.

26.2.11.1.2 In case the supplier fails to adhere to the condition of shipping the item through the Purchaser's Consolidation Agent and opt to ship the stores through carriers of their choice, the supplier shall be liable to reimburse to the Purchaser the difference in freight charges and all other additional connected expenditure as claimed by the Purchaser at a later date.

26.2.11.2 Sea Freight

26.2.11.2.1 In cases where the mode of shipment is desired by sea it should be stipulated in the contract that the shipping arrangement will be made by the Ministry of Shipping through the authorised Government of India freight forwarders and the suppliers should be instructed to hand over the consignment to the nominated freight forwarders.

26.2.11.2.2 Two copies of the relevant purchase orders should be forwarded to the Shipping Officer, Ministry of Shipping for making necessary arrangement for shipment through the nominated Government of India freight forwarders.

26.2.12 Advance Intimation for Shipping Authorisation

The Contractor shall give adequate advance intimation to the Purchaser/Consignee by fax about the readiness of the consignment for shipment with the following details to enable the Purchaser to arrange for insurance cover as well as issue necessary authorization for shipment wherever required:-

- 1) No. of packages.
- 2) Dimension & weight of each package.
- 3) Details of transportation arrangement if already made.

26.2.13 Advance copies of Shipping Documents

Immediately on despatch of the consignment ordered the Contractor shall send details of despatch such as name of the carrier, flight number, date & place of departure, expected date of arrival at airport/port of destination, etc. along with advance copies of the shipping documents such as Invoice, Bill of Lading, Airway Bill, Packing Lists, etc. by fax to the Purchaser for making necessary arrangement for customs clearance of the consignment.

26.2.14 Transit Insurance

26.2.14.1 All imports by DPS are covered by an open marine insurance policy with one of the insurance companies. Open insurance policy is obtained from an insurance company after inviting competitive bids.

26.2.14.2 The marine cargo insurance policies are essentially 'voyage/transit' insurance and the cover is provided by the policies to coincide with the duration of 'voyage/transit'. The marine insurance starts from the time the goods leave the warehouse of the supplier, continue during the ordinary course of transit and terminate either on delivery of the goods to the consignee or place of storage at destination named in the purchase order or on expiry of 60 days after discharge from overseas vessel or 30 days after unloading of goods at the international airport whichever occurs first.

26.2.14.3 Every fifteen days the list of all consignments imported by DPS as well as other Regional Units is sent to the insurance company for automatic insurance coverage against the open insurance policy issued by them. Based on the statement from DPS/Regional Units, the Insurance Company will adjust the premium against the deposit and raise the bill for recoupment. Wherever the value of a single imported consignment exceeds Rs. 5 crore, the supplier should be specifically instructed in the contract to intimate the details of shipment by fax/email directly to the insurance company under intimation to the concerned Purchase Unit failing which the insurance company will be absolved of the responsibility to provide the necessary insurance coverage for the consignment against DPS open insurance policy.

26.2.15 Installation & Commissioning/Training

In case the scope of the Contract includes the installation & commissioning of the equipment at Purchaser's site either by the overseas supplier's technical expert or by the Indian agent of the firm, the terms for installation & commissioning of the equipment and training of the Purchaser/User and the charges payable by the Purchaser if any as mutually settled should be incorporated in the Contract.

26.2.16 Warranty

As per DPS General Conditions of Contracts applicable to the contracts for imported stores contained in Form No. DPS-P-12, the normal warranty period is 12 months from the date of putting into operation of the equipment/machinery/instrument. If the standard warranty is not acceptable to the Contractor the mutually agreed period of warranty should be incorporated.

26.2.17 Performance Bond

The Contract should include a condition that the Contractor or their Indian Agent should furnish a Performance Bond in the form of a Bank Guarantee as per DPS format for 10% of the total value of the order towards satisfactory performance of the equipment during the warranty period. The Bank Guarantee should be executed by a bank of international repute duly confirmed by SBI or a Bank Guarantee executed by SBI or any nationalized bank.

26.2.18 Payment Terms

The payment terms and the mode of payment mutually agreed and the documents required for claiming the payment should be clearly specified in the Contract. Normally the modes of payment agreed to in respect of DPS contracts are sight draft, telegraphic transfer/wire transfer, mail transfer, letter of credit, demand draft. Detailed explanations are given in the Chapter 'Payment'.

26.2.19 Bank Charges

The Contract should specify that bank charges inside India shall be borne by the Purchaser and the bank charges outside India shall be borne by the Contractor.

26.2.20 Paying Authority

The name, address, SWIFT details of the Seller's bank and the details of the paying authority should be clearly specified in the Contract.

26.3 Other Conditions

The Contract should clearly specify that all other terms and conditions of the Contract shall be as per the Standard Terms & Conditions of the Contract contained in Form DPS-P-12.

26.3.1 Preparedness for Clearance

26.3.1.1 After issue of the purchase order in favour of the foreign supplier, in case the requirement is for an R&D Unit of DAE and the item procured is covered under the concessional duty notification, an application for concessional customs duty should be sent to DAE and a close follow up should be maintained with DAE till issue of the necessary certificate. The contracting authority should examine carefully the applicability of the notification for the item procured before claiming the concession as claiming concessional duty for items not covered under the notification may be considered by the Revenue Authorities as evasion of tax and may result in imposing penalty both on the Seller and the Buyer. At the same time, care has to be taken that concessional duty is availed for all the items procured for which the same is applicable.

26.3.1.2 The Officer-in-charge of customs clearance in the Purchase Unit must keep himself prepared for arranging customs clearance as soon as intimation is received from the supplier regarding shipment of the material. He should also obtain the technical write up and other technical literature/catalogue available from the user for the item being imported.

26.3.1.3 All goods imported into India have to pass through the procedure of customs clearance after they reach the Indian border. The goods are examined, appraised, assessed, evaluated and then allowed to be “out of customs charge” for taking delivery by the importer.

26.3.1.4 Due to the very complex nature of the customs clearance activity DPS periodically enter into contracts with customs house agents who are experienced in the line to handle the customs clearance of all import consignments.

26.4 Customs Clearance

26.4.1 Export - Import Policy of Government

26.4.1.1 In the modern day and age, trade plays an important role in the economy of the country. In the present day of globalization and liberalization, the occurrence of trade between countries is inevitable. The concept of global village makes it almost impossible for the economy of any nation to exist in isolation of the factors and parameters that influence the global economy. This we have witnessed in the South East Asian crisis and sub-prime crisis of USA. The ascent of the organizations such as the World Trade Organisations (WTO) has been towards an opening out of the world economy, reduction of tariff and non-tariff barriers and progressively greater access to world markets.

26.4.1.2 In the light of the above, India evolved and implemented suitable export-import policies that strike the balance between liberalization and protection of Indian industry aimed at increasing self reliance. In this back ground, Govt. of India announced Export-Import Policy (EXIM Policy 1992-97) which came into force on 1st April 1992 valid for a period of 5 years.

26.4.1.3 The EXIM Policy intended to lay out clear cut guidelines for meeting the challenges arising out of globalization and liberalization. This policy provided for a progressive reduction in the customs tariff regime as well as reduction of controls on imports. It arrived at rationalization of the tariff structure as well as reduction in peak rate of customs duty. It attempts to simplify the procedure, reduce the number and variety of documentation as well as clearance required and introduce the concept of single window clearances, wherever possible. It was followed by EXIM Policies 1997-2002 and 2002-2007.

26.4.1.4 While increasing the exports which are of vital importance, it is also required to facilitate imports, which are required to stimulate Indian economy. Coherence and consistency among trade and other economic policies is important for maximizing the contribution of such policies towards development. Hence after a review, the export-import policy of 2007 was discontinued and the first Foreign Trade Policy 2004-2009 came into force on 1st September 2004. A period of 5 years has been kept having regard to the need for a stable policy.

26.4.1.5 It substantially eliminates licensing, quantitative restrictions and other regulatory and discretionary controls. All goods may be freely imported and exported except in cases where they are regulated by provisions of the policy or any other law for the time being in force. Export and Import has been classified as under:

1. Prohibited items not permitted to be imported.

2. Restricted items not permitted to be imported except against licence or in accordance with public notice issued in this behalf.
3. OGL (free import) permitted for import without any restrictions.

The list of prohibited goods has been kept as small as possible. The primary purpose is not only earning of foreign exchange, but also stimulation of greater economic activity. The two major objectives of Foreign Trade Policy are (i) to double India's percentage share of global merchandise, trade within the next 5 years and (ii) to act as an effective instrument of economic growth by giving a thrust to employment generation.

26.5 Acts Governing Exports & Imports

26.5.1 India's exports and imports are governed by the Foreign Trade (Development and Regulations) Act 1992, referred as FT (D&R) Act 1992. Section 3 of this Act, enables the central government to make a provision for prohibiting, restricting or otherwise regulating the import or export of goods from/to India. Section 5 authorises the central government to formulate and announce its policies governing exports and imports. Section 7 highlights the essentiality of the importer/exporter code number (IEC code).

26.5.2 Another important Act is the Customs Act 1962 which forms the basis for the actual collection of customs duty and formulation of suitable procedures as well as rules in this regard. Section 25 of the Customs Act 1962 empowers the central government to frame and notify the changes/exemptions/concessions in the import and export tariff as well as other procedural matters concerned with the levy of customs duty. As such, Section 25 of the Customs Act 1962 forms the backbone of this omnibus legislation. Sections 74 & 75 of the Customs Act 1962 are the other important sections dealing with the procedures governing duty draw back and the specific conditions under which this facility is available.

26.5.3 The third important legal act for customs is the Customs Tariff Act 1975 (CTA), which is the main repository for customs classification. CTA mainly comprises of the first and second schedule of the import tariff and export tariff respectively.

26.6 Assessable Value and Landed Cost

26.6.1 The following are the major elements of customs duty:

1. Basic Customs duty
2. Additional Customs duty (CVD)
3. Education Cess on CVD
4. Customs Education Cess on Customs duty
5. Special countervailing additional duty

NOTE: For details, please refer Chapter 8 'Statutory Levies'.

26.6.2 The landed cost of any imported item is calculated as follows:

1. Landing charges includes charges towards landing + unloading + handling associated with the delivery of imported goods at place of importation. These will be calculated at 1% of the CIF value. The landing charges means expenditure incurred by an importer for bringing the goods from the ship to the land. As exact amount is not readily available at the time of submission of Bill of Entry, flat rate of 1% towards this on CIF value is charged.
2. Assessable value FOB price + Insurance + Freight + 1% of CIF value.
3. Landed cost Assessable value (a) + Basic CD [calculated on assessable value] (b) + Additional Customs Duty CVD [calculated on assessable value + basic Customs Duty] (c) + Education Cess on CVD (d) + Customs Education Cess [on a + b + c + d] (e) + 4% Special Additional Duty [on a + b + c + d + e] (f) + Transportation charges payable upto the Unit Stores.

26.7 Customs Classification

All goods imported into India have to pass through the procedure of customs clearance, wherein the goods are examined, appraised, assessed, evaluated and then allowed to be taken out of customs charge for use by the importer. The rate at which the different import or export duties are leviable is laid out in the First & Second Schedule respectively to the Customs Tariff Act 1975 and is called the Import Tariff and Export Tariff respectively. Export tariff has very limited scope as only a few specified types of items are subject to export duties whereas the Import tariff is very comprehensive. With effect from 1986, the Import Tariff Classification (ITC) is based on International Convention on Harmonized Commodity and Coding System commonly known as Harmonised System of Nomenclature (HSN). It is divided into 21 sections which are further divided into 98 chapters and a total of 1098 headings. Classification is on the basis of the principle of grouping together material derived from the raw material and within each chapter, the movement is from raw material to the finished product.

26.8 Valuation of Goods

26.8.1 The value of goods is deemed to be the price at which the imported goods are like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of International Trade and the price is the sole consideration for the sale or offer for sale. The essential features are-

1. It is a deemed value.
2. It is based on the price at which such goods or like goods is sold or offered for sale.
3. It is the price prevailing at the time and place of importation or exportation.

4. Such price must be in the course of international trade.
5. Price must be sole consideration.
6. Buyer and Seller must not have any interest in the business of each other. As per the amended definition, it is sufficient if the importer in the transaction proves that either he has no interest in the business of the foreign supplier or the foreign supplier has no interest in the business of the importer.

26.8.2 **Transaction Value** The “Transaction Value” defines as the price actually paid or payable for the goods when sold for export to India and adjusted in accordance with the provisions of Rule 9. The concept of “Transaction Value” pervades the rule. As per Rule 3, the value of imported goods shall be the transaction value, but if the value cannot be determined based on transaction value, it has to be determined by proceeding sequentially through Rule 5 to 8 i.e. “identical goods” or “similar goods” or “deductive value” or “computed value” or “best judgement valuation”.

26.9 Import Clearance Procedure

26.9.1 Goods imported in a vessel/aircraft attract customs duty. Importer has the option to clear the goods after payment of duties leviable or to clear them for warehousing without immediate discharge of the duties leviable. Every importer is required to file in terms of Section 46 an entry (called Bill of Entry) in the form, as prescribed by regulation. If the goods are cleared through the Electronic Data Interchange (EDI) System, no formal Bill of Entry is filed as it is generated in the computer system, but the importer is required to file a cargo declaration having prescribed particulars required for processing of the entry for customs clearance. The Bill of Entry duly filled is to be submitted in a set, different copy meant for different purposes, in different colour schemes and on the body of the Bill of Entry the purpose for which it will be used is mentioned in the non-EDI system of declaration. The importer clearing the goods for domestic consumption has to file the Bill of Entry in quadruplicate, original and duplicate are meant for Customs, third copy for the importer, and the 4th copy is meant for the bank for making remittances.

26.9.2 The following documents along with Bill of Entry are to be submitted:

1. Import Invoice duly signed.
2. Bill of Lading/Airway Bill/Delivery Order.
3. Packing list duly signed.
4. Certificate of Origin, Mill test certificate, Test report (wherever applicable).
5. OGL declaration or Import licence or Customs clearance permit, as applicable.
6. Catalogue, drawings, technical write-up, literature (as may be applicable).
7. Freight bill.

8. Importer's/CHA's declaration duly signed.
9. Insurance Memo or Insurance Policy.
10. Test Certificate.
11. NMI (not manufactured in India) Certificate, if any.
12. Duty exemption certificate/Concessional duty certificate, if any.
13. Chemical Composition Certificate.
14. High Seas Letter/Letter of Authority, Sales Agreement, if any.
15. Bank draft / Letter of Credit.
16. General Agreement Trade & Tariff (GATT) declaration form duly filled in.
17. Industrial licence, if required.
18. HSN number, Notification number and Rate of duty.
19. Advance licence/Duty entitlement exemption certificate (DEEC) in original wherever applicable.
20. Split up value of spares, components and machinery.
21. No commission declaration duly signed.
22. Importer should submit a declaration in the prescribed form about the correctness of the information.

26.10 Assessment and Clearance of Imported Goods

26.10.1 Customs Clearance in respect of Air Consignments

26.10.1.1 Whenever the goods are despatched by air, immediately on landing of the aircraft at an airport, the airlines hand over all the consignments meant for that airport to the Airport Authority of India, the custodian of all the consignments. The airlines also hand over a list of items to the customs against which a number will be given by the customs which is known as Import General Manifest (IGM). Upon receipt of the IGM number and item number to every consignment the freight forwarder would make out a notice of call to all the consignees which are known as Cargo Arrival Notice (CAN). The CAN incorporate the name of the consignee, flight number and date, brief description of item, number of packages, weight and the freight amount payable. As soon as the Purchase Unit get the CAN they should link with the relevant purchase case file and forward the following documents to CHA who will file Bill of Entry in the prescribed form through Electronic Data Interchange (EDI):-

- 1) Import Invoice duly signed.
- 2) Airway Bill/Delivery Order.
- 3) Packing List duly signed.
- 4) Catalogue/literature/technical write up from the user/Chemical composition of the item wherever necessary.
- 5) Freight Bill.
- 6) Customs Duty Certificate for import in respect of R&D Unit.
- 7) Copy of purchase order.
- 8) Customs Clearance copy of Import Licence for restricted items.
- 9) OGL Declaration.

26.10.1.2 The importer is expected to furnish the required details such as name of the importer, name of the supplier, brief description of the item, import/export code number, value in foreign exchange, freight amount, insurance amount and also the IGM number/item number/BTN number (Brussel Tariff Nomenclature) directly to the computer counter in Customs House. All the documents will be properly scrutinised and a check list will be prepared and handed over to the importer or his authorised Customs House Agent (CHA). The importer/CHA has to verify the check list and in case of any discrepancy the same should be corrected immediately failing which we may have to ask for an amendment to the Bill of Entry at a later date which will ultimately delay the customs clearance. Once the check list is okayed by the importer all the relevant documents will be sent to the appraising officer who would assess and intimate the customs duty payable. For certain consignments meant for R&D Unit only the concessional customs duty of 5% is payable. For other consignments meant for R&D Units and other Industrial Units like NFC, HWP, BRIT, etc. customs duty on merit as per the prevailing tariff rate is payable.

26.10.1.3 The customs duty payable is classified as (i) basic duty (ii) countervailing duty (iii) special additional duty. Detailed explanation is given in Chapter-8 'Statutory Levies'.

26.10.1.4 After scrutiny, the appraising officer in Customs forwards the documents to their audit who calculate and check the duty payable and intimate the same to the importer for payment of the customs duty mentioned. After payment of the customs duty the documents are once again resubmitted for the final approval of the Assistant Commissioner of Customs. Once the Bill of Entry is duly approved by the Assistant Commissioner of Customs, the entire process of customs is completed.

26.10.1.5 The computer clerk would then take out duplicate, triplicate and quadruplicate copy of BE and hand over to the importer for effecting physical clearance of the consignment while the original is retained by the Customs. The importer is given three (3) working days for effecting physical clearance from the Airport Authority of India failing which demurrage is to be

paid for every consignment till physical clearance. Since DAE is a Central Government Department, DPS/Regional Purchase Units have to explore the possibility of clearing the consignments through 'green channel' which would actually mean that the items are cleared fast and without opening the packages at the Customs Warehouse. The third copy of BE is the office copy of the importer and quadruplicate copy is used for remitting payment to the foreign supplier (Exchange Control Copy).

26.10.1.6 In respect of all high value consignments (Rs. 20 lakhs and above), as soon as the material is landed the department can consider for a preliminary insurance survey at the Airport/Seaport before taking delivery so that the claim if any can be lodged in time with the carrier (if the damage is attributable to the carrier) in addition to the insurance company. The final survey shall however be carried out at the destination stores. In respect of all other consignments, at the time of taking delivery from the Customs Warehouse, if any of the packages is found to be outwardly damaged the Officer-in-charge of the Purchase Unit should immediately contact the insurance company to conduct the survey in the presence of the carrier, the airport authority, indenting officer, the Indian Agent of the foreign supplier, if any, to ascertain the extent of damage and obtain a survey report from the underwriter to strengthen our claim. Meanwhile a provisional claim should be lodged with the underwriter followed by a final claim on the strength of the survey report for the exact amount of loss incurred by the Department. An intimation should also be sent by the Purchase Unit to the overseas supplier to get free replacement, if possible.

26.10.1.7 While the above procedure is to be followed for clearance of the general cargo, in respect of radioactive material such as molybdenum-99, iodine-131, etc./perishable item/items with short shelf life/items requiring refrigeration, immediately on receipt of an advance intimation from the supplier regarding despatch of such material, the Officer-in-charge in the Purchase Unit should prepare a kuccha (manual) Bill of Entry and approach the Customs seeking their permission for taking direct delivery of the consignment immediately on landing of the aircraft. The Customs after verifying the nature of the consignment imported, would normally grant permission for taking direct delivery immediately on arrival of the aircraft, however after payment of the customs duty assessed.

26.10.2 Customs Clearance - Sea Consignments:

26.10.2.1 The procedure to be followed for customs clearance of the consignment imported by sea is similar to that of air clearance.

26.10.2.2 After shipment of the goods by the overseas supplier, the Purchase Unit get intimation directly from the supplier intimating the details of shipment such as the name of the vessel, bill of lading number, the date of shipment and the expected date of arrival of ship at the destination Indian Port, etc.

26.10.2.3 The original negotiable shipping documents will be received by the Purchase Unit from the bank through the concerned Accounts Unit.

26.10.2.4 The Purchase Unit also gets intimation from the shipping company regarding arrival of the ship as well as the freight amount payable.

26.10.2.5 Once the vessel arrives at seaport all the consignments are handed over to the Port Trust who would be the custodian of all those consignments.

26.10.2.6 After completing the customs formalities through the EDI system the Purchase Unit should approach the respective shipping company for delivery order after payment of the freight charges.

26.10.2.7 On the basis of the duplicate copy of the BE, physical clearance of the consignment is taken from the Port Trust.

26.10.2.8 Similar to that of air clearance, while taking delivery of consignment the condition of packages should be properly checked. In case the external condition of the package is found to be damaged, a joint insurance survey shall be conducted associating customs, port trust, I/O, Indian Agent of the foreign supplier, if any, to ascertain the extent of damage and a copy of the survey report should be obtained from the surveyor. A provisional claim shall be lodged with the underwriters as well as with the supplier and carrier to be followed by a final claim.

26.10.2.9 In case the consignment is meant for a Unit in a different destination from the airport of clearance, advance arrangement shall be made to conclude an exclusive transport contract at carrier's risk for safe transportation to the desired destination. The Stores Unit/User should be clearly instructed to inspect the goods while taking delivery of the consignment from the transport company and in case of damage/discrepancy, if any, in the consignment they should immediately lodge a provisional claim with the transport contractor and the insurance company and intimate the concerned Purchase Officer apart from making suitable remark on the LR so that a final detailed claim can be lodged with the transport contractor as well as the insurance company against the open insurance policy.

26.10.2.10 Normally after offloading two thirds of the complete shipment a date will be declared by the Port Trust which will be called the general landing date. The importer is given three working days for effecting clearance of the consignment without payment of demurrage. The last free date is called LFD. In case the consignment is not cleared within the above period the importer has to pay demurrage charges as well as the mandatory wharfage charges.

26.10.3 Broad Procedure for Import by Sea/Air/Road:

The following are the broad procedure to be followed for clearance of the material:-

1. Submission of Bill of Entry giving details of the goods to be cleared from Customs. Bill of Entry for Home Consumption It is used when imported goods are to be cleared on payment of duty, as applicable. Home Consumption means use within India. White coloured B/E is used for this purpose. Bill of Entry for Warehousing If the imported goods are not required immediately, the importer may like to store the goods in a warehouse without payment of duty under a bond and then clear it from the warehouse when required on payment of duty. This B/E is printed on yellow paper. It is also called "into bond Bill of Entry". Bill of Entry for Ex-bond clearance - this is used for clearance from the warehouse on payment of duty and is printed on green paper. It may be noted that the rate of duty applicable is as prevalent on the date of removal from warehouse. Thus, if rate has changed after goods are cleared from Customs Port,

customs duty as assessed on yellow B/E and as paid on green B/E will not be the same. Amendment to B/E is permissible. B/E is a very vital and important document which every importer has to submit to customs officer in respect of imported goods, other than goods intended for transit or transshipment. B/E should be in the prescribed form. It should include all goods mentioned in the Bill of Lading or other receipt given by carrier to consignor. Importer has to declare that the contents of B/E are true.

2. Importer to submit other documents like invoices, contracts, product literature, packing list, import licences, concessional custom duty form etc. so that customs officer can assess the imported goods under clearance.
3. Noting of the B/E by customs officer. The noting is now done electronically in large parts where B/E number is generated by the System. If it is done manually, thoka number (serial number) is given while noting the B/E.
4. Examination of goods and assessment by customs officer (if first appraisal system) or assessment of goods on the basis of documents (if second appraisal system).
5. Preaudit of the customs documents.
6. Customs Officer to approve the assessment (valuation of goods) on the B/E and return it to the importer.
7. Importer to execute the bond if clearance at concessional rate of duty subject to some conditions or clearance is under provisional assessment.
8. Importer to pay duty, if clearance is for home consumption or a bond is to be executed if clearance is for warehousing. The duty should be paid in the bank specified by the Customs House which is usually situated within the premises of the Customs House.
9. Inspection of goods (if assessment was under second appraisal system).
10. Out of Customs charge on order by the Customs Officer.
11. Pay dues of Port Trust, pay demurrage (if applicable), and pay other dues.
12. Transport the goods from Customs.

26.11 Risk Management System (RMS)

26.11.1 With the introduction of Risk Management System, the present practice of routine assessment and concurred audit and examination of all the Bills of Entry is discontinued with the

aim to speed up the process of cargo clearance without compromising the interest of revenue. The purpose of RMS is to facilitate the clearance of large number of B/E (low risk consignments), which are perceived to be compliant with the Customs laws and Regulations. Consignments are cleared based on the acceptance of importer's self assessment and without examination. After implementation of RMS, a B/E can be sent for examination without assessment and examination by the officer based on the system examination order. After payment of duty, goods can be cleared on the presentation of the required documents to the Customs Shed Appraiser/Examiner at the concerned Shed where the goods are kept. However, some B/E will be taken up for assessment and/or examination based on risk parameters and also on a random basis. Electronic output generated by RMS determines whether the B/E is required to be taken for appraisal or examination or both or to give out of charge directly; i.e. after payment of customs duty without assessment and examination.

26.11.2 Accredited Clients Programme (ACP)

Importers with a known track record of compliance are called Accredited Clients. The B/Es filed by importers who are registered with Customs Authorities under the ACP are cleared without any assessment and examination. The Customs Examiner will check the marks and number of consignments and send the B/E for out of charge. The Appraising Officer will give out an out of charge in the system, after collecting all the necessary documents.

26.12 Decisions on some important Case Laws

The following are some of the decisions based on case laws:-

1. Filing of B/E in the prescribed form is not a mere procedural formality. B/E filed in one form cannot be treated as filed in another form. An importer wanted to substitute an 'into bond B/E' or a 'home consumption B/E' has to make an application for permission to the proper officer.
2. The date of filling of B/E is relevant for determining their rate of duty. Even if a B/E is filed in the wrong form and subsequently B/E was filed in the proper form, the date of original B/E filed date is relevant for determining the duty.
3. If the Assistant Collector allows amendment to the B/E for the purpose of changing the importer's name, the Department cannot treat the amended B/E as a new one. Goods are liable to be assessed to duty at the rate prevailing on the date of original filing.
4. A B/E cannot be amended in respect of description of goods when the goods have already left the customs control.
5. If the discrepancy in the weight of the imported goods as against weight in the invoice is proved to be an error at the place of shipment (by way of letter from the bank of the foreign supplier), confiscation of the goods and imposition of penalty is not justified.

6. Rate of Exchange or tariff will apply as in force on the date of presentation of B/E even if the B/E is deficient or defective. It cannot be applied on the date on which the deficiencies were made good.
7. Bill of Lading is the symbol of goods. Therefore, transfer of B/L to another person is symbolic of transfer of goods themselves. When a B/L is endorsed in favour of another person, the endorsee, for all purpose, becomes the importer. Unless the endorsement is cancelled, the original consignee cannot exercise any rights in respect of the consignments.
8. In case of liquid cargo, importation occurs only when the cargo is pumped from the ship to shore tanks, because that is when the goods cross the customs frontier. Therefore the duty is chargeable on the quantity which is transferred to the shore.

26.13 Post Parcel

Post parcel is one of the modes of despatch which is generally used for importing packages weighing upto 10 kgs. in case of air post parcel and upto 20 kgs. in case of surface post parcel. As soon as the parcel arrives the same is handed over to Foreign Post Office who is the custodian of all the consignments. Notice of call is sent by the Foreign Post Office to all the importers with an advice to clear the packages. Normally one month time is given for arranging clearance. Upon receipt of notice of call Purchase Unit should link up with the relevant purchase file and submit all the required documents directly to the Foreign Post Office where they are scrutinised by Customs and after making payment of customs duty, the packages are given to the importer for taking delivery. In case the packages are not cleared within the stipulated period the package will be sent back to the supplier which is normally called 'return to sender'. On receipt of intimation for taking delivery of parcel on payment of customs duty, the request is to be made to the Pay & Accounts Officer, for drawing cheque in favour of Sub-Post Master/Post Master furnishing the details of parcel number, duty amount and purchase order reference. On receipt of the cheque, arrangements should be made for taking delivery of the parcel. The parcel should be cleared within 7 days from the date of receipt of duty intimation failing which demurrage will accrue at the rate of Re. 1 per day. The maximum demurrage payable will not exceed Rs. 40 per parcel. The cover of the parcel containing the details of customs clearance and customs duty has to be preserved carefully and forwarded to Accounts Officer for submission to the bankers while making payment to overseas suppliers.

26.14 Imports through Courier

26.14.1 Imports through Couriers are treated as imports as any other mode. There is no restriction on value of goods that can be brought through courier. The duty payable is normal duty as applicable to all other goods normally imported by ship/air. Courier Imports and Exports (Clearance) Regulations 1998 specify the procedures.

26.14.2 As per the Courier Imports and Exports (Clearance) Regulations 1998

1. Import through Courier is permitted by Air to Mumbai, Delhi, Chennai, Bangalore, Hyderabad, Ahmedabad, Trivandrum, Cochin, Jaipur and

Kolkata or to any land customs station, except two land stations in West Bengal.

2. Weight of individual package should not exceed 70 kgs.
3. Goods requiring any specific conditions to be fulfilled under any other Act, Rule or Regulations are not permitted.
4. Some items like Animals or its parts, Plants, Perishables, Publication containing Maps depicting incorrect boundaries of India, Precious stones, Gold, Silver and Chemical or Chemical products are not allowed to be imported through Courier.
5. Authorised Courier must be registered with the Commissioner of Customs. They should be financially viable for which they have to produce a certificate from bank. They have to execute a bond and furnish security to the Commissioner of Customs.
6. Authorised Courier should advise their clients about provisions of customs act and exercise due diligence. They should disclose all information to the Assessing Officer in connection with the imported goods. They should also maintain proper records.
7. The goods can be carried by the on-board courier or the person in charge of the aircraft or authorised agent of courier service. It is not necessary that the goods must be carried by the on-board courier themselves.
8. The courier bag should be kept separately and shall be dealt with only as per the directions of Commissioner of Customs.
9. Goods like documents, free sample and free gifts upto prescribed value limit, dutiable or commercial goods can be sent through courier. These should be packed separately with appropriate labels. These goods must be accompanied by a declaration by sender in respect of contents of the package and its value.
10. Free gifts and samples upto Rs. 10,000/- (exclusive of freight and insurance) can be imported by courier.
11. Import of gems and jewellery of EOU/SEZ and export of cut and polished diamonds, gems and jewellery is permitted if value of each consignment does not exceed Rs. 25 lakhs.

26.14.3 Authorised Courier has to submit declaration in the prescribed form. He will present all the imported goods brought by on-board courier or person in charge of the aircraft to the customs officer. Courier prepares a consolidated B/E. If a particular importer intends to avail Cenvat credit, separate B/E is to be prepared for the same. If goods are not cleared within 30 days, these will be disposed of. Payment for imports can be made by the importer on the strength of the B/E in the name of the registered courier company where the CIF value of the consignment is less

than Rs. 1 lakh. The copy of the B/E may be certified by the courier company itself as per RBI circular no. 27 dated 31.8.99. The cover containing the customs details and customs duty payment should be preserved and forwarded to the Pay & Accounts Officer for submission to the bankers towards payment to the foreign suppliers.

26.15 Importing consignments through Container Services

The container service has led to the logical concept of multimode transport which would mean shipment of consignment by utilising more than one mode of transport. The advantage of getting the item by a container service is that it is faster, reliable, gives more protection to the cargo, reduces loss/pilferage, also results in reduction in packing costs and cost of cargo handling. Containers are normally available in 20' & 40' with a cargo capacity of 18 tonnes and 26 tonnes respectively. Containers are also available with open top container or flat which is mainly used for unpacked heavy equipment/machinery. Liquid bulk cargo are imported in tank container and temperature controlled cargo are imported in refrigerated container. Containers are also available in full container load (FCL) or less container load (LCL). As far as LCL is concerned all the containers are destuffed by the shipping agent and GLD declared and the importer has to clear the consignment within three working days from GLD. As far as FCL is concerned, the importer is given seven days for clearing the consignment without payment of detention charges. In case of non-clearance of the consignment within the free period available, the importer has to pay detention charges to the shipping company which is calculated on US dollar basis though the payment is made by us in Indian rupees, apart from the payment of demurrage charges to the warehouse. In case of necessity, the consignment can be cleared along with the container for safety purpose and the container should be returned to the shipping company after making payment of hiring charges, by executing an indemnity bond.

26.16 Direct Delivery from Dock

26.16.1 In respect of sophisticated/strategic/costly consignments it is necessary to make advance planning/arrangement to take direct delivery from the dock with a view to avoid theft, pilferage, and damage/breakage.

26.16.2 The following procedure is required to be completed for arranging direct delivery:

26.16.2.1 Necessary permission from the Port Trust

A letter should be addressed to the Deputy Manager, Port Trust intimating the nature as well as the dimensions of the consignment seeking his permission to take direct delivery of the consignment on the importer's trailer/lorry placed alongside the wharf.

26.16.2.2 Permission from the steamer agent

A letter should be addressed to the steamer agent mentioning the nature and dimensions of the consignment seeking his permission to take direct delivery of the consignment. The steamer agent will advise the Captain of the vessel to allow direct delivery. They will also issue necessary instruction to the stevedores in the respective shed to permit direct delivery of the consignment to the importer.

26.16.2.3 Payment of Port Trust Due

It is necessary for the importer to make advance payment of wharfage, opening charges and any other applicable charges to the Port Trust to facilitate direct delivery of the cargo on the importer's vehicle.

26.16.2.4 Obtaining information from stevedores

Immediately on berthing of the vessel on the shed, it is necessary for the importer to keep in constant touch with the stevedores to ascertain the availability of the packages in the respective hatch and also the probable schedule for unloading of the material. The importer should also make advance planning/arrangement for placing the required number of vehicles to take delivery of the consignment immediately on unloading from the vessel.

26.16.2.5 Permission from Port Trust to pay gate/shed opening charges

The importer should take necessary permission in advance from the Deputy Manager, Port Trust for payment towards opening of the shed and gate. The payment towards the above charges as per the scheduled rate shall be made to the Port Trust in advance.

26.16.2.6 Permission from Customs

Customs Department normally do not provide appraiser for inspection of the import cargo on holidays and during the second shift. They may, however, agree in exceptional cases to provide appraiser beyond normal working hours on payment of requisite charges in advance. It is therefore necessary for the importer to obtain necessary permission from the Assistant Commissioner of Customs/Deputy Commissioner of Customs for deputation of the appraising officer to carry out customs examination on holiday or in the second shift as the case may be. In order to avail the above facility it is necessary for the importer to apply in advance so that the concerned appraising officer is present at the time of customs examination.

26.16.2.7 Advance payment of customs charges towards availing of examination facility

The Customs Department has prescribed necessary fees for deputation of appraising officer during night time and holidays and the payment towards the fee is required to be made in advance to the Customs authority. It is also necessary for the importer to make necessary payment in advance to avail the services of the Preventive Officer available on the gate for inspection of the consignment while taking delivery from the dock.

26.16.2.8 Customs examination/delivery of the consignment

After the customs examination, it is necessary to obtain the delivery chit from the shed delivery clerk and necessary passing from the shed Manager for the removal of the vehicle from the shed. Both the copies of the Bill of Entry are to be presented to the Checker available at the gate as well as to the Preventive Officer of Customs and Inspector of the Port Trust for physical verification of the package in conformity with the Bill of Entry.

26.17 Procedure for clearance of FCL and LCL Container

Normal procedure is applicable for arranging clearance of the consignment brought by LCL container except a special loading date to be granted by the Port Trust from the date of destuffing of the container. In case the clearance is not arranged within three days from the date of destuffing of the container, the consignee has to pay the demurrage on the goods. With regard to FCL container the Port Trust will allow seven working days from GLD for clearance free from any demurrage charges. The steamer agent will only allow five running days free from detention charges. They would however recover detention charges as per the rate applicable on a weekly basis. With regard to arranging clearance of FCL container it is absolutely essential to obtain necessary permission from the Deputy Manager, Port Trust for taking delivery and also for payment of relevant Port Trust charges such as wharfage, demurrage in anticipation of customs out of charge. In consultation with the steamer agent necessary gang is booked for destuffing the container for the customs examination and clearance. In case the consignee fail to present themselves at the time and date allotted for destuffing the consignee has to pay the specified charges for not using the services of the gang. The Customs Officer should further be requested to have the examination immediately at the time of destuffing and obtain necessary direct delivery permission from Port Trust for the customs clearance.

26.18 Appeal for Reassessment of Customs Duty

Goods imported are classified and assessed for customs duty as per Indian Customs Tariff Classification. In spite of production of the relevant catalogue/technical write up in support of the item imported, if in the opinion of the Purchaser, the Customs authorities have not classified the item correctly and assessed the Bill of Entry with higher rate of customs duty, the Purchaser can appeal to the Deputy Commissioner of Customs explaining the position and obtain a speaking order for the exact rate of customs duty applicable for the consignment.

26.19 Re-export of Damaged/Rejected Materials for Repair/ Replacement

26.19.1 After the receipt of imported consignment, the user inspects the goods received to ascertain that the material satisfies the requisite specifications as per the terms of the purchase order and the material is in acceptable condition. In case discrepancy is noticed, the material is rejected. Rejection may be due to short shipment or damage or the material is not meeting the ordered specifications. If the rejection of the consignment is due to damage or that they are not meeting the specifications or defects occurred during installation and commissioning or during the warranty period, in such cases, consignment is required to be re-exported in full or part, to the overseas supplier for repair/replacement.

26.19.2 As per the guidelines issued by RBI, No Objection Certificate, if applicable, has to be obtained from the authorised agent approved by RBI for re-export of consignment. While putting up the request application to the authorised agent, the following has to be clearly indicated:

1. Acceptance from overseas supplier/repairer to accept the re-export material for repair/replacement.
2. Amount of foreign exchange out go involved, if any.

3. Nature of repair/replacement.
4. Estimated time schedule for re-import of the repaired/replaced equipment.
5. Description of goods, serial number, model number, year of import, etc.

26.19.3 Re-export of articles after repair is maintained in the General Exemption 94 of the Customs Tariff Act 1975 whereby it is made clear that the assessable value for purposes of levy of customs duty on articles re-imported after repair will be fair cost of repairs (whether such cost actually incurred or not) plus insurance and freight charges both ways. Also under General Exemption 94, the Assistant Commissioner of Customs should be satisfied

1. with regard to the identity of the goods.
2. that the goods have been re-imported within one year of the date of their exportation abroad for repairs or within such extended time as the Commissioner of Customs may, having regard to the circumstances of each case allow.
3. that there has been no change in the ownership of the goods between their time of export and re-import.
4. that no drawback of duty has been paid on this export.

26.19.4 It is also to be noted that duty draw back under Section 74 of the Customs Act 1962 can be availed only on damaged/rejected items which are re-exported for replacement and within two years of payment of customs duty as original import. Draw back available is upto 98% of duty paid on original imports. However, customs duty on the import of replacement will be fully payable and assessed on the fair value of the item for which duty draw back may be availed. Draw back under Section 74 is applicable when imported goods are re-exported as it is and the article is easily identifiable.

26.19.5 Duty draw back under Section 75 is granted, when imported materials are used in the manufacture of goods which are then exported. Since DPS is not a regular exporter or manufacturer of goods from the material imported, the provision under Section 75 is not made use of by DPS. Number of imported items is re-exported by DPS under Section 74 of the Customs Act 1962. The Customs authorities allow this export under Section 74 provided

1. Overseas supplier has agreed in writing to accept this material for replacement or for credit.
2. The goods are in its original and serviceable condition.
3. Identity of goods can be established with reference to the import invoice such as model no., serial no. etc.
4. Goods returned within two years of import.

5. No addition has been made to the value of the item or there is no decrease in the value of the item and the value of the item should not be less than the amount of the duty claimed.

26.19.6 Green colour shipping bills are to be processed for re-export of goods by ocean freight or air. Hence the procedure is quite reverse to the normal procedure. The consignment is to be booked by airline in the case of air consignment, the same is to be brought inside the examination shed. The shed supervisor will go through all import documents, verify the goods and ensure that the identity of the goods is established with reference to the import documents. He will record his report on the duplicate copy of the shipping bill and with recommendation where the goods are being re-exported and to be allowed under Section 74. He will submit his report to the Assistant Collector of Customs (drawback) for his orders and he, after going through the papers, will allow the export under duty draw back or allow export without any duty draw back. Shipping bills are then numbered and out of charge by Customs Appraiser sitting in the Appraising Section. The rest of the procedures are as per export by Sea or Air.

26.20 High Seas Sales

26.20.1 The expression High Seas Sales is synonymous with sales or purchase which takes place by transfer of documents of title after or before the goods has crossed the customs frontier of India. The expression “High Seas Sales” means in common parlance, sale effected by transfer of documents of title to the goods and which are covered by Section 5(2) of the Central Sales Tax Act, 1956. Such sales being “in the course of import”, are undoubtedly exempt from payment of sales tax or purchase tax in terms of Article 286 (1)(b) of the Constitution of India.

26.20.2 Sections 5(1) and 5(2) of CST Act, defines a sale in the course of export and sale in the course of import respectively. The said sections are reproduced below:

1. Section 5 states where a sale or purchase of goods is said to take place in the course of import or export.
2. Section 5(1) states where a sale or purchase of goods shall deem to take place in the course of export of the goods out of territory of India only if the sale or purchase either occasions such export or is effected by a transfer of document of title to the goods after the goods have crossed the Customs frontier of India.
3. Section 5(2) states a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or it is effected by a transfer of document of title to the goods before the goods have cross the Customs frontier of India.

26.20.3 Sales or purchases by transfer of shipping documents while the goods are in transit are a characteristic feature of foreign trade as they take place in the course of import and are regarded commercially as incidental to the import transaction. High Seas Sales must be considered as a sale in the course of imports of goods within the meaning of Article 286(1)(b) of

the Constitution of India, “course of imports” means start at a point in importing country after goods crosses customs territory. A purchase by an importer of goods when they are on high seas by payment against shipping documents is also a purchase in the course of import. A sale by an import of goods, after property in the goods passed to him, either after receipt of documents of title against payment or otherwise to a third party by similar process is also a sale in the course of import.

26.20.4 Section 5(2) of CST reads “a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of document of title to the goods before the goods have crossed the customs frontier of India”. A reading of Section 5(2) of CST makes it clear that if the sale is effected by a transfer of document of title to the goods before the goods have crossed the 'customs frontier of India', then alone the sale or purchase of goods is deemed to have taken place in the course of import of goods into Indian territory.

26.20.5 As per Sale of Goods Act, a transfer of document of title can be either by endorsement or by mere delivery of the documents. The person making an endorsement or delivering the document himself must have the authority to do so, or must in other words have the authority to transfer the property in the goods represented by the said documents of title. Therefore mere endorsement or mere delivery of the documents of title cannot vest title in the person to whom the documents have been transferred or delivered. The documents must be negotiable which means that the person negotiating the said documents can vest title in the goods represented by the documents in the person to whom it is negotiated.

26.20.6 “Crossing Customs Frontiers” of India means crossing the limits of area of customs station in which imported goods are ordinarily kept before clearance by customs authorities. “Course of Imports” must be considered to come to an end once goods have passed customs frontier, in the sense customs duty has been levied on the goods imported and the importer has been permitted to clear the goods.

26.20.7 As far as possible high seas sale transactions should be discouraged as it involves a greater risk on the part of the ultimate buyer since the genuineness, quality and condition of the material shipped is not known to the buyer at the time of high seas sale transaction. Further the entire responsibility of customs clearance and the risk of loss, shortage or damage are passed on to the ultimate buyer. In some exceptional cases where high seas sale transaction cannot be avoided, the possibility of obtaining a suitable marine transit insurance coverage on warehouse to warehouse basis transferred in the name of President of India acting through Director/Regional Director, Purchase & Stores indicating CPU/Regional Purchase Unit of DPS as the beneficiary with a right to lodge claim in the event of any loss, shortage or damage must be examined. A suitable provision should also be made in the contract making the contractor responsible for supply of the right quality and quantity of the material as contracted.

26.21 Consolidation

Consolidation of air freight consignments from abroad means buying air cargo space in bulk and selling it on retail. In air freighting, the higher the weight of the cargo tonnage, the lower will be the per unit cost. Illustratively, the packages individually weighing above 500 kgs. from London to Mumbai would cost around Sterling £2 per kg. and it would cost around Sterling

£2.6 per kg. for a package weighing below 100 kgs. Consolidation works on this principle and the consolidation agent collects all piecemeal consignments from several consignees and bargain for a competitive rate from the airline and then apportions a part of the reduction obtained to the consignees concerned. Thus instead of each consignment being forwarded independently, goods for the same destination are forwarded as one shipment under single master airway bill. This enables the consolidation agent to offer more competitive rates, in proportion to the weight or dimension of the packages of the consignment. It is analogous to purchasing in bulk and selling in smalls (retail). In addition to lower freight rates, consolidation has the following advantages:

1. Follow up of DPS purchase orders with suppliers abroad.
2. Status report indicating when the shipment will be ready for despatch.
3. Pre-alert information giving details of flights from abroad to India.
4. Advance information regarding arrival of the consignments in India so that the T&C Section could keep the documents for customs clearance ready to avoid delays in clearance and consequent savings by way of demurrage charges.

26.22 Marine Insurance

26.22.1 Marine Insurance is the oldest of all types of insurances known in the world. When the overseas trade greatly dependent on the movement of goods by ships, all marine cargo policies covered the goods carried by ships from port of shipment to port of destination only. As the other types of vehicles for transportation of goods on land and by air were subsequently introduced, marine insurers expanded the scope of their policies by granting cover from the sender's warehouse on land to receiver's warehouse. It is commonly known as 'warehouse to warehouse cover'. Today marine cargo policies are not restricted to insurance of goods shipped by a vessel only. Goods in transit on land alone by rail or road or by air are also insured by marine policies. The policy may also cover transportation of goods partly on land by rail/road and partly by ship (vessel) in sea, lake or river water or by an aircraft.

26.22.2 Policies are agreed value basis. The indemnity provided by the policy is of course subject to actual amount of the loss or damage suffered and is also subject to over all limits i.e. sum assured. Therefore, the marine insurance contract is a contract of commercial indemnity. Domestic and International trade is financed by the security against loss provided by the Marine Insurance System. Marine Insurance policy acts as a collateral security to the banks advancing money on goods and hence becomes a statutory prerequisite for banking operation and credibility.

26.22.3 Insurable interest should exist at the time of occurrence of loss not necessarily at the time of commencement/taking the policy. Marine cargo policies are freely assignable because the interest in the goods pass through various hands till the final delivery is taken by the ultimate consignee. Since the policies are freely assignable, the existence of insurance interest of the claimant should exist at the time of loss. There is no need of insurance interest to exist at the time of taking up the policy.

26.22.4 The sum insured indicated in the policy, is the value agreed between the insured and the insurer. Hence the policies are as agreed value basis. The value so agreed upon cannot be reopened unless fraud is suspected. The duration of cover in marine policy is subject to the transit clause of the respective cargo clauses. This differs from one mode of transit to another (sea, air, road and rail). The duration of cover in marine insurance is governed by the nature of transit, the time of discharge and time of arrival at the destination.

26.22.5 Marine Insurance means the business of effecting insurance of ships, cargo, freight and other interests which may be legally insured under a marine policy. In Marine insurance, 'cargo' means goods or merchandise in transit such as imports to India/shipment between two points outside India/inland transit in India which includes waterways and coastal shipment by vessel from/to/between ports in India. Marine Insurance in India is subject to number of statutory provisions and other rules & regulations of governing bodies. The insurers attach various clauses known as the Institute Cargo Clauses to define the terms and conditions of the policy. These clauses drafted by the Institute of London Underwriters are used by several countries. These Institute clauses had also been revised by the UK Market in 1982, these revisions have been adopted by the Indian insurers since 1.4.1983. It may be noted that the revision in the clauses have been effected in order to bring about simplicity and clarity.

26.22.6 Open Cover Policy This policy, which is issued for a policy period of one year indicates the rates, terms and conditions agreed upon by the insured and the insurer to cover the consignments to be imported or exported. A declaration is to be made to the insurance company as and when a consignment is to be sent along with the premium at the agreed rate. The insurance company will then issue a certificate covering the declared consignment. The Open Cover Policy includes loss of customs duty paid in case goods arrived in damaged condition. This policy is normally obtained when the goods are imported on CIF basis and the customs duty should also be included in the Open Cover Policy. However, customs duty cover cannot be obtained for goods which are not specially covered under the open policy, it has to be taken before goods arrive in India.

26.22.7 As per Section 64(V) (B) of Insurance Act 1938, Underwriters can only assume risks if premium is paid in advance, i.e. at the time of commencement of transit, adequate premium must be available with the insurer. DPS is maintaining a Deposit Account with the Insurance Company to adjust the premium and the deposit amount is recouped at periodical intervals against the premium bills submitted by the Insurance Company for the policy issued.

26.22.8 The rate of premium charged under the policy depends upon the marine risk, war and strike risk and additional premium. The rate of premium under marine risk for all insurances of import to/export from India are non-tariff i.e. fixed by the insurance companies on the basis of their past claim experience of the insured's business or the goods and or their expertise. A fraction of a total rate of premium is charged under the policy towards war and strike, civil commotion (SRCC) risks. Additional premium is charged for advance features of the vessel on which the cargo is shipped, such as overage (above 15 years old), under tonnage and non-classification. War risks are not covered when the goods in transit on land even under a warehouse to warehouse policy.

26.22.9 Under the Transit clause, risk coverage commences from the time the goods leave the warehouse at the place named in the policy for commencement of transit and continues during ordinary course of transit. The term 'ordinary' is deemed to embrace (a) customary

method of carriage relevant to the type of goods and (b) the most direct route to destination. It would include delays during or pending customs inspection and awaiting arrival of the carrying conveyance or overseas vessel. But it would not include any delay, which the assured could avoid. Thus, if the assured elects to use a port warehouse for storage, this would be outside the ordinary course of transit and hence, not covered under this clause.

26.22.10 Cover is terminated on delivery at the consignee's or other final warehouse at the destination named in the policy or on delivery to any other warehouse for storage or allocation or sixty days (30 days for air import) after the date of discharge at the final port whichever shall first occur. Cover is extendable on payment of additional premium prior to expiry. If the cover is to be extended after expiry of the original policy, fresh survey is to be made at the cost of the policy holder (insured).

26.22.11 DPS is taking insurance policy under Open Policy (import) to provide insurance coverage for all consignments imported by DPS on warehouse to warehouse basis under all Risks Cover i.e. ICC (A) (All Risks) + war and SRCC on warehouse to warehouse basis with facility of transit storage and subject to completion of transit within the time limit laid out by ICC (A). As per the policy, cover is provided for transit from anywhere in the world to anywhere in the world.

26.23 Transport & Clearance Section

26.23.1 Transport & Clearance Section (T&C of DPS) is responsible for arranging customs clearance of import/export consignments, observing customs procedure, rules and regulations laid down under various Acts. The T&C Section is also responsible for arranging transportation of the material by concluding contracts with transporters, consolidation agents and CHA for transportation, booking and clearance of consignments respectively.

26.23.2 The T&C Section is responsible for customs clearance of all imported consignments including concluding contracts with CHA, Consolidation Agents and Transit Insurance on an annual basis, providing all documentary inputs in order to facilitate effective clearance, monitoring the performance of the above contracts, ensuring the availability of funds towards freight, customs duty and other charges for effective clearance in line with the CHA contract and coordinating with various agencies for speedy customs clearance.

26.23.3 Transportation includes concluding contract with transporter (s) on an annual/as and when required basis for movement of consignments by road to various destinations and vice versa, dock/airport to various sites etc., management of annual transport contract and coordinating with various agencies for smooth implementation.

26.23.4 The role of T&C Section in these activities is interaction and coordination between agencies, supplier, customs, port and indenting officer. On receipt of shipping documents from supplier, the expected time of the arrival of the shipment is ascertained from the Daily Shipping Times and the shipping documents are then handed over to CHA. Delay in receipt of shipping documents is to be avoided by constant follow up and it should be ensured that the documents are complete in all respects such as Bill of Lading, Airway Bill duly endorsed by the overseas supplier and the Invoice contains the break-up of value as required by the Customs. The T&C Section closely coordinate with CHA and provide all inputs including duty exemption

certificates, wherever applicable, to avail concessional rate of duty, assessment under merit duty, payment of customs duty, arranging explanation regarding technical aspects to Customs and other details such as chemical composition, end use catalogues, etc.

26.23.5 The action of CHA in respect of clearance at Port/Airport is then coordinated by T&C Section including arrangements of payment of freight, demurrage, wharfage, if any, survey in case of damaged consignments, obtaining all documents thereof and Customs examination report in case of damaged/short landed cases. T&C Section continuously coordinate with CHA till physical despatch of cleared goods from dock/airport to destination. Complete manual records of each consignment are maintained by T&C Section in the Index Register, Job Details Register and Customs Payment Register. T&C Section is responsible for lodging of claims in time for the consignments damaged/lost/short landed and follow-up with the insurance company/carrier/supplier/any other agency responsible to make good the loss for timely settlement of the claim. The following registers are normally to be maintained by the T&C Section:-

1. Main Index Register
2. Master Job Register
3. Payment Register
4. Import Clearance Report Register
5. Re-export Master Register Etc.

(courtesy Import & Export Booklet, NPCIL)

CHAPTER - 27

POST CONTRACT FOLLOW UP

27.1 Introduction

27.1.1 Merely on placement of the purchase order in favour of the recommended supplier the Officers/staff in the Purchase Unit cannot remain assured of the execution of the order. It is equally essential to keep a close watch on the progress of the order and take appropriate timely action to see that the orders are executed by the suppliers satisfactorily on schedule. The Officers in the Purchase Unit are also expected to maintain the necessary records/data base of the purchase orders issued and also establish a close liaison/coordination with the User as well as Stores and Accounts to ensure that the contractual obligations of the Purchaser are fulfilled on time leaving no ground for delay in the execution of the purchase order.

27.1.2 The entire sequence of action to be taken right from the time of issue of purchase order till its satisfactory execution including taking charge by the Stores, settlement of payment to the supplier, fulfillment of warranty obligation by the supplier, etc. can be termed as post contract follow up.

27.1.3 Broadly, the actions to be taken up by the Purchase Unit after issue of the purchase order are listed below:-

27.2 Acknowledgement of the Purchase Order by the Supplier

27.2.1 The Officer-in-charge in the Purchase Unit should ensure that the purchase order issued is received and accepted by the supplier unconditionally and the acknowledgement card sent along with the purchase order is returned by the supplier duly signed.

27.2.2 In case the supplier send the order confirmation in their own form/format it is the responsibility of the Officer-in-charge to check that the details mentioned in the order confirmation are in accordance with the purchase order issued by the Purchase Unit. In case of any variation or omission the same should be immediately brought to the notice of the supplier for issuing suitable correction or amendment to their order confirmation in conformity with the purchase order.

27.3 Submission of Security Deposit by the Supplier

The Officer-in-charge should watch whether the Contractor has complied with the requirement of furnishing the Performance Security (Security Deposit) as per the terms and conditions of the Contract. In case of non-submission of Security Deposit by the supplier

within the specified time, action should be taken as per the guidelines given in Chapter-7 'EMD/Security Deposit/Performance Bond'.

27.4 Submission of Samples/Drawings/other documents by Supplier for approval prior to supply

27.4.1 Wherever the Contract provides for any condition to be fulfilled before further progress like submission of engineering drawings/documents or proto type samples for approval by the User prior to commencing production/manufacture of the item, the Contracting Officer should follow up with the supplier to ensure that the required drawings and/or samples as per the terms of the Contract are submitted by the supplier within the time stipulated in the Contract.

27.4.2 As soon as the samples/drawings are submitted by the supplier, the Purchase Unit should equally ensure that the approval/comments of the User on the drawings/samples are conveyed to the supplier at the earliest.

27.5 Submission of Bank Guarantee by the Supplier for Advance/Progressive Payment

27.5.1 Wherever the Contract provides for advance/progressive payment the Contracting Officer should periodically review such cases and follow up with the supplier for completion of required milestones as well as submission of the Bank Guarantee in the form and manner acceptable to the Purchaser and other documents specified in the Contract. They should also keep in touch with the User to ascertain the progress of the purchase order.

27.5.2 As soon as the supplier has completed the required milestones in terms of the order and submitted all the documents specified in the Contract and the Bank Guarantee, acceptance of the Bank Guarantee should be conveyed to the paying authority to expedite payment in accordance with the provision in the purchase order. Detailed guidelines regarding acceptance of the Bank Guarantee are given in the Chapter Bank Guarantee.

27.6 Insurance Policy for FIM

27.6.1 Wherever the purchase order condition provides free issue of department material to the Contractor towards manufacture/fabrication of the ordered equipment the Purchase Unit should follow up with the supplier for submission of the insurance policy for the value of the free issue material covering all the required risks, in the form and manner acceptable to the Purchase Unit. Detailed guidelines regarding insurance policy is given in Chapter 19 'Formulation of Purchase Order/Contract'. The Purchase Unit should also coordinate with the Indenting Officer and concerned Stores Unit to ensure that all the FIM that are required to be provided to the supplier as per the contract terms are available and kept ready to avoid any delay in the issue of FIM.

27.6.2 As soon as the supplier has submitted the insurance policy and accepted by the

competent authority, an intimation about the receipt of insurance policy for issue of the FIM to the Contractor as per the provisions of the purchase order should be sent to the concerned Stores Unit as well as to the Indenting Officer, Paying Authority and to the Contractor for arranging collection of FIM.

27.7 Expediting Supply

The Officer-in-charge in the Purchase Unit should periodically follow up with the supplier to ascertain the progress of execution of the purchase order from time to time. They should also keep in touch with the User for a feed back. In case the progress is found to be not satisfactory and the supply is not likely to materialise within the delivery date stipulated in the Contract appropriate action shall be taken as per the guidelines given in the Chapter 29, 'Delivery & Delivery Extension'. In cases where FIM is issued the progress of work has to be monitored regularly in consultation with the inspecting authority/indenter. Where the progress is Nil/slow or the required phase of progress is lacking due to labour problem or financial difficulties or non-availability of proper technical manpower, etc. action should be initiated to safeguard the government material issued in addition to other actions as per contract terms.

27.8 Follow up of Supply

27.8.1 Placement of the contract on a particular supplier does not essentially ensure the completion of supplies to the User's satisfaction. A constant watch after the placement of the contract thus becomes essential.

27.8.2 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 materializing. Purchase Officers may also ascertain the supply position in a contract through their junior Officers by follow up action orally and ensure that the supplier takes necessary action. Suppliers are bound to provide information concerning the contracts as required and enquired through these officers.

27.8.3 The inspecting officer should also be vigilant and there should not be any avoidable delay in inspection of Stores.

27.8.4 At the end of the month Purchase Officers are required to forward to the respective Dy. Directors/Joint Director lists of purchase orders where the delivery dates are due to expire within the next two months and also the status of progress of the purchase orders.

27.8.5 On receipt of the statement, the Dy. Director should immediately review the purchase files and if supplies have not been completed, 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 of the communication may be endorsed to the User asking for confirmation whether stores are still required and extension can be granted for a reasonable period. Contracts against which FIM were issued have to be monitored very closely at periodical intervals for the progress to safeguard the government material.

27.8.6 The Joint Director/Dy. Director should watch for response to the above communication for taking further course of action.

27.9 Quality Surveillance/Pre-despatch Inspection

Wherever the Contract includes a provision for quality surveillance and pre-despatch inspection by the User, the Officer-in-charge in the Purchase Unit should interact with the User as well as the supplier and ensure that the supplier furnishes the required plan/schedule for quality surveillance and inspection to the Purchaser well in advance and also provide the necessary access and facility to the User for arranging the quality surveillance and inspection. The Purchase Unit should follow up/keep in touch with the User to see that the inspection/QS is carried out by them as per the agreed schedule to facilitate completion of the order within the contract delivery date.

27.10 Issue of timely clarification

During the course of execution of the Contract all the communication from the supplier shall be properly attended to in time and the information/clarification desired by the supplier if any shall be furnished in consultation with the User wherever necessary. In case the supplier calls for issue of any amendment to the purchase order, the financial implication must be thoroughly examined before considering issue of any amendment.

27.11 Issue of Excise Duty Exemption Certificate/Concessional Custom Duty Certificate

27.11.1 Wherever the purchase order has a provision for issue of Excise Duty Exemption Certificate or concessional Custom Duty Certificate, immediately after issue of the purchase order the concerned Purchase Unit should prepare the necessary application in the prescribed proforma and send it to DAE. A close follow up with DAE is necessary till the receipt of the required certificate.

27.11.2 The certificate when received shall be sent to the supplier at appropriate time prior to supply to avail of the allowed exemption from Excise Duty/concessional Custom Duty as the case may be.

27.12 Export Licence

Wherever the opening of L/C and execution of the order is subject to receipt of export licence by the foreign supplier, a time limit has to be fixed in the contract for obtaining the export licence. The principal and their Indian agent, if any, have to be reminded for suitable action in time.

27.13 Opening of Letter of Credit

27.13.1 Wherever the payment term agreed in the Contract is through Letter of Credit, the Letter of Credit shall be arranged in time as per the agreed contract terms on receipt of unconditional acceptance and confirmation regarding receipt of export licence wherever required. Amendment to LC, if any, shall also be arranged as and when required as per the term mutually agreed between the Purchaser and the supplier.

27.13.2 The authority who is initiating the opening of the Letter of Credit should ensure that the L/C is proposed at the appropriate time and the details furnished for opening of L/C are as agreed between the buyer and seller. Care has to be taken to fill up the L/C opening form correctly to avoid any amendment to L/C as issue of amendment will not only delay the supply but also results in additional costs to the Departments for such amendment. It is the responsibility of the Officer authorizing the opening of L/C to ensure that the particulars are furnished correctly and amendment should be considered only against modification mutually agreed between buyer and seller after opening of L/C. The paying authority should thoroughly check that the particulars in the L/C requisition is as per the terms and conditions agreed in the purchase order and if there is any difference, the same has to be brought to the notice of Purchase for clarification. After detailed examination and if found in order the L/C has to be opened indicating the correct particulars ensuring that no amendment is called for due to wrong filling of the form or furnishing mistaken information.

27.13.3 Detailed guidelines for opening of Letter of Credit are given in the Chapter 24 'Letter of Credit'.

27.14 Shipping Clearance/Authorisation in respect of supply from Foreign Supplier

On receipt of intimation from the foreign supplier about the readiness of the material for shipment along with the details of the packages and the expected date of shipment necessary shipping authorisation shall be issued by the competent officer. Wherever the purchase order provides for inspection by the User at the supplier's premises prior to arranging supply, before issuing the shipping authorisation it should be ensured that the pre-despatch inspection has been carried out by the User and necessary shipping release is issued. Before forwarding the shipping authorization, it should be ensured that advance intimation to the insurance company (in respect of high value orders) is issued wherever necessary and all other agencies like Indentor, Stores, Transport & Clearance Section, Accounts, Clearing Agents are alerted for examining and keeping ready the relevant documents for timely clearance and safe transportation of the material

27.15 Erection & Commissioning

27.15.1 In case the scope of the Contract covers erection and commissioning to be undertaken by the supplier, it is the responsibility of the User to keep the site as well as other utilities to be provided to the supplier in terms of the Contract ready to facilitate the supplier to carry out the erection & commissioning within the agreed schedule. The Officer-in-charge in the Purchase Unit should get in touch with the User to ensure the availability of the site and other utilities on time so as to avoid any delay in the erection and commissioning by the supplier.

27.15.2 Immediately on completion of supply the Purchase Unit should also follow up with the supplier to undertake erection and commissioning within the agreed schedule.

27.16 Submission & Acceptance of Performance Bank Guarantee

The Purchase Unit should follow up with the supplier regarding submission of the Performance Bank Guarantee as a back up surety for fulfillment of warranty obligation by the supplier in terms of the Contract. On receipt of the Performance Bank Guarantee in the form and manner acceptable to the Purchaser and after verification of genuineness of the BG, acceptance of PBG must be conveyed to the paying authority at the earliest to facilitate payment to the supplier without delay.

27.17 Rectification & Replacement of Rejected Items

27.17.1 In cases where the material supplied by the Contractor are found to be not in conformity with the order or deficient and defective and stand rejected, appropriate action shall be taken with the supplier for arranging repair and replacement.

27.17.2 In cases where the material received are found damaged or in shortage, appropriate timely action shall be taken for lodging of claim with the supplier, underwriter and the carrier. In case any advance payment to the firm against this supply is made, intimation has to be sent to Accounts with instruction to withhold any other payment due to the firm.

27.17.3 Detailed guidelines regarding rejection and lodging of claims are given in the Chapter 32 'Rejection & Lodging of Claims.'

27.18 Obtaining Refund of Advance paid to Foreign Supplier in case of non-supply

The concerned Purchase Unit should maintain proper record/register regarding the cases where advance payment has been made to the foreign supplier and closely follow up such cases to ensure supplies are made as early as possible but not later than 3 months from the date of advance. In cases where the material is not likely to be supplied appropriate action for obtaining refund from the supplier/encashment of bank guarantee must be taken and the case should be closely followed up till the refund is received.

27.19 Acceptance of BG from Overseas Supplier

Before accepting bank guarantee from an overseas bank advice of SBI should be taken as to whether the foreign bank providing bank guarantee is a first class bank of international repute.

27.20 Release of Payment to the Supplier

27.20.1 It is the responsibility of the Purchase Unit to ensure settlement of payment to the

suppliers at the earliest after they have fulfilled all their contractual obligations. The Officer-in-charge should closely coordinate with the User and the Stores Unit and ensure that the required documents for release of payment as per the terms of the order are sent to the Paying Authority without delay.

27.20.2 On receipt of the bill along with all other required documents as per the order from the supplier and the documents required from the User and from the Stores in Accounts, the payment should be settled to the supplier at the earliest and the Officer concerned should closely follow up with the Accounts till settlement of payment.

27.21 Procedure for noting down change in Constitution resulting in change in the name

27.21.1 The firm should be asked to furnish complete list of purchase orders which are proposed to be transferred in the name of the newly constituted firm. Simultaneously the Purchase Unit will satisfy itself about the financial position and technical competence of the incoming firm.

27.21.2 The outgoing and incoming firms should execute a tripartite agreement to be countersigned by the competent authority in the Purchase Unit in the prescribed format as per Annexure 1, placing on the incoming firm the onus for the proper execution of the outstanding orders. After the said agreement is properly executed, the firms would be informed that they would be treated as Contractor in respect of the outstanding purchase orders and they would, in future, duly discharge, perform and observe all the liabilities, obligations and stipulations of the assignor company. A copy of this communication with a list of purchase orders against which payment and/or supplies are outstanding should be endorsed through the authenticated Officers concerned to the Pay & Accounts Officer, who will take necessary action without waiting for formal amendments to the individual purchase order. All other concerned should also be informed by the Purchase Unit through a letter individually in respect of each purchase order. A tripartite deed is not required where the outgoing firm does not have any contracts pending for execution and/or payment.

27.22 Amendment to Contract

Amendment to the Contract or the terms and conditions thereof need to be handled with a lot of care and after proper analysis of implication. The IFA is to be consulted in post contract amendments having financial implications. Concurrence of competent authority should be obtained if DP extension is proposed without imposing LD. However, amendments and post contractual activities as per the terms and conditions of the contract may be approved by the competent authority and concurrence of IFA would not be needed unless there are deviations and financial implications.

27.23 Termination of Contract

A contract may be terminated in the following circumstances:-

- 1) When the supplier fails to honour any part of the contract including

failure to deliver the contracted stores in time.

- 2) When the contractor is found to have made any false or fraudulent declaration of statement to get the contract or he is found to be indulging in unethical or unfair trade practices.
- 3) When both parties mutually agreed to terminate the contract.
- 4) When the items offered by the supplier repeatedly fail during inspection and the supplier is not in a position to either rectify the defects or offer items conforming to the contracted quality standards.
- 5) Any special circumstances which must be recorded to justify the cancellation or termination of a contract.

27.24 Bad Performance

Bad performance of the registered firm should be reported to the concerned registering authority for suitable action.

ANNEXURE - 1
TRIPARTITE DEED

THIS INDENTURE MADE this _____ day of _____
_____ between _____ of _____ carrying on business in
_____ at _____ in the name and style of
_____ (here insert name of the proprietor) as the sole
proprietor thereof.

1.
2,
*

(insert the name of all the partners)

carrying on business in partnership at _____ under the firm name
and style of _____ a company incorporated under the provisions of the
Companies Act and having its registered office at _____
(hereinafter called “the assignors(s) which expression shall wherever the context so requires or
admits be deemed to include his heir/their respective heirs executors, administrators and
permitted assigns/its successors and assigns) of the first part and _____
and _____ of _____ carrying on business
_____ at _____ in the name and style of
_____ as the sole Proprietor hereof/or

(1) _____
(2) _____ etc.

(Insert the names of all partners)

carrying on business in Partnership at _____ under the firm name
and style of _____ or _____ Ltd.
Company incorporated under the provisions of the Companies Act and having its registered
office at _____ (hereinafter
called the assignee (s) which expression shall wherever the context so requires or admits be
deemed to include his heirs/their respective heirs, executors, administrators and assigns/its
successors and assigns, of the second part and the President of India (hereinafter called “the
Government” which expression shall unless excluded by or repugnant to the context include his
successors and assigns) of the third part.

WHEREAS the assignor(s) has/have prior to the _____ (insert date) been
carrying on business at _____. AND WHEREAS the assignor (s) had
entered into with the Government certain contract (s) more particularly specified in the schedule
hereunder written (hereinafter referred to as the said contract (s).

OR

AND WHEREAS the assignor (s) have converted themselves into limited company etc. viz. the
assignee herein.

AND WHEREAS the assignor (s) are desirous of assigning the benefits of the said contract(s) to the assignee.

AND WHEREAS the assignor(s) has/have agreed to assign the said contracts to the assignee for a sum of Rs. _____ applicable in case of the assignee is a new party.

AND WHEEAS under the terms and conditions of the said contract (s) prior consent in writing of the Government is required for any such assignment.

AND WHEREAS under the assignor (s) requested the Government to give their consent to such assignment.

AND WHEREAS at the request of the assignor (s) the Government has agreed to the benefit of the said contract (s) being assigned to the assignee as from _____ as is evidenced by its joining in and executing these presents.

NOW THIS INDENTUR WITNESSETH that in pursuance of the said agreement and at the request of the assignee, the assignor (s) doth hereby assign (s) and transfer (s) the benefit of the said contract (s) all pending contracts more particularly specified in the schedule hereunder written and all and every stores, goods, equipments, mentioned in the said contract (s) and money to become due thereby or by any agreement therein contained and all rights of action, benefit, advantage, claims and demand, whatsoever relating thereto which thereby or otherwise in any manner, the assignor (s) is/are entitled.

TO HOLD the contract (s) and all and every the said stores, goods, equipments and all other premises hereby assigned into the assignee absolutely and the assignor (s) doth hereby empower the said assignee to demand, sue for recovery and receive all the singular the premises hereby assigned and upon receipt thereof/or any part thereof to give discharge for the same as fully in all respects as the assignor might do and the President doth hereby agree to the assignment and transfer of the benefit if the said contract (s) by the assignor (s) to the assignee (s) as aforesaid.

AND the assignee hereby conversant with the assignor (s) and the Government that the assignee shall duly fulfill, observe and perform the several obligations and stipulations on the part of the assignor (s) contained in the said contract (s) and shall at all times hereinafter save harmless and keep indemnified the Government and Assignor (s) against all actions, proceedings, claims and demands, damages, penalties and costs whatsoever by reasons of or on account of any default or breach on the part of the Assignee in observance of the said contract (s) or otherwise in relation thereto on account of the several orders/contracts and other matters specified in the schedule hereto.

AND nothing herein contained shall discharge the assignor (s) from any liability under the said contract (s) as may have been incurred prior to the date hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and the year first herein above written:

SCHEDULE above referred to:

*A/TNo. & Date	Amount
----------------	--------

- 1.
- 2.

* In case assignee other than Limited concern.

- 3.
- 4.

Signed and delivered by the within names assignor in the presence of

- 1.
- 2.

Signed and delivered by _____
_____ for and on behalf of the President of India in presence of:

- 1.
- 2.

In case the assignee is a Limited Company.

The common seal of _____ Limited was hereunto affixed pursuant to the resolution of the Board of Directors passed at a meeting of the Board held on the _____ day _____ 200__ in the presence of

- 1.
- 2.

we have signed below:

- 1.
- 2.

Signed in the presence of

- 1.
- 2.

Signed by the _____ in the presence of

- 1.
- 2.

The details in the above signature clause will have to be inserted in accordance with the provisions contained in this behalf in the Article of Association of the Particular Company concerned.

CHAPTER - 28

BANK GUARANTEES

28.1 Purpose for receipt of Bank Guarantees (BGs)

28.1.1 Bank Guarantees are securities obtained from the supplier/contractor for safeguarding the government interest.

28.1.2 In DPS, Bank Guarantees are mainly obtained in the following cases:-

- 1) Towards Security Deposit for satisfactory execution of the purchase order/contract.
- 2) Towards advance payment and stage payments i.e. any payment made before despatch of the material from supplier's premises.
- 3) Towards Performance Bond as a back-up surety for warranty obligation.
- 4) Towards re-export of the defective instrument/equipment to the manufacturer within the warranty period for arranging repair/replacement.
- 5) Towards security for issue of FIM.

28.1.3 Standard formats of different bank guarantees are enclosed as Annexures III to X.

28.2 Checking of Bank Guarantees (BG)

28.2.1 While accepting and discharging the Bank Guarantees the officers and staff should pay adequate attention and exercise maximum care. They should maintain proper register/record, ensure close monitoring, and take appropriate timely action for renewal/extension of Bank Guarantee or lodging claims well before the expiry date of the Bank Guarantee.

28.2.2 In order to ensure timely action and to avoid any delay in the handling of the BGs, the officers and staff concerned should strictly follow the instructions given below :-

- 1) All the Bank Guarantees will be received by the nominated official.
- 2) On receipt of the Bank Guarantee, the official concerned should check the following:-
 - a) The BG is in favour of the President of India, acting through the Director,

- Purchase & Stores/Regional Director (The Purchaser).
- b) The text of the BG is strictly in accordance with the DPS format.
 - c) The name and address of the contractor/supplier, bank and the beneficiary are correctly mentioned in accordance with the purchase order.
 - d) The purchase order number and date is correctly mentioned.
 - e) The value & period of the Bank Guarantee are correctly mentioned as per the order.
 - f) In case of lodging the claim, the payment will be made without any demur and without attaching any condition for payment.
 - g) The validity of the BG is sufficient to take care of the Govt. interest:-
 - (i) BG towards SD/advance/stage payment shall be valid 2 months beyond the contractual date for completion of the order.
 - (ii) BG towards Performance Bond shall be valid 2 months beyond the expiry date of warranty.
 - (iii) BG towards re-export of rejected item shall be valid till the receipt and acceptance of the item by the user after repair.
 - (iv) BG towards FIM shall be valid till receipt and acceptance of supply and satisfactory accounting of FIM.
 - h) The BG is issued by State Bank of India or any one of the nationalized banks or reputed private banks ICICI or HDFC or AXIS or IDBI and executed on non-judicial stamp paper of appropriate value.
 - i) Complete address of the bank including fax, telephone number, etc. is available.
 - j) Guarantees are absolute in character and independent of underlying contract.

28.3 Modification in BG

28.3.1 In case the Officer-in-charge finds that the Bank Guarantee furnished by the firm is not in order and needs modification/changes, he should take up the matter with the supplier concerned for getting the corrections/modifications carried out by the bank as per the Department format and then submit to the next higher Officer concerned.

28.3.2 The BGs once received in the Office/Department should not be returned to the supplier under whatsoever reasons. In case any correction/modification in the wording of BG is required, the supplier should be advised to approach the bank and obtain the necessary amendment to the BG on non-judicial stamp paper of appropriate value. 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.

28.4 Verification of genuineness of BG

28.4.1 The Bank Guarantee shall be subject to verification for the genuineness. For this purpose, the Officer-in-charge shall address a registered A/D letter to the concerned branch of the bank with a copy to the Manager of the Regional/Controlling Office of the bank, enclosing a photo copy of the Bank Guarantee with each letter requesting them to confirm within 10 days that the Bank Guarantee has been issued by them.

28.4.2 For the purpose of verification of the genuineness of the Bank Guarantee, the name, designation and code number of the Officer/Officers signing the guarantee are incorporated under the signature(s) of the officials signing the Bank Guarantee may be got verified by approaching the Regional Manager/Zonal Manager of the concerned bank.

28.5 In respect of BGs received from Overseas Suppliers

Advice of SBI should be taken as to whether the foreign bank providing Bank Guarantee is a first class bank of international repute before taking a decision whether such BG should be confirmed by any one of the nationalized bank or SBI in India. The details of the banks of International repute have to be obtained from RBI/SBI and the same can be included in the NIT as the banks from which BGs are acceptable by the Department.

28.6 Acceptance of BG

28.6.1 After satisfying the genuineness of the Bank Guarantee and BG is in order in all respects, the Bank Guarantee shall be put up along with the purchase file to the Officer-in-charge.

28.6.2 The Officer-in-charge will scrutinize the Bank Guarantee for its correctness and if he is satisfied that the Bank Guarantee is in order in all respects will sign the standard format and instruct the official in-charge of BG to enter the details of the Bank Guarantee in a register in a serial order as per the format given in the enclosed Annexure - I.

28.6.3 The Bank Guarantee along with the relevant case file should then be submitted to the next higher Officer for further scrutiny and to Joint Director, P&S/Deputy Director, P&S/Regional Director/Nominated Officer concerned for acceptance.

28.6.4 The Joint Director, P&S/Deputy Director, P&S/Regional Director/Nominated Officer will sign the BG and also in the standard format if the BG is found to be in order with the remarks 'Accepted' and return the BG along with the file to the Officer-in-charge for making final entry in the Bank Guarantee Register by the officials dealing with the BG. After entry in the register the Officer-in-charge will remove the BG from the file and keep it under safe custody.

28.6.5 An intimation to the paying authority and the indenter towards acceptance of the Bank Guarantee should be sent in the format specified in the Annexure II enclosed.

28.7 Maintenance & Follow up of BG

28.7.1 The Officer-in-charge shall be responsible for the custody, renewal/revalidation of the Bank Guarantee prior to expiry of the original validity date and timely lodging of claim with the bank wherever necessary.

28.7.2 The Officer-in-charge is also responsible for the following:-

- 1) Proper maintenance of the Bank Guarantee register and its scrutiny once in a fortnight.

- 2) The Bank Guarantee register maintained by the Officer-in-charge shall be checked by the next higher Officer concerned once in a month to ensure that none of the Bank Guarantee had expired and timely action as is necessary is taken by the Officer-in-charge and sign in the appropriate column of the Bank Guarantee register for having verified and satisfied with the record maintained by the Purchase Group. Lapses, if any, found in complying with the above instructions should be reported to the Director, P&S/Ex-officio Director, P&S through the respective Joint Director, P&S/Deputy Director, P&S/Regional Director/Nominated Officer for remedial action.
- 3) Sending suitable communication to the Contractor concerned for revalidation/renewal of the Bank Guarantee wherever necessary due to non-fulfillment of the contractual obligation within the original validity period of the BG. The request for revalidation/renewal of BG should be sent to the firm at least two months before the expiry date of Bank Guarantee. In case the bank guarantee is not revalidated/renewed in time action should be taken immediately to lodge the claim with the banker within the validity period.
- 4) Since Bank Guarantees are securities to safeguard government interest, officers concerned should ensure that there is no lapse or laxity on their part while dealing with the BGs. In case the government is put to any loss due to any negligence of the officer while accepting or discharging the Bank Guarantee and/or delay in lodging the claim with the bank, the officers concerned will be held solely responsible for such losses.
- 5) Entry in the Bank Guarantee register when revalidation/renewal of the Bank Guarantee has been received indicating the revised validity of the Bank Guarantee. Grace period if any provided by the bank in the Bank Guarantee should be indicated separately in the register.

28.8 Lodging of Claim

28.8.1 Security Deposit taken for the due performance of the contract can be forfeited and credited to the Govt. in the event of a breach of contract.

28.8.2 Bank Guarantee obtained towards 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 Bank Guarantee should be taken as far as possible by an Officer higher in the rank than the one who accepted the Bank Guarantee. In DPS the decision is taken by Director, P&S/Ex-Officio Director, P&S.

28.8.3 Bank Guarantee can be invoked only after fulfilling the following conditions:

- 1) Claim should reach issuing bank on or before expiry date.
- 2) Should be in strict conformity with the guarantee terms.

28.8.4 The validity of the PBG should be carefully followed and the indenting officer should

be approached well in time (say a month before expiry of the validity of the BG) to ascertain the performance of the equipment and in case the performance is not satisfactory and inspite of the reminders the firm has not properly responded and rectified the defects, action should be initiated to lodge the claim in time. The Indenting Officer should keep Purchase Unit informed of the performance of the firm during the warranty period for suitable action, if any, required, including encashment of BG.

28.8.5 Preparation of claim letter wherever required to the bank and submission through the concerned Joint Director, P&S/Deputy Director, P&S/Regional Director/Nominated Officer for approval and signature by the Director, P&S/Ex-Officio Director, P&S. The claim letter should be prepared at least one month before the expiry date of the Bank Guarantee in case of outstation bank, 15 days in case of local bank and 45 days in case of foreign bank.

28.9 Non-receipt of Proceeds

28.9.1 Issuing bank not to enquire into merits of claimer or take views on dispute between applicant and beneficiary.

28.9.2 On compliance of terms of guarantee, payments should be effected immediately and unconditionally.

28.9.3 If the 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 to be taken:-

- 1) To report to the Central office of the bank clearly expressing that because of the bank's failure to take timely action, Govt. had to incur loss and also to request, where considered appropriate, to initiate proceedings to investigate the matter and to fix responsibilities on the concerned bank officer. An administrative decision should be taken to debar acceptance of Bank Guarantee issued by such branches and from such firms.
- 2) After sending the claim letter to the bank, the Officer-in-charge should hand over the case file to the next higher Officer. Follow up with the bank to ensure that the claim is received by the bank and for getting the Bank Guarantee encashed should be done by the Officer concerned. If the bank does not remit the money within a period of 45 days from the date of lodging of our claim, the case should be reported to Director, P&S/Ex-officio Director, P&S through the respective Joint Director, P&S/Dy. Director, P&S/Regional Director/Nominated Officer for taking appropriate action against the bank.

28.10 Return of BG

28.10.1 If the purpose for which the Bank Guarantee obtained has been fulfilled by the contractor, the Bank Guarantee should be returned to the contractor for which the Officer-in-charge will submit the Bank Guarantee to the Joint Director, P&S/Deputy Director, P&S/Regional Director/Nominated Officer through the next higher Officer for discharge and

cancellation. If the Joint Director, P&S/Deputy Director, P&S/Regional Director/Nominated Officer is satisfied that the Bank Guarantee can be discharged he will sign on the Bank Guarantee with the remark 'DISCHARGED'. As soon as the Bank Guarantee has been signed by the Deputy Director, P&S/Regional Director/Nominated Officer in token of having discharged the same, the Bank Guarantee should be returned to the supplier by Registered Post with A/D, after making necessary entry to that effect in the Bank Guarantee register.

28.10.2 The Bank Guarantee towards security deposit can be returned to the Contractor duly discharged only after satisfactory execution of the Contract and on receipt of PBG wherever applicable.

28.10.3 The Bank Guarantee towards advance/progressive payment can be returned to the supplier only after the Contract has been satisfactorily executed.

28.10.4 In case of purchase order involving erection and commissioning job, where an advance payment has been made including the erection and commissioning charges, such Bank Guarantee can be discharged/returned to the supplier only after satisfactory completion of erection and commissioning by the contractor and acceptance of the equipment by the User.

28.10.5 The Performance Bank Guarantee can be returned to the supplier only after expiry of the warranty period and after getting a certificate from the indenting officer that the equipment had performed satisfactorily during the warranty period and there are no complaints about the malfunctioning/defects/deficiency in the equipment supplied during the warranty period or the defects/deficiencies noticed during the warranty period has been rectified by the Contractor and the equipment functioned satisfactorily during the warranty period.

28.10.6 The Bank Guarantee towards the rejected goods can be returned after receipt of the repaired equipment and acceptance by the user on the basis of a certificate from the indenting officer that the equipment is working satisfactorily.

28.11 Essential elements of Bank Guarantees

- (1) Amount
- (2) Address of beneficiary, applicant and bank
- (3) Validity date
- (4) Contract number & date
- (5) Bank should release the amount without any demur on receipt of a written order from beneficiary.

28.12 Salient features of Guarantee

- 1) Guarantees are absolute in character and independent of underlying contract.

- 2) Obligation to pay not to perform.
- 3) Unconditional and without demur payment against valid claim.
- 4) For specified amount and period.

28.13 Invocation of Guarantee

- 1) Should reach issuing bank on or before expiry date.
- 2) Should be in strict conformity with guarantee terms.
- 3) Issuing bank not to enquire into merits of claims or take views on dispute between applicant and beneficiary.
- 4) On compliance of terms of guarantee, payments effected immediately and unconditionally.

ANNEXURE - 1

FORMAT OF BANK GUARANTEE REGISTER

(To be filled in by the Purchase Assistant/Dealing Hand)

1. Sr. No.
2. Purchase Order Number & Date
3. Nature of the Bank Guarantee, i.e. Security Deposit, Advance Payment/Progressive Payment, Performance Bond, etc.
4. The relevant clause No. in the Purchase Order and the value of the Bank Guarantee
5. Bank Guarantee No. and Date
6. Name & Address of the Bank
7. Validity date of the Bank Guarantee exclusive of the grace period
8. Grace period, if any, and the final date for lodging the claim
9. Date of acceptance of the Bank Guarantee by Dy. Director, P&S
10. Date of communication of acceptance of Bank Guarantee to the Paying Authority
11. Brief details about action taken for renewal of the Bank Guarantee, i.e. the date on which reminders were sent to the firm for extension of validity of the Bank Guarantee.
12. Date upto which the Bank Guarantee is revalidated
13. Date of lodging the claim wherever applicable
14. Date of return of Bank Guarantee duly discharged
15. Initial with date of

PA/DH

APO

PO
(When review of BG Register is made)

ANNEXURE - 2

**FORMAT FOR SENDING INTIMATION ABOUT
ACCEPTANCE OF BANK GUARANTEE
TO PAY & ACCOUNTS OFFICER**

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V S Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

Sub: Purchase Order No. _____ dated _____
placed on M/s. _____

In accordance with the provision contained in Clause No. _____ of the abovementioned purchase order, the firm has furnished the Bank Guarantee and the same has been accepted by the Dy. Director, P&S and kept under the safe custody of the undersigned. The details of the Bank Guarantee are furnished below for records:-

Sr. No.	Bank Guarantee No. & Date	Purpose/Nature of Bank Guarantee (SD/PBG/Adv/Prog. Payment etc.)	Value	Expiry date of the Bank Guarantee	Final date for lodging claim including grace period	Name and address of the Bank

(_____)
Asst. Purchase Officer

Pay & Accounts Officer
Central Accounts Unit
D.P.S.

Copy to: Indenting Officer
Copy to: Firm

ANNEXURE - 3
BANK GUARANTEE FORMAT
FOR SECURITY DEPOSIT
(INDIGENOUS SUPPLIER)

(On non-judicial stamp paper of appropriate value)

The President of India
(acting through the Director, Purchase & Stores)
Directorate of Purchase & Stores
Department of Atomic Energy,
Government of India,
V.S.Bhavan,
Mumbai- 400 094

In consideration of the President of India acting through the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy, (hereinafter called the "the Government") having agreed to exempt M/s. _____ (hereinafter called the said "Contractor(s)") from the demand, under the terms and conditions of an agreement No. _____ dated _____ made between the President of India acting through the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy, and M/s. _____ for supply of/supply, installation and commissioning of _____ (hereinafter called the said "Agreement"), of security deposit for the due fulfillment by the said Contractor(s) of the terms and conditions contained in the said agreement, on production of Bank Guarantee for Rs. _____ (Rupees _____ only), we _____ (hereinafter referred to as "the bank") on the request of M/s. _____ (hereinafter referred to as "the Contractor(s)") do hereby undertake to pay to the Government an amount not exceeding Rs. _____ (Rupees _____ only) against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms and conditions contained in the said agreement.

2. WE, _____ (Name & Address of the bank) do hereby undertake to pay the amount due and payable under this guarantee without any demur, merely on a demand from the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy, on behalf of Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said Contractor(s) of any of the terms and conditions contained in the said agreement or by reason of the Contractor's failure to perform the said agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____ (Rupees _____ only).

3. WE, _____ (bank) undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present

guarantee being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor(s) shall have no claim against us for making such payment.

4. WE, _____ (bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said agreement have been fully paid and its claim satisfied or discharged or till the Director, Purchase & Stores, Directorate of Purchase & Stores of the Department of Atomic Energy certified that the terms and conditions of the said agreement have been fully and properly carried out by the said Contractor(s) and accordingly discharges this guarantee. Unless a demand or a claim under this guarantee is made on us in writing on or before _____(date) [two months beyond the contract completion date] we shall be discharged from all liability under this guarantee thereafter.

5. WE, _____ (bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said agreement or to extend time for performance by the said Contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the government against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor(s) or for any forbearance, act or commission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

7. WE, _____ (bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Government in writing.

Dated the _____ day of _____ 20__

for _____
(indicate the name of the bank)

ANNEXURE - 4
BANK GUARANTEE FORMAT TOWARDS
SECURITY DEPOSIT TO BE SUBMITTED BY
THE INDIAN AGENT, ON BEHALF OF
THE FOREIGN SUPPLIER

(On non-judicial stamp paper of appropriate value)

The President of India
(acting through the Director, Purchase & Stores)
Directorate of Purchase & Stores
Department of Atomic Energy,
Government of India
Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai - 400 094

1. WHEREAS on or about the _____ (date), M/s. _____, having its Office at _____ (hereinafter referred to as "The Contractor") entered into a contract bearing No. _____ dated _____ (hereinafter referred to as "The Contract") with the President of India, acting through the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy (hereinafter referred to as "the Government") for _____ (hereinafter referred to as "the Equipment"). The contract recognizes that M/s. _____ as the Indian Agent of the Contractor in India who will furnish the Security Deposit bond on behalf of the Contractor for satisfactory performance of the contract as per the terms and conditions contained in the said contract.

2. AND WHEREAS under the terms and conditions of the contract, an amount of Rs. _____ (Rupees _____ only) representing around _____ % of the contract value is to be furnished as bank guarantee by the Indian Agent on behalf of the Contractor, in a manner herein contained, duly executed by _____ (bank) towards satisfactory performance of the contract.

3. We _____ (Name of the Bank & Address) [hereinafter referred to as "the bank"] at the request of M/s. _____ authorised Indian Agent of the Contractor(s) do hereby undertake to pay to the Government an amount not exceeding Rs. _____ (Rupees _____ only) against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms and conditions contained in the said contract.

4. WE, _____ (Bank) do hereby undertake to pay the amount due and payable under this guarantee without any demur, merely on a demand from the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy, stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said Contractor(s) of any of the terms and conditions contained in the said contract or by reason of the Contractor(s)' failure to perform the said contract. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____ (Rupees _____ only).

5. WE, _____ (Bank) undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s), in any suit or proceedings pending before any Court or Tribunal relating thereto, our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this bond shall be valid discharge of our liability for payment thereunder and the Contractor(s) shall have no claim against us for making such payment.

6. WE, _____ (Bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said contract and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said contract have been fully paid and its claims satisfied or discharged or till the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy certifies that the terms and conditions of the said contract have been fully and properly carried out by the said Contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before _____ (date) [two months beyond the contract completion date], we shall be discharged of all liability under this guarantee thereafter.

7. WE, _____ (Bank) further agree that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract or to extend time for performance by the said Contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor(s) or for any forbearance, act or commission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision have effect of so relieving us.

8. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

9. WE _____ (Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Government in writing.

Dated the _____ day of _____ 20__.

For _____
(indicate the name of bank)

ANNEXURE - 5

**BANK GUARANTEE
FORMAT FOR ADVANCE PAYMENT**

(On non-judicial stamp paper of appropriate value)

The President of India,
(acting through the Director, Purchase and Stores)
Directorate of Purchase & Stores
Department of Atomic Energy,
Government of India,
Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai - 400 094.

WHEREAS on or about the _____ day of _____ M/s _____, a company registered under the Companies act 1931/1956 and having its registered office at _____ (hereinafter referred to as 'the Contractor') entered into an agreement bearing No _____ (hereinafter referred to as 'the Contract') with the President of India acting through the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy (hereinafter referred to as 'The Government') for the supply of _____ (hereinafter referred to as 'the Equipment').

2 AND WHEREAS under the terms and conditions of the contract an amount of Rs _____ (Rupees _____ only) representing _____ percent advance payment out of the contract value of Rs. _____ (Rupees _____ only) is to be paid by Government to the Contractor.

3. AND WHEREAS the Government has agreed in pursuance of the said terms and conditions of the contract to make an advance payment of Rs. _____ (Rupees _____ only) to the Contractor on the Contractor furnishing a Bank Guarantee in the manner herein contained.

4. NOW WE, _____ (Name & Address of the Bank) in consideration of the Government having agreed to pay to the Contractor an advance payment of Rs. _____ (Rupees _____ only) do hereby agree and undertake to indemnify the Government and keep the Government indemnified to the extent of a sum not exceeding the said sum of Rs. _____ (Rupees _____ only) against any damage or loss that may be suffered by the Government by reason of non-fulfillment of any of the terms and conditions of the contract by the Contractor.

5. WE, _____ (Bank) do hereby undertake to pay the amount due and payable under this guarantee without any demur merely on a demand from the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy on

behalf of the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said Contractor(s) of any of the terms and conditions contained in the said agreement or by reason of the Contractor(s) 's failure to perform the said agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee, shall be restricted to an amount not exceeding Rs. _____ (Rupees _____ only).

6. WE, _____ (Bank) undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor(s) shall have no claim against us.

7. AND WE, _____ (Bank) hereby further agree that the decision of the said Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy as to whether the Contractor has committed breach of any such terms and conditions of the contract or not and as to amount of damages or loss assessed by the said Director, Purchase & Stores as damage or loss suffered by the Government on account of such breach would be final and binding on us.

8. WE _____ (Bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said agreement or to extend time of performance by the said Contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor(s) or for any forbearance, act or commission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving us.

9. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

10. OUR GUARANTEE shall remain in force until _____ (two months beyond the contract completion date) and unless a claim under the guarantee is lodged on or before the above date, all rights of the Government under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

Dated the _____ day of _____ 20__.

For _____
(Indicate the name of bank)

ANNEXURE - 6
BANK GUARANTEE FORMAT
TOWARDS PERFORMANCE BOND
(FOR INDIGENOUS SUPPLY)

(On non-judicial stamp paper of appropriate value)

The President of India
(acting through the Director, Purchase & Stores)
Directorate of Purchase & Stores
Department of Atomic Energy,
Government of India,
Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai - 400 094.

1. WHEREAS on or about the _____ day of _____ 200__
M/s _____ a company registered under Companies Act 1913/1956 and
having its registered office _____ (hereafter referred to as 'The Contractor') entered into an
agreement bearing No. _____ dated _____ (hereinafter referred to as 'The
Contract') with the President of India acting through the Director, Purchase & Stores, Directorate
of Purchase & Stores, Department of Atomic Energy (hereinafter referred to as 'The
Government') for supply of _____ (hereinafter referred to as 'The Equipment').

2. AND WHEREAS under the terms and conditions of the contract an amount of
Rs. _____ (Rupees _____ only) representing balance _____ per cent payment
out of the total value of the contract of Rs. _____ (Rupees _____ only) is to be paid to
the Contractor on the final acceptance of the equipment and on the Contractor furnishing a bank
guarantee in a manner herein contained towards satisfactory performance of the equipment
during warranty period, viz. _____ months from the date of acceptance/commissioning of
the said equipment or _____ months from the date of despatch of the last lot of consignment
whichever is earlier (Specify as per warranty clause in the Order).

3. NOW WE, the _____ (Name & Address of the Bank) in consideration
of the promises and the payment of said sum of Rs. _____ (Rupees _____ only) by the
Government to the Contractor do hereby agree and undertake to pay to the Director, Purchase &
Stores, Directorate of Purchase and Stores, Department of Atomic Energy, on behalf of the
Government the amount due and payable under the guarantee without any demur, merely on a
demand from the Director, Purchase and Stores, Directorate of Purchase & Stores, stating that
the amount claimed is due by way of loss or damage caused to or suffered by the Government by
reason of unsatisfactory performance of the equipment during the warranty period. Any such
demand made on the bank shall be conclusive as regards the amount due and payable by the bank
under this guarantee. However, our liability under this guarantee shall be restricted to an amount
not exceeding Rs. _____ (Rupees _____ only).

4. WE, _____ (Bank) undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s), in any suit or proceedings pending before any Court or Tribunal relating thereto, our liability under this present guarantee bond being absolute and unequivocal. The payment so made by us under this bond shall be valid discharge of our liability for payment thereunder and the Contractor (s) shall have no claim against us for making such payment.

5. WE, _____ (Bank) hereby further agree that the decision of the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy as to whether the said equipment is giving satisfactory performance or not during the warranty period and as to the amount of damages suffered by the Government on account of unsatisfactory performance of the said equipment shall be final and binding on us.

6. AND WE, the _____ (bank) do hereby agree that our liability hereunder shall not be discharged by virtue of any agreement between the Government and the Contractor whether with or without our knowledge and/or consent or by reason of the Government showing any indulgence or forbearance to the Contractor whether as to payment, time for performance, or any other matter whatsoever relating to the contract which but for this provision would amount to discharge of the surety under the law.

7. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or Contractor(s).

8. OUR GUARANTEE shall remain in force until _____ (two months beyond the contract warranty period) and unless a claim under the guarantee is lodged with us on or before the above date, all right of the Government under the guarantee shall be forfeited and we shall be relieved and discharged from all our liabilities thereunder.

Dated the _____ day of _____ 20__.

For _____
(indicate the name of bank)

ANNEXURE - 7
BANK GUARANTEE FORMAT
TOWARDS PERFORMANCE BOND
(FROM FOREIGN SUPPLIER)

(TO BE EXECUTED BY THE CONTRACTOR'S BANK)

The President of India
(acting through the Director, Purchase & Stores)
Directorate of Purchase & Stores
Department of Atomic Energy
Government of India,
Vikram Sarabhai Bhavan,
Anushaktinagar (P.O.)
Mumbai - 400 094

1. WHEREAS on or about the _____ day of _____ 20__ M/s. _____ having its registered Office at _____ (hereinafter called 'The Contractor') entered into an Agreement No. _____ dated _____ for manufacture and supply of _____ (hereinafter called 'The Contract') with the President of India acting through the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy (hereinafter called 'The Purchaser')
2. AND WHEREAS under the terms and conditions of the contract final payment amounting to _____ (_____ only) under the contract is to be made against a performance bond in the form of bank guarantee furnished by the Contractor for a sum of _____ (_____ only) equivalent to 10% (Ten per cent) of the value of the contract towards satisfactory performance of the _____ (hereinafter called 'the Equipment') valid for a period of 12 months from the date of putting into operation of the said equipment or _____ months from the date of receipt of the last lot of consignment whichever is earlier (specify as per warranty clause in the purchase order)..
3. NOW WE, _____ (Name & Address of the Bank) in consideration of the promises and payment of the final/balance amount of _____ (_____ only) under the contract to the Contractor hereby agree and undertake to pay on demand and without any demur to the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy on behalf of the Contractor a sum not exceeding _____ (_____ only) against any loss or damage that may be suffered by the Purchaser by the reasons of any unsatisfactory performance of the said equipment.
4. AND WE, _____ (Bank) hereby also agree that the decision of the said Director, Purchase & Stores as to whether the said equipment is giving satisfactory performance or not and as to the amount of loss or damages suffered by the Purchaser on account of unsatisfactory performance of the said equipment shall be final and binding on us.

5. AND WE _____ (Bank) hereby further agree that our liability hereunder shall not be discharged by virtue of any agreement between the Purchaser & the Contractor whether with or without our knowledge and/or consent or by reason of the Purchaser showing any indulgence or forbearance to the Contractor whether as to payment, time for performance or any other matter whatsoever relating to the contract which but for this provision would amount to discharge of the surety under the law.

6. OUR GUARANTEE shall remain in force until _____ (two months beyond contract warranty period) and unless a claim under the guarantee is lodged with us on or before the above date, all rights of the Purchaser under the Guarantee shall be forfeited and we shall be relieved and discharged from all our liabilities hereunder.

Our liability under this guarantee shall not be affected by any change in our constitution or the constitution of the Contractor.

(Stamp & Signature)
FOR AND ON BEHALF _____ (BANK)

Dated the _____ day of _____ 20_____.

ANNEXURE - 8
FORMAT TOWARDS PERFORMANCE
BOND BANK GUARANTEE
(FROM INDIAN AGENT ON BEHALF
OF FOREIGN SUPPLIER)

(ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)

The President of India
(acting through the Director, Purchase & Stores)
Directorate of Purchase & Stores
Department of Atomic Energy.
Government of India,
Vikram Sarabhai Bhavan,
Anushaktinagar
Mumbai - 400094.

1. WHEREAS on or about the _____ day of _____ M/s. _____ (Name of the foreign supplier) having its office at _____ (hereinafter referred to as 'the Contractor') entered into an agreement bearing no _____ (hereinafter referred to as 'the Contract') with the President of India acting through the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy (hereinafter referred to as 'the Government') for the supply of _____ (hereinafter referred to as 'the Equipment'). The Contract recognizes that M/s. _____ (Name & Address of the Indian Agent) of the Contractor in India will furnish a Performance Bond on behalf of the Contractor for satisfactory functioning of the equipment during warranty period while releasing _____ % payment to the Contractor.

2. AND WHEREAS under the terms and conditions of the contract an amount of _____ (_____ only) only representing _____ % payment of the FOB value of the contract is to be paid to the Contractor after reducing the agency commission subject to the Indian Agent furnishing a Bank Guarantee on behalf of the Contractor for 10% of order value amounting to _____ in a manner herein contained towards satisfactory performance of the equipment during warranty period, viz _____ months from the date of acceptance/commissioning of the said equipment or _____ months from the date of despatch of the last lot of consignment whichever is earlier (specify as per warranty clause in the purchase order).

3. NOW WE the _____ (Name & Address of the Bank) on behalf of M/s. _____ (Indian Agent) in consideration of the promises and the payment of the said sum of _____ (_____ only) by the Government to the Contractor do hereby agree and undertake to pay to the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy on behalf of the Government the amount due and payable under the guarantee without any demur, merely on a demand from the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy stating that the amount claimed is due by way of loss or damage caused to or suffered by the Government by reason of unsatisfactory performance of the equipment during the warranty period. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However,

our liability under this guarantee shall be restricted to an amount not exceeding _____
(_____ only)

4. WE UNDERTAKE to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) or their subsidiary companies, in any suit or proceedings pending before any Court or Tribunal relating thereto, our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor (s) shall have no claim against us for making such payment.

5 WE HEREBY further agree that the decision of the Director, Purchase & Stores, Directorate of Purchase and Stores, Department of Atomic Energy as to whether the said equipment is giving satisfactory performance or not during the warranty period and as to the amount of damages suffered by the Government on account of unsatisfactory performance of the said equipment shall be final and binding on us.

6. AND WE, the _____ (bank) do hereby agree that our liability hereinunder shall not be discharged by virtue of any agreement between the Government and the Contractor or their subsidiary company whether with or without our knowledge and/or consent or by reason of the Government showing any indulgence or forbearance to the Contractor whether as to payment, time for performance, or any other matter whatsoever relating to the contract which but for this provision would amount to discharge of the surety under the law.

7. THIS guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s) or their subsidiary company.

8. OUR Guarantee shall remain in force until _____ (two months beyond the contract warranty period) and unless a claim under the guarantee is lodged with us on or before the above date, all rights of the Government under the guarantee shall be forfeited and we shall be relieved and discharged from all our liabilities hereunder.

Dated the _____ day of _____ 20____.

For _____
(indicate the name of Bank with Postal address,
Fax number & e-Mail details)

Note: Kindly incorporate the specific validity date of the bank guarantee strictly as per our warranty clause no. _____ of the Purchase Order with extra two months period for lodging the claim.

ANNEXURE - 9

BANK GUARANTEE FORMAT TOWARDS ISSUE OF FREE ISSUE MATERIAL

(ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)

The President of India,
(Acting through the Director, Purchase & Stores)
Directorate of Purchase & Stores,
Department of Atomic Energy,
Government of India,
Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai - 400 094.

WHEREAS on or about the _____ (date), the President of India, acting through the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy, (hereinafter referred to as 'the Purchaser') has entered into an agreement bearing No. _____ dated _____ for manufacture, inspection, testing and safe delivery of _____ (herein after referred to as 'the Equipment') with M/s. _____ (hereinafter referred to as 'the Contractor.')

2. AND whereas in terms of the above said agreement, the Purchaser is required to supply free issue materials costing Rs. _____ as listed out in the agreement No. _____ dated _____ for the manufacture of the equipment at the Contractor's site, and that the Purchaser has agreed to authorise the Contractor to collect the free issue materials from the Purchaser's site subject to the Contractor furnishing a Bank Guarantee for Rs. _____ in a manner herein specified towards the safeguard of free issue materials.

3. Now, WE _____ (Name & Address of the Bank) in consideration of the Purchaser having agreed to authorise issue of free issue material for collection by the Contractor, hereby undertake to indemnify the Purchaser and keep the Purchaser indemnified to the extent of the full value of the free issue material till such time the materials are lying under the custody/possession/control of the Contractor and till the equipment along with balance material, if any, are received by the Purchaser after manufacture of the equipment.

4. WE, _____ (bank) do hereby undertake to pay to the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic energy, the amount due and payable under this Guarantee without any demur, merely on a demand from the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy, on behalf of the Government stating that the amount claimed is due by way of loss, destruction, deterioration or damage caused to or suffered by the Government to the purchaser's material thereby resulting in a loss to the Government while they are lying under the Contractor's custody, possession or control or on account of the Contractor's failure to fulfill any of the contractual obligations. Any

such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. _____

5. WE, _____ (Bank) undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this Bond shall be a valid discharge of our liability for payment thereunder and the Contractor(s) shall have no claim against us for making such payments.

6. WE, _____ (Bank), also agree that the decision of the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy, Mumbai, as to whether the Contractor(s) has caused any loss/destruction or deterioration or damage to the Purchaser's material while these are lying under his custody/possession/control from whatever cause arising as also on the quantum of damage suffered by the Purchaser shall be final and binding on us.

7. WE, _____ (bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time for performance by the said Contractors from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said Contractors and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractors or for any forbearance, act or commission on the part of the said Government or any indulgence by the Government to the said Contractors or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision, have the effect of so relieving us.

8. THIS GUARANTEE will not be discharged due to change in the constitution of the Bank or the Contractor(s).

9. OUR GUARANTEE shall remain in full force until _____ (two months beyond contract completion date) and unless a claim under the guarantee is lodged with us on or before the above date, all rights of the Government under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

Dated _____ this _____ day of _____ 20____.

For _____
(indicate the name of Bank with Postal address,
Fax number & e-mail address)

ANNEXURE - 10
BANK GUARANTEE FORMAT FOR RE-EXPORT
OF REJECTED EQUIPMENT/INSTRUMENT
FOR REPAIRS / REPLACEMENT
(FROM FOREIGN SUPPLIER)

The President of India
(Acting through the Director, Purchase & Stores)
Directorate of Purchase & Stores,
Department of Atomic Energy,
Government of India,
Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai -400094.

1. WHEREAS on or about the _____ day of _____ 20____, M/s. _____ a company having incorporated their office at _____ (hereinafter referred to as 'the Contractor') entered into an agreement bearing No. _____ dt. _____ (hereinafter referred to as 'the Contract') with the President of India acting through the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy, (hereinafter referred to as 'the Government') for manufacture and supply of _____ numbers of _____ (hereinafter referred to as 'the instrument') at a cost of _____ (in figures and in words).

2. WHEREAS as per the terms and conditions of the contract, the contractor delivered to the consignee all the _____ Nos. of instruments, out of which _____ No./s. of the instrument(s) costing _____ (in words) was/were found defective and not working satisfactorily after receipt by the consignee and therefore the instrument(s) received from the Contractor was/were rejected by the Government.

3. WHEREAS as per the terms and conditions of the contract, the Contractor has agreed to either repair or replace the instrument(s), as is deemed fit, free of cost, to the Purchaser within a period of _____ months from the date of receipt of the rejected instrument(s) by the Contractor, under the warranty conditions of the contract.

4. WHEREAS as per the Government policy, the Contractor is required to furnish a Bank Guarantee for full value of the defective instrument(s) amounting to _____ (in figures and words) as a safeguard to the Government on account of any damage/loss that may be caused or suffered by the Government due to the Contractor's inability/failure to return the instrument(s) duly repaired or supply a new instrument(s) in replacement of the defective instrument(s) within the specified time and also when the instrument(s) lie under the Contractor's custody, control or possession.

5. WHEREAS the Contractor, based on the Government's requirement has agreed to furnish such a Bank Guarantee as a safeguard to the Government interest as indicated in para 4 above, valid till the return of the repaired instrument(s) or replacement thereof, to the Government.

6. WHEREAS WE _____ (Name & Address of the Bank), in consideration the Government having agreed to despatch the defective instrument(s) to the Contractor's Works on freight to pay basis and the Contractor having agreed to repair and return the defective instrument(s) duly repaired or arrange free replacement of the defective instrument(s) on freight paid/CIF _____ basis, do hereby agree and undertake to indemnify the Government and keep the Government indemnified to the extent of a sum not exceeding _____ (in words) against any loss or damage that may be caused or suffered by the Government by reason of the Contractor either not returning the repaired instrument(s) or not arranging free replacement within the specified time and also when the instrument(s) lie under the custody, control or possession of the Contractor.

7. WE, _____ (the Bank), do hereby undertake to pay to the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy, Government of India, the amount due and payable under this guarantee, without any demur, merely on a demand from the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy on behalf of the Government, stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of the Contractor either not returning the instrument(s) duly repaired or not arranging free replacement to the Government and also when the instrument(s) lie under the custody, control or possession of Contractor. Any such demand on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding _____ (in words).

8. WE undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor/s or by Agents in any suit or proceeding pending before any court or tribunal relating thereto our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor/s and the Agents shall have no claim against us for making such payment.

9. AND WE, _____ (the Bank) hereby further agree that the decision of the said Director, Purchase & Stores as to whether the Contractor has committed breach of any such terms and conditions of the contract or not and as to the amount of damage or loss assessed by the said Director, Purchase & Stores on account of such breach would be final and binding on us.

10. WE, _____ (the Bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said agreement or to extend time for performance by the said Contractor from time to time or to postpone for any time or from time to time, any of the powers exercisable by the Government against the said Contractor/s and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor/s or for any forbearance, act or commission on the part of the Government or any indulgence by the Government to the said Contractor/s or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

11. THIS GUARANTEE will not be discharged due to the change in the constitution of the bank, the Contractor/s or the Agents.

12. OUR GUARANTEE shall remain in force until _____ (two months beyond the contract date for return of repaired instrument(s)/replacement) and unless a claim under the guarantee is lodged on or before the above date, all rights of the Government under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

Dated the _____ day of _____ 20_____.

For _____
(indicate the name of Bank with Postal address ,
Fax number & E-mail address)

CHAPTER - 29

DELIVERY & DELIVERY EXTENSION

29.1 Date of Delivery - Essence of Contract

29.1.1 The date of delivery of the stores stipulated in the Contract shall be deemed to be the essence of the contract. The period for delivery of the ordered goods and completion of any allied service(s) thereof (like installation and commissioning of the equipment, operator's training etc.) are to be properly specified in the contract with definite dates. Hence it is necessary that a definite date for supply of stores must be stipulated in the Contract. Expression such as 'immediate', 'ex-stock', 'as early as possible' should be avoided.

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

29.1.3 The delivery must be completed by the stipulated delivery date. The Contract comes to an end by way of a breach on the failure of the Contractor to deliver the goods by agreed date and the Purchaser may refuse to take delivery of the goods if offered after the agreed delivery date.

29.2 Definition of Delivery Date

Terms of delivery inter alia determine the delivery point of the ordered goods from where the Purchaser is to receive/collect the goods. Terms of delivery have direct bearing on the quoted price. Delivery date in respect of Contract placed by the Directorate of Purchase and Stores shall be deemed to be as follows depending upon delivery terms specified in the Contract:

Terms of Delivery	Date of Delivery
a) Ex-works	The date the supplier delivers the goods to the Purchaser at its (supplier's) factory/premises.
b) Local delivery (Safe delivery at Purchaser's godown)	The date on which the delivery is actually effected to the consignee.

c) Where goods are to be inspected & collected by I/O.	The date on which the goods are tendered for inspection provided they are found acceptable.
d) FOR station of despatch.	The date on which the goods are placed on rail i.e. RR date after inspection by the Purchaser's representative wherever necessary.
e) By Post Parcel	The date of Postal Receipt.
f) FOR Destination	The date on which the goods reach the destination unless otherwise stated.
g) FOB/FAS Contract	The date on which the goods are put on board the ship/aircraft (i.e. date of Bill of Lading/Airway Bill).
h) CIF Contract	The date on which the stores actually arrive at the Indian Port unless otherwise stated.
i) Consignment delivered to Consolidation Agent.	Date on which the consignment is handed over to the Consolidation Agent at gateway airport.
j) Consignment collected by Consolidation Agent.	Date on which the consignment collected by the Consolidation Agent.
k) If the Contract contains provision not only for supply of Material, but also some other allied services like Installation & Commissioning, training etc.	The delivery period indicated in the contract is not only for delivery of the material at Buyer's premises, but also completion of the entire contractual obligations including Installation & Commissioning, imparting training and any other allied services, within the indicated delivery period.

29.3 Classification of instalment delivery contract

29.3.1 A Contract in the sale of goods to be delivered by instalment may be -

- 1) An entire contract
- 2) a severable contract

Illustration:

29.3.2 Entire Contract

Delivery to commence after 45 days within 3 months at the rate of 20,000 units per month i.e. 31.3.08 or earlier.

29.3.3 Severable Contract

29.3.3.1 Delivery date - 7410 units by 15.2.08. 8510 units by 31.3.08.

29.3.3.2 According to legal advice in the case of 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 the reservation of right to liquidated damages, the Purchaser will not be legally entitled to claim the liquidated damages. Therefore, in case of severable contract the Purchaser should watch delivery position of each instalment as per the specified date for that instalment and wherever necessary, extend the corresponding date for the instalment in question or cancel that instalment in which there is delay in supply.

29.4 Grace Period

29.4.1 Wherever supplies are made within the grace period there is no necessity for any extension in delivery period and the paying authority 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. Any additional expenditure on account of increase/fresh imposition of taxes & duties during the grace period cannot be agreed to unless an amendment to the same is issued with the approval of competent authority. Any taxes and duties as admissible within the committed delivery period at actual as per contract terms (as per delivery date indicated in the Purchase Order) is applicable and only reimbursable. This clause is applicable in all cases except where it is explicitly denied in case of contracts like delivery preference etc.

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

29.4.3 If the stores are sent out for inspection within the original delivery period stipulated in the acceptance of the tender (Purchase Order) and the firm despatches the stores within the grace period the Purchaser is bound to accept the stores even though the inspection continues after the delivery date and the inspection note was issued with a franking clause.

29.4.4 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.

29.4.5 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.

NOTE: This grace period is not to be the part of the contract concluded. This provision is kept for making payment by Accounts without seeking amendment to the contract towards delivery period extension.

29.5 Option available to the Purchaser in case of non-delivery of stores within the Contract Delivery Period

When supply do not materialise by the stipulated contract delivery date the Purchaser has the following options depending upon the condition and circumstances of the case:

- 1) Extend the delivery date with imposing of liquidated damages and other denial clause.
- 2) To re-fix the delivery date
- 3) Forfeit the Security Deposit.
- 4) To cancel the Contract and to repurchase the unsupplied quantity.
- 5) Impose other available sanctions/penalties.

29.6 Points to be considered for extending the delivery date or to cancel the Contract

29.6.1 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 Officer concerned in the Purchase Unit has to balance the time factor required for making repurchase and the needs of the user i.e. whether the supply can be arranged earlier than the period of extension sought for, at cheaper rate from alternative source and in the later case whether the user can reasonably wait to take advantage of lower trend in price.

29.6.2 Extension should be granted only where the competent Officer is convinced that supplies would come forward during the extended period. Where the Officer in the Purchase Unit/User 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 contract conditions.

29.7 Re-fixation of Delivery Date

29.7.1 Re-fixed delivery period means the fresh delivery period which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible. Normally in the following category of cases the delivery period should be re-fixed:-

- 1) In cases where the manufacture of stores is dependent on the approval of advance

sample by the user and delay occurred in approving the sample though submitted in time by the supplier.

- 2) Where extension in delivery period is granted on account of omission on the part of the Purchaser affecting his rights to enforce delivery date within the stipulated time.
- 3) Cases where the entire production is controlled by the Government.
- 4) The duties and taxes including excise duty and VAT levied by the Govt. on domestic goods vary from product to product. As a general policy, the statutory variations in such duties & taxes are to be allowed during the period from the date of tender to the date of acceptance of the tender (i.e. placement of Contract) and during the original/re-fixed delivery period of the Contract so that both the Supplier and the Purchaser are equally compensated for rise or fall in the prices of the goods on account of such statutory variations.

29.7.2 The delivery cannot be re-fixed 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.

29.8 Extension of Delivery Period

The extension of delivery period amounts to changing the terms of the original Contract and as such an extension can be only with the consent of the parties i.e. the Purchaser and the Contractor. 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.

29.9 Consideration of request for Extension

29.9.1 In case the Contractor approaches the Purchase Unit intimating their inability to adhere to the contract delivery date and seeking extension the Officer concerned can initiate further action for granting extension to the delivery date provided the reasons mentioned by the Contractor are convincing.

29.9.2 An extension is binding on the supplier if it is granted on the same term as asked for by the firm. While granting extension of time on application from the Contractor the letter and spirit of the application should be kept in view in fixing the extended time for delivery. It is to be noted 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.

29.9.3 For example: A Contractor asks on 15th January for the extension of delivery period upto 31st May. There has been delay in deciding the firm's application and granting extension

till 1st April. In this case the delivery date shall be extended till 15th August and not only upto 31st May requested by the firm taking into account the 4 ½ month extension sought by the firm on January 15.

29.10 Extension of Delivery Date should be with R/R and Denial Clauses

29.10.1 Wherever it has been decided by the competent authority to grant extension to the delivery period such extension should be given by reserving the rights of the Purchaser to levy liquidated damages for delay and with the denial of increase in price, taxes, duties, etc. taking place during the extended period. These are called R/R and denial clauses.

29.10.2 Standard forms of letters as per Annexure - 1 & 2 enclosed shall be used while granting extension to delivery date.

29.10.3 Copies of the letters granting extension in the contract delivery period should be invariably endorsed to the Indenting Officer, inspecting authority, the consignee and the paying authority. 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 inspecting authority should be informed by telex/fax of the extension of the delivery date. Such advance intimation should be given to the inspecting authority even in cases where the delivery date has not expired so that the inspector is forewarned.

29.11 Performance Notice Notice-cum-Extension letter

29.11.1 If there is no response or no satisfactory response from the firm regarding the progress/status of supply in respect of the Contract, depending upon the circumstances of the case, the Officer-in-charge in the Purchase Unit should take a decision in consultation with the user whether to cancel the Contract and risk purchase the unsupplied quantity or to give a further extension of delivery period.

29.11.2 In case it is considered expedient to give further extension to delivery period in a bonafide effort to procure the stores, the Officer-in-charge in the Purchase Unit may do so by issuing notice-cum-extension (performance notice) in the form as per Annexure - 3.

29.11.3 If there is no response to the notice-cum-extension letter within 15 days further notice may be issued to the firm in the manner as provided for in the Annexure-4.

29.11.4 If the Contractor does not acknowledge/communicate acceptance of the extension-cum-performance notices the Officer-in-charge would be in a position to cancel the Contract after the 15 days notice period in which case the date of breach will still remain the originally agreed delivery date.

29.11.5 Prior consultation with the indenter is essential before granting extension / cancellation.

29.12 Extension of Delivery date in cases where downward trend in price is indicated

29.12.1 When there is a downward trend in prices, advantage thereof should be taken while considering the request of the Contractor for extension of the delivery period. In such circumstances the following action should be taken:-

29.12.2 Where the lower trend in prices is such that it can be legally recovered from the pre-estimated damages against the higher priced acceptance of tender (Purchase Order) then the delivery period can be extended with R/R and denial clauses.

29.12.3 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 authority 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, capacity of the lower quoting firm, etc. Such counter offer should be sent in the standard format given in Annexure 5

29.12.4 In case the firm does not accept the lower price, the Contract may be cancelled and action may be taken to repurchase the stores as per the conditions governing the Contract.

29.12.5 In case the firm agrees to the lower price counter offered the delivery period can be extended without liquidated damages and R/R and denial clauses.

29.13 Intimation of lower trend to Inspecting Authority

29.13.1 When the lower trend in prices comes to the notice of the Officers in the Purchase Unit they should advise immediately the inspecting authority/indenter 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 rate after cancellation of the original Contract is under consideration.

29.13.2 Such an intimation should be given to the inspecting authority/indenter as well as to the consignee even in cases where the delivery date has not expired so that the inspecting authority/consignee is forewarned.

29.14 Guidelines for determining the lower trend in Prices -

- 1) The quantity in the lower price contract should be comparable with the existing Contract.
- 2) The delivery period in both the cases should be comparable.
- 3) 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 prices in unaccepted tenders were available.

29.15 Extension of Delivery date in instalment delivery contracts

29.15.1 In case of Contracts providing for delivery in instalment (severable contracts), each instalment constitute a separate contract and the Officer-in-charge should examine granting extension in delivery period, as per standard format, wherever there is a delay in supply against each individual instalment.

29.15.2 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.

29.15.3 Inspection of stores after expiry of delivery period of a particular given instalment.

29.15.4 In 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 the Officer-in-charge in the Purchase Unit in consultation with the user to make up the mind to take advantage of the default and cancel the instalment quantity as per provisions of the contract conditions. If it is decided not to do so there is no legal impediments to the acceptance of the delivery after the default of the first instalment.

29.15.5 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.

29.15.6 It will be open to the Purchaser to reappropriate the stores after the expiry of delivery period of a given instalment towards the supply due for the next instalment.

29.15.7 Illustration

29.15.7.1 A Contract provides instalment delivery of 10,000 nos. in March 2007, 10,000 nos. in April 2007, etc. and the Contractor default to supply anything in the month of March 2007 and tenders some quantity for inspection in the month of April 2007.

29.15.7.2 The Purchaser has the right to cancel the Contract in respect of instalment due in March 2007 in respect of which the default has already taken place and to reappropriate the stores offered towards the instalment due in April 2007.

29.15.7.3 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 the appropriation of the stores is in respect of the April 2007 instalment only.

29.15.7.4 The inspecting authority should also inform the firm in writing that the stores tendered in the month of April 2007 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 2007.

29.15.7.5 The inspecting authority may accept the stores after the expiry of the delivery period of the particular or given instalment but should frank the inspection note with a stamp:

“without prejudice to the right of the Purchaser under the Contract and under the law”.

29.15.7.6 It may be noted that the grace period (wherever there is a provision for the same in the Contract) will not be available for the purpose of tendering stores for inspection.

29.16 In cases where there is delay by the Contractor in submitting Advance Pilot Sample

In cases where the Contract provides for submission of advance sample for approval by the Purchaser and in case the Contractor fails to supply the sample within the specified date there is a breach of Contract. In such cases if the Contractor request for extension of the time limit for submission of the advance sample and the reason for seeking extension is convincing and it is decided by the competent authority to grant extension in time the delivery period can be extended subject to the denial clauses. But before doing so the Officer concerned in the Purchase Unit should address a letter to the firm as per format given in Annexure - 6 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.

29.17 In cases where advance sample is submitted in time but rejected

In cases where advance samples submitted by the firm within the specified time limit are rejected and the firm has come forward with a request for extension of time limit for submission of fresh sample and it is proposed to consider the request the Officer-in-charge should address a letter to the firm in the proforma given in the Annexure - 7 and based on the firm's response and circumstances of the case necessary extension can be granted with or without R/R and denial clauses with the approval of competent authority.

29.18 Follow up action after issue of Extension Letter

29.18.1 If the Contractor does not agree to the extension of the delivery date subject to the condition stipulated in the extension letter i.e. R/R and denial clauses the alternative course left to the Purchaser would be to cancel the Contract and repurchase the outstanding quantity provided that the Purchaser is legally entitled to cancel the Contract.

29.18.2 In case of difficult item or item for which sufficient capacity does not exist the competent authority will have to take a conscious and pragmatic view whether on the refusal of the firm to accept the stipulated condition, the Contract may or may not be cancelled.

29.18.3 In case it is decided to allow a firm to execute the Contract by granting extension of delivery date without insisting on the condition stipulated in the extension letter the specific approval of the competent authority should be obtained.

29.18.4 In respect of cases where suo-moto extension has been given in a bonafide effort to procure the stores the Officer-in-charge in the Purchase Unit 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.

29.19 Extension of delivery period for replacement consequent to rejection of stores

29.19.1 Supply in replacement of stores rejected by the consignee need to be inspected wherever considered necessary before despatch. Such replacement supply if tendered after expiry of the delivery period should not be inspected by the inspecting authority unless the delivery period has been got extended by the Contractor.

29.19.2 The Purchaser, the inspecting authority 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 till the issue of the acceptance certificate by the consignee. Any request for effecting replacement of the stores during this period will tend to keep the Contract alive and replacement supply made after expiry of the delivery date would involve extension of delivery period and inspection also.

29.19.3 Extension of delivery period is not necessary for replacement in pursuance of the warranty/guarantee clause.

29.20 Effect of correspondence with the Supplier after breach of Contract

29.20.1 The Purchaser or its authorized representative is not to enter into correspondence after expiry of the delivery date stipulated in the Contract because such a correspondence will make the Contract alive. This situation will not allow the Purchaser to cancel the Contract straightaway without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the Contract, the Purchaser may obtain information regarding part supplies etc. from the supplier, simultaneously making it clear to the supplier that calling such information is not intended to keep the Contract alive and it does not amount to waiving 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 letters should be addressed by the consignee as given Annexure - 8 and by the Purchase Unit as given in Annexure - 9.

29.20.2 The inspecting authority should also not enter into correspondence with the firm after expiry of the delivery date stipulated in the Contract. When oral enquiries are made, Ministry of Law has held that there is no positive contact which can be established by documentary evidence. It would be reasonable view to take that the conduct does not amount to waiver of the right to treat time/extended time as the essence of the contract. Hence the Purchase Officer may ask the junior officers to follow up with the firm orally and ensure that the supplying firm takes necessary action. While following up the matter with the firm, the junior officer should make it absolutely clear to them that he is making enquiry without prejudice to the rights of the Purchaser and that he will communicate the position to the higher authority.

29.21 Inspection of stores tendered at the fag end or last date of delivery date

29.21.1 As far as possible, the inspection should be commenced and finished within the validity period of the Contract and the shipping release is issued.

29.21.2 In cases where the Contractor offers the stores for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the inspecting authority to commence the inspection before the expiry date of the delivery period.

29.21.3 In cases where it is not possible to commence/conclude the inspection before expiry of the contract delivery date the inspecting authority should immediately on receipt of 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 last stage and that it is not possible to commence/conclude the inspection before expiry of the delivery date.

29.21.4 The Contractor should also be informed that the stores offered for inspection will however be inspected till the completion of inspection which can be after the expiry of the contractual delivery date and such an inspection continuing after the expiry of the delivery date is neither intended nor is to be construed as keeping the Contract alive.

29.21.5 The contracting authority should invariably issue such notices to avoid the Contract being kept alive before the inspection is concluded after the expiry of the contractual delivery date. In such cases where the inspection has commenced before the expiry of the delivery period a notice should be sent to the supplier as given in Annexure 3&4 and the inspection report whether accepting or rejecting the stores should be duly franked as below as a precaution against keeping the Contract alive:-

- 1) The standard franking clause to be adopted in the case of acceptance of stores -
'The fact that the stores have been inspected after the delivery period and passed by the inspecting authority 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.'
- 2) The standard franking clause in the case of rejection of stores-
'The fact that the stores have been inspected after the delivery period and rejected by the inspecting authority 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'.

29.22 Replacement of Supply

The Purchaser, the inspecting authority or the consignee should not enter into any such correspondence as would have the effect of keeping alive the Contract with the supplier from the date of expiry of the agreed delivery period till the issue of consignee acceptance voucher. 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 period would

involve extension of delivery period and also inspection.

29.23 Despatch of stores after expiry of the delivery period

29.23.1 In terms of the contract conditions, on expiry of the contract delivery period, the supplier shall not despatch the stores till such time an extension in delivery period 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 have a right to cancel the Contract. It shall be no defence that the consignee has taken delivery of the stores despatched by the supplier without getting an extension letter and therefore the Contract has been kept alive.

29.23.2 The Purchaser can reject the supply made by the firm in case it is not required by the user and tell them accordingly viz. that the supply stands rejected for the reason that they have been made after the expiry of the delivery date and simultaneously return the despatch documents RR/LR to the firm.

29.23.3 The Purchaser may accept the stores in case it is still required by the user and extend the delivery date subject to applicability of denial clauses and right to claim damages for delay in supply.

29.24 Cancellation of Contract

29.24.1 The Purchaser may without prejudice to any other remedy for breach of Contract, by written notice of default to the supplier, terminate the Contract in whole or in part:-

1. If the supplier fails to deliver any or all of the stores within the time period specified in the Contract or any extension thereof granted by the Purchaser.

OR

2. If the supplier fails to perform any other obligation under the Contract.

29.24.2 In the event of the Purchaser terminating the Contract, in whole or in part

- 1) The performance security will be forfeited
- 2) The Purchaser may procure, upon such terms and in such manner as deemed appropriate, stores similar to those undelivered and the supplier shall be liable to the administrative action in terms of the Contract.
- 3) However the supplier shall continue performance of the Contract to the extent not terminated.

29.24.3 Before cancelling the Contract and taking action, it may be desirable to obtain legal advice from the Legal Wing of the Department or from the Ministry of Law.

29.25 Termination of Contract for Insolvency

If the supplier becomes bankrupt or otherwise insolvent, the Purchaser may, at any time, terminate the Contract by giving written notice to the supplier, without compensation to the supplier provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

29.26 Termination of Contract for Convenience

After placement of Contract, there may be some unforeseen situation compelling the Purchaser to cancel the Contract. In such a case, the Purchaser has to send a suitable notice to the supplier for cancellation of the Contract, in whole or in part, for its (Purchaser's) convenience, inter alia, indicating the date with effect from which the termination is to become effective depending on the merits of the case. The Purchase Organization may have to suitably compensate the supplier on mutually agreed terms for terminating the Contract. Suitable provisions to this effect are to be incorporated in the tender documents as well as in the resultant Contract.

ANNEXURE - 1

BY REGISTERED A/D

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

DATE:

To

Sub: Purchase Order No. _____ dated _____
for supply of _____
Ref: Your Letter No. _____ dated _____

Dear Sirs,

You have failed to deliver the stores _____ (the entire quantity of stores) within the contract delivery period _____ (delivery period as last extended upto). In your letter under reply you have asked for extension (further extension) of time for delivery. In view of the circumstances stated in your said letter the time for delivery is extended from _____ to _____.

Please note that price preference loss where stipulated in the schedule to the Purchase Order, and an amount equal to the pre-estimated/liquidated damages for delay in the supply of the stores after the expiry of the contract delivery period shall be recovered from you as specified in clause * _____ of the schedule to the Purchase Order/Clause _____ of the DPS General Conditions of Contract for the extended period notwithstanding the grant of this extension. You may now tender the stores (balance of the stores) for inspection in terms of this letter.

The above extension of delivery date will also be subject to the following further conditions:-

- a) That no increase in price on account of any statutory increase in or fresh imposition of customs duty, excise duty, sales tax or on account of any other tax or

duty leviable in respect of the stores specified in the said Purchase Order which takes place after _____ & _____ shall be admissible on such of the said stores as are delivered after the said date and

- b) That notwithstanding any stipulation in the contract for increases in price on any other ground no such increase which takes place after _____ & _____ shall be admissible in such of the said stores as are delivered after the said date.
- c) But, nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, sales tax or on account of any other tax or duty or on any other ground, including market rate, stipulated in the price variation clause which takes place after the expiry of the above mentioned date namely _____ & _____ .

You are requested to note that notwithstanding the extension in delivery period (if accepted by you) the time hereby extended for supply of stores shall be deemed to be of essence of contract and failure on your part to supply the stores by the extended time shall entitle the Purchaser to cancel the contract at your risk and cost without further notice or opportunity.

Please note that for the stores delivered hereafter you will be entitled to a provisional payment at the rate of _____ which was the rate quoted by the lowest acceptable tenderer namely M/s _____.

Please intimate your unconditional acceptance to reach this office within 21 days of the issue of this letter failing which contract will be cancelled at your risk and expense without any further reference to you.

All other terms and conditions of the contract remain unaltered.

This is issued without prejudice to our rights under the terms and conditions of the contract.

Yours faithfully,

(APO/PO/DD/JD/RD)
For & on behalf of the President of India
(The Purchaser)

- @ For contracts containing the price preference for early delivery clause.
- & Insert here the original delivery date or the last unconditionally extended delivery date.
- * For contracts wherein provisions is made for recovery of pre-estimated damages.

Give here the date of original D/P in all extensions.

Copy to:-

Indenting Officer - He is requested to advise within one month of the due date for completion of supplies (original or re-fixed), if he has suffered any monetary loss/actual or potential) and/or any inconvenience moderate or serious). In case inconvenience has been suffered by him he should quantify inconvenience in terms of money, he should specifically state the nature/extent etc. of the inconvenience and intimate full facts regarding the same together with his views whether it is of a serious / grave nature as to merit levy of liquidated damages and if so to what extent. In case he has suffered monetary loss (actual or potential), complete details of the same should be furnished. He is requested to ensure reply (by a target date of one month beyond the extended delivery date to be given). If no reply is received by the said date, DPS will performe assume that he has suffered no monetary loss or inconvenience and the case will be regularized on the basis of information available on the files without any further reference to him.

2. Consignee/Stores Unit
3. Inspection Authority (if any)
4. Pay & Accounts Officer.

(APO/PO/DD/JD/RD)

ANNEXURE - 2

BY REGISTERED A/D

(To be used for contracts providing delivery on FOB/FAS terms)

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

To

Sub: Purchase Order No. _____ dated _____ for supply of

Ref: Your letter No. _____ dated _____

Dear Sirs,

You have failed to deliver the stores (the entire quantity of stores) within the contract delivery period (delivery period as last extended upto _____). In your letter under reply you have asked for extension (further extension) of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from _____ to _____. Please note that price preference loss where stipulated for in the schedule to Purchase Order and an amount equal to the liquidated damages for delay in the supply of the stores after the expiry of the contract delivery period shall be recovered from you as mentioned in clause _____ of the DPS General Conditions of Contract, of the extended period notwithstanding the grant of this extension. You may now tender the stores/balance of the stores for inspection in terms of this letter. (Stores, if any already tendered by you for inspection but not inspected will now be inspected accordingly).

The above extension of delivery date will also be subject to the further condition that notwithstanding any stipulation in the contract for increase in price on any ground no such increase which takes place after _____ shall be admissible on such of the said stores as are delivered after the said date. But, nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on any ground as stipulated in the price variation clause which takes place

after the expiry of the above mentioned date namely _____.

Please intimate your unconditional acceptance within ten days of receipt of the Amendment Letter failing which the Contract will be cancelled at your risk and expense without any further reference.

All other terms and conditions of the contract remain unaltered.

This is issued without prejudice to our rights under the terms and conditions of the contract.

Yours faithfully,

(APO/PO/DD/JD/RD)

For & on behalf of the President of India
(The Purchaser)

** Give here the date of expiry of the original delivery period in all extensions.*

Copy to:-

1. Indenting Officer
2. Consignee/Stores Unit
3. Inspecting Authority (if any)
4. Pay & Accounts Officer

(.....)
APO/PO/DD/JD/RD

ANNEXURE - 3

BY REGISTERED A/D

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

To

Sub: Purchase Order No.....dated.....for supply of.....

Ref: Your Offer/letter No..... dated.....

Dear Sirs,

Your attention is invited to the acceptance of tender cited above, according to which supplies ought to have been completed by you on or before..... . In spite of the fact that the time of delivery of the stores stipulated in the purchase order is deemed to be of the essence of the Contract, it appears that thesupplies* are still outstanding even though the date of delivery has expired.

Although not bound to do so, I hereby extend the delivery date to.....and you are requested to note that in the event of your failure to deliver the stores within the delivery period as hereby extended, the contract shall be cancelled and the outstanding quantity of the stores shall be purchased at your risk and cost.

Please note that price preference loss where stipulated for in the schedule to the acceptance of tender and an amount equal to the liquidated damages for delay in supply of the stores after the expiry of the Contract delivery period shall be recovered from you as mentioned in clause.....of DPS General Conditions of Contract for the extended period notwithstanding the grant of this extension of delivery period. You may tender the stores/ (balance of the stores for inspection in terms of this letter).

* Give details of quantity of item.

The above extension of delivery date will also be subject to the following further conditions:-

- (a) that no increase in price on account of any statutory increase in or fresh imposition of customs duty, excise duty, sales tax or on account of any other tax or duty leviable in

respect of the stores specified in the said P/O which takes place after*..... shall be admissible on such of the said stores as are delivered after the said date, and

- (b) that notwithstanding any stipulation in the contract for increase in price on any other ground no such increase which takes place after.....*..... shall be admissible on such of the said stores as are delivered after the said date.
- (c) But, nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of the reduction in or remission of customs duty, excise duty, sales tax or on account of any other ground as stipulated in the price variation clause which takes place after the expiry of the above mentioned date namely.....

You are requested to note that notwithstanding the extension in delivery period, (if accepted by you) the time hereby extended for supply of stores shall be deemed to be of essence of Contract and failure on your part to supply the stores by the extended time shall entitle the Purchaser to cancel the contract at your risk and cost without further notice or opportunity.

Please intimate your unconditional acceptance to reach this office within 21 days of issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference.

All other terms and conditions of the contract remain unaltered.

This is issued without prejudice to our rights under the terms and conditions of the Contract.

Yours faithfully,

(APO/PO/DD/JD/RD)
For & on behalf of the President of India
(The Purchaser)

* Give here the date of the original delivery period.

Copy to:-

1. Indenting Officer - Within a period of one month please inform whether any loss actual/potential, damage or inconvenience has been suffered on account of the delay in supplies. In case no reply is received within this period, it will be presumed that no loss, damage or inconvenience has been suffered and P/O will be finalized without any further reference to him.
2. Consignee/Stores Unit
3. Inspecting Authority (if any)
4. Pay & Accounts Officer

ANNEXURE - 4

BY REGISTERED A/D

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

To

Sub: Purchase Order No.....dated.....
for supply of.....

Ref: Your Offer/letter No..... dated.....

Dear Sirs,

This is with reference to your letter No.....dated..... requesting the grant of extension of delivery period under the above mentioned contract and this office amendment letter No.....dated.....

You have neither conveyed your acceptance of the extension letter as desired in paraof the letter/nor you have cared to effect any supplies without prejudice to the rights of the Purchaser under the contract and under the law, you are requested to state by..... (here give date by adding 15 days to the date of issue of this notice) whether the aforesaid amendment letter regarding extension of delivery period is acceptable to you. In the event of your failure to acknowledge acceptance of the extension letter by the above mentioned date, the contract will be cancelled and outstanding quantity of the stores shall be purchased at your risk and cost under the terms of the contract.

This is issued without prejudice to our rights under the terms and conditions of the contract.

Yours faithfully,

(APO/PO/DD/JD/RD)
For & on behalf of the President of India
(The Purchaser)

Copy to: - (Not to appear on firm's copy)

1. Indenting Officer He should inform immediately whether any supplies have been made by the supplier after (here indicate the last agreed delivery period) the last agreed delivery period after the issue of the extension letter mentioned in this notice. This reply should be sent so as to reach the undersigned before..... (here give the date which has been indicated in the notice for the supplier to send his acceptance).
2. Consignee/Stores Unit
3. Pay & Accounts Officer

(.....)
APO/PO/DD/JD/RD

ANNEXURE - 5

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

To

Sub: Purchase Order No.....dated.....
for supply of.....
Ref: Your Offer/letter No.....dated.....

Dear Sirs,

This is with reference to your letter No.....dated..... requesting the grant of extension of delivery period under the above mentioned contract.

The stipulated delivery period has expired on..... and the goods have still not been supplied by you. You have consequently committed a breach of contract.

With a view to considering your request for an extension of the delivery period, and without prejudice to the rights of the Purchaser under the contract and under the law, for the contracted stores, please note that for the stores contracted, hereafter you will be entitled to a provisional payment at the rate of which is the present market price.

Please intimate your unconditional acceptance to reach this office within 21 days of the issue of this letter failing which Contract will be cancelled at your risk and expense without any further reference to you.

All other terms & conditions of the Contract remain unaltered.

This is issued without prejudice to our rights under the terms & conditions of the Contract.

)
Yours faithfully,

(APO/PO/DD/JD/RD)
For & on behalf of the President of India
(The Purchaser)

ANNEXURE - 6

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/
To

Date:

Sub: Purchase Order No. _____ dated _____
for supply of _____

Ref: Your Offer/letter No _____ dated _____

Dear Sirs,

This is with reference to your letter No _____ dated _____ requesting for grant of permission for additional time to submit advance sample. With a view to consider your request and without prejudice to the rights of the Purchaser under the Contract, you are requested to intimate unconditional acceptance within 10 days of receipt of this letter to the following conditions:- that any extension in delivery date will also be subject to the further condition that notwithstanding any stipulation in the contract for increase in price on any ground no such increase which takes place after the contract D/P _____ shall be admissible on such of the said stores as are delivered after the said date, but nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on any ground as stipulated in the price variation clause which takes place after the expiry of the above mentioned date.

Please note that, if your unconditional acceptance is not communicated within 10 days of the receipt of this letter the contract shall be cancelled at your risk and expense without any further reference to you.

All other terms and conditions of the contract remain unaltered.

This is issued without prejudice to our rights under the terms and conditions of the contract.

Yours faithfully,

(APO/PO/DD/JD/RD)
For & on behalf of the President of India
(The Purchaser)

Copy to: 1. Indenting Officer 2. Stores Unit/Consignee 3. Pay & Accounts Officer

ANNEXURE - 7

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/
To

Date:

Sub: Purchase Order No. _____ dated _____
for supply of _____

Ref: Your Offer/letter No. _____ dated _____

Dear Sirs,

This is with reference to your letter No. _____ dated _____ requesting for grant of permission to submit fresh advance sample. With a view to consider your request and without prejudice to the rights of the Purchaser under the Contract, you are requested to intimate unconditional acceptance within 10 days of receipt of this letter to the following conditions:-

that any extension in delivery date will also be subject to the further condition that notwithstanding any stipulation in the contract for increase in price on any ground no such increase which takes place after the contract D/P.....shall be admissible on such of the said stores as are delivered after the said date, but nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on any ground as stipulated in the price variation clause which takes place after the expiry of the above mentioned date.

Please note that, if your unconditional acceptance is not communicated within 10 days of the receipt of this letter the contract shall be cancelled at your risk and expense without any further reference to you.

All other terms and conditions of the contract remain unaltered.

This is issued without prejudice to our rights under the terms and conditions of the contract.

Yours faithfully,

(APO/PO/DD/JD/RD)
For & on behalf of the President of India
(The Purchaser)

Copy to: 1. Indenting Officer 2. Stores Unit/Consignee 3. Pay & Accounts Officer

ANNEXURE - 8

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

To

Sub: Purchase Order No _____ dated _____
for supply of _____

Dear Sirs,

The date of delivery in relation to the subject purchase order expired on..... but as supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies, you are requested to send the particulars regarding the quantity so far supplied/inspected but not yet despatched/tendered for inspection before the expiry of the date of delivery. The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach.

This is without prejudice to the rights and remedies available to the Purchaser in terms of the contract and law applicable to this behalf.

Yours faithfully,

(_____)
Consignee

ANNEXURE - 9

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

To

Sub: Purchase Order No _____ dated _____
for supply of _____

Dear Sirs,

The date of delivery in relation to the subject Purchase Order expired on _____. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies, you are requested to send the particulars regarding the quantity so far supplied/inspected but not yet despatched/tendered for inspection before the expiry of the date of delivery. The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach.

This is without prejudice to the rights and remedies available to the Purchaser in terms of the contract and law applicable to this behalf.

Yours faithfully,

(APO/PO/DD/JD/RD)
For & on behalf of the President of India
(The Purchaser)

CHAPTER - 30

PAYMENT

30.1 Timely Payment

30.1.1 Timely payment is the vital function and responsibility of the Purchase accounts Unit. The reputation of the organization in the market, enthusiastic participation of the tenderers in the tender called for by the Unit and receipt of competitive bids mainly depends on the timely payment of the suppliers' bills. The Purchaser should ensure procurement of quality goods in time. As soon as the material is despatched/received, the Accounts should ensure payment to the supplier as per the terms of the purchase order, especially in respect of advance payment and payment against documents/receipt of material.

30.1.2 The timely payment assumes further importance as the expenditure on annual budget provisions has to meet the quarterly target fixed by the Ministry of Finance as per Fiscal Responsibility & Budget Management Act. Since major portion of DAE Capital Budget provisions are for procurement of material, payment by DPS plays a significant role in meeting the quarterly target of the budgeted expenditure.

30.2 Responsibility of the Authority Paying the Bill

30.2.1 The suppliers should take care to see that all the documents as called for towards payment are submitted to the Accounts Officer concerned. Once the firm's bill with all relevant documents as per the purchase order terms is received, the payment should be released in shortest possible time and at any cost not exceeding the time limit specified in Director's circular. In case the firm could not submit some of the internal documents to be received from Purchase/Stores/Indentor/any other agency within the Department which is a part of the documents to be produced along with the bill, it is imperative that Accounts should initiate immediate action and collect the documents from the internal sources for early settlement of the bill.

30.2.2 The bill passing authority should be careful, ensure proper check and satisfy himself/herself that all relevant documents in original as per terms and conditions of the purchase order are received and other contract conditions relevant to that particular payment fulfilled before passing the bill.

30.2.3 Payment should be effected by the paying authority within the stipulated time indicated in the circular issued by Director, P&S relating to time schedule for payment. Consolidated observations, if any, should be forwarded to the supplier within 5 working days by the paying authority for clarification if any.

30.3 Avoidance of Duplicate Payment

In order to avoid duplicate payment and also to ensure other recoveries due from the firm, the payment should be made only against accounts copy of the purchase order, original invoice (in case of excisable items original buyer copy), shipping release duly authenticated by the authorized Officer in the Purchase, Stores delivery challan duly acknowledged by the authorized Officer in Stores (not photocopy) and Original Bill Section Copy of the CSRV, etc. All the payment particulars and recovery details, if any, should be entered in the payment record sheet containing the purchase order details and attached with the Accounts copy of the purchase order. One copy of all the documents against which each payment was made should also be kept with the purchase order to verify the earlier payment details before making further payment, to avoid duplicate payment and to reconcile all the payments made before releasing the final payment.

30.4 Transparency

30.4.1 As soon as the bills are received an acknowledgement regarding receipt of bill should be sent to the supplier concerned. In order to have transparency, the status of the pending bills should be entered in the computer on day-to-day basis so that the supplier knows the present status of settlement of their bill by logging in DPS website. In case the material supplied is under discrepancy, the bill should be returned to the supplier with instruction to resubmit the bill after settlement of the discrepancies and acceptance of the material.

30.4.2 Reserve Bank of India has introduced payment through ECS/RTGS. These payment systems have to be introduced for timely payment to the supplier as advised by the Central Vigilance Commission. Government of India has issued instructions for rounding off the government transaction to the nearest rupee. Hence the final total of each bill should be rounded off to the nearest rupee, fraction below 50 paise being ignored, half a rupee and above being taken as one rupee.

30.5 Payment by one Pay & Accounts Officer against one Purchase Order

All the payments against one purchase order should be made only by one Pay & Accounts Officer. Change in paying authority should be considered only in exceptional circumstances with the concurrence of IFA, DPS/Unit and approval of Director, P&S/Ex-Officio Director, P&S. In such cases where no payment has been made, the Accounts Officer should be asked to return the Accounts copy of the purchase order to the Purchase Officer concerned for amendment and onward transmission to the concerned Accounts Officer. If on the other hand, any part payment is reported to have already been made, the Accounts Officer originally indicated in the contract as paying authority and who has made the payment should be asked to send the Accounts Copy of the Contract together with certified extracts of payment already made by him against the contract to the new Accounts Officer through the Purchase Officer concerned.

30.6 Payment in Indian Rupee

It is mandatory to have payment terms in Contract expressed in Indian currency in

respect of transactions originating within the country relating to outright sale or hire/lease by foreign companies operating in India. The payment terms may, however, be expressed in a foreign currency if quotations are received and payment insisted on in their currency by the foreign suppliers in respect of “off shore” transactions.

30.7 Documents for Payment

The following are the documents generally needed for scrutiny and payment in Accounts:-

- 1) Bill in triplicate/excisable invoice.
- 2) Unconditional order acceptance.
- 3) Advance stamped receipt.
- 4) Documentary evidence for packing, forwarding and transportation charges if called for in the purchase order.
- 5) Completed inspection report/shipping release in original in the form provided by Purchase Unit bearing the signature and stamp of the authorized Officer in Purchase. The inspection report/shipping release duly completed shall be signed and stamped by the inspecting authority.
- 6) Delivery challan duly acknowledged by the authorized Officer in Stores in original for safe receipt of the material/parcels.
- 7) Certificate for taxes and duties as per the format attached with the purchase order.
- 8) Documentary evidence, if called for, for any other claim as agreed in the purchase order.
- 9) In case of Contracts with provision for issue of free issue material where advance payment is to be made confirmation from Purchase regarding availability of valid insurance policy.
- 10) Free issue material accounting.
- 11) Certificate from Indenting Officer for satisfactory completion of erection and commissioning of the equipment.
- 12) Security Deposit/Advance Payment/Performance Bank Guarantees acceptance letter from Purchase.
- 13) Test certificates/sample approval, if any, called for.
- 14) Certificate regarding satisfactory completion of training, if any.

- 15) Any other documents called for towards payment as per the purchase order.
- 16) CSRV (Central Stores Receipt Voucher) (Original/Accounts Copy).
- 17) Shipping authorization in respect of FE payment.
- 18) Bank intimation in respect of Sight Draft/LC payment.
- 19) Bill of Entry.
- 20) Packing List.
- 21) Certificate of country of origin.
- 22) Certificate of Insurance if called for.
- 23) Bill of Lading/Airway Bill/Rail Receipt or any other despatch document, issued by a Government agency or any agency authorized by DAE.
- 24) The supplier shall certify in the bill that product is new, un-used and also meets the other relevant contractual requirements.
- 25) The supplier shall certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the supplier for claiming the payment has been fulfilled as required under the contract.

30.8 Types of Payments

Various types of payments being followed towards indigenous procurements in DPS are discussed below:-

30.9 Payment after Receipt and Acceptance of the Material

30.9.1 This is the normal type of payment as per the provisions under Form DPS-P-11. As per the terms of the purchase order it is committed that the payment will be released within 30 days after receipt of the material. In the growing economy, it is becoming difficult to get competitive offers as suppliers are overbooked. In such circumstances if payment is not made within the stipulated time there is a possibility of losing the reliable vendors for future requirements. In this type of payment 100% payment is released after the material is received, inspected and accepted i.e. such payments are released against CSRV. In such cases coordinated efforts are needed from Purchase, Indentor, Stores and Accounts to ensure that the required documents are prepared and sent to the respective agencies in time to settle the bill.

30.9.2 At times, the purchase order contains the terms of payment as 100% against receipt, inspection, and acceptance and against submission of Performance Bank Guarantee for 10% of the order value towards satisfactory performance of the equipment during the warranty period. In such cases some times even though all the concerned agencies have completed all the

formalities, the payment could not be released for want of confirmation from the bank regarding the authenticity of the Bank Guarantee issued by them. In such cases where all other contractual obligations are completed and CSRV is received, the paying authority should release 90% payment to the supplier retaining the 10% payment to be released on confirmation from bank.

30.9.3 Payment to domestic suppliers is usually made by cheque/demand draft drawn on State Bank of India transacting government business. Such payment can also be made to the supplier's bank if the bills are endorsed in favour of the bank with a pre-receipt embossed on the bills with the words "received payment" and both the endorsement and pre-receipt are authenticated by the supplier. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the bank. In such of those cases where there has been global tendering, in order to have uniform payment clauses, if domestic suppliers, especially against high value contracts for sophisticated equipment/machinery, desire payment through Letter of Credit, the same, depending on the merits of the case may be agreed to.

30.9.4 e-Payment

e-Banking and e-Payments are now used by various banks by adopting Electronic Clearing System (ECS) and Electronic Fund Transfer (EFT) Procedure. Payments to suppliers may be made through such mechanism where such facilities are available.

30.9.5 Recovery of Public Money from Supplier's Bill

Sometimes, requests are received from a different Ministry/Department for withholding some payment of a supplier out of the payment due to them against a contract. Such requests are to be examined by DAE (which has received the request) on the merits of the case for further action. It will, however, be the responsibility of the Ministry/Department asking for withholding of payment to defend the Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

30.10 Payment against Preliminary Inspection & Supply and balance after Final Acceptance

30.10.1 Generally in respect of reputed suppliers for high value orders and for machinery and equipment, the payment terms agreed are 80 to 95% payment against delivery at buyer's premises after preliminary inspection of the material at the supplier's premises and the balance after final inspection and acceptance. In case where installation and commissioning is involved, the final payment along with installation and commissioning charges is to be paid after completion of satisfactory installation and commissioning activities and on receipt of a certificate to this effect from the user.

30.10.2 In such cases as soon as the documents called for as per the purchase order are submitted by the firm including the original buyer copy of the invoice, original shipping release and delivery challan duly acknowledged by the authorized Stores representative for safe receipt of the material the payment should be released within 5 working days after the paying authority is satisfied that the payment being released is in order. These payments are entered in the advance payment register and its adjustment should be watched after final acceptance for regularization. In case supply is effected after expiry of the delivery period, without obtaining amendment for

extension of delivery period, the bill should be returned to the supplier with a request to resubmit the bill after the validation of the contract by means of an amendment.

30.11 Payment against Delivery/Collection of Material

There are certain items which are in demand and in some cases relating to proprietary items, the supplier is willing to accept the payment terms only against collection of the material at their premises/against delivery of the material at the buyer's godown. In all such cases the payment is made against requisition from the Officer in Purchase Unit and Supplier's proforma invoice as soon as the intimation from the firm is received regarding the availability of the material for supply. Such payments are to be treated as advance payments. It is the responsibility of the Officer in Purchase, who is collecting the advance payment, to ensure that the inspection is done wherever PDI is required and to submit for adjustment of advance, the final invoice (if excisable original buyer copy), shipping release, stamped receipt, receipted delivery challan and other relevant documents immediately after the receipt of the material. The final adjustment should be watched by the paying authority to regularize the advance payment on receipt of CSR.V.

30.12 Payment against Sight Draft

In this type of payment, the firm negotiates the document through the bank and claims the payment. The banker acts as an intermediary without any commitment from their end. In such cases, the supplier sends the relevant documents as called for in the purchase order through the bank and the bank sends the intimation to the Purchaser regarding receipt of documents and payment is made to the supplier through bank at the time of collection of documents and the material is cleared. In such cases the documents called for should be negotiable instrument i.e. the consignee copy of the railway receipt issued in favour of the Purchaser should be one of the documents for payment. Before making payment, the documents received in the bank have to be verified and ensured that the original documents as called for in the purchase order are available in the bank. This payment to be treated as Advance Payment and the Pay & Accounts Officer should watch for the clearance of the material and its acceptance before closing the Advance Payment. As this type of payment involves risk and time consuming for clearance of the material, such payments should be discouraged and should be accepted only in exceptional cases justifying the reason for accepting such payments with the approval of the competent authority. The Department should send a strong message to the market that DPS will not agree to such payment terms.

30.13 Advance payment

In respect of high value orders and long term contracts where investment by the suppliers is very high, the advance payment term as mutually agreed between the buyer and seller is incorporated in the purchase order. Normally initial payment of 5 to 10% is agreed against order acceptance for equipping the contractor for starting the work. Further advance payments are made against completion of certain milestones and such payments made should not be more than the value of the work done. The total advance payments normally should not exceed 30% of the contract value in respect of private firms and 40% in respect of PSUs or Govt. agencies. All such

advance payments should be only against the bank guarantee for equal amount from the authorized bank valid till two months beyond the contractual date for satisfactory execution of the entire contract. These bank guarantees should be accepted after verification for its correctness as per the format approved and after confirming the authenticity from the issuing bank. All the relevant documents relating to this payment as called for in the purchase order should be submitted by the firm. A proper record of all the advance payments has to be maintained and it should be ensured that while releasing the balance payment, all the advance payments made are properly adjusted and the remaining amount due are only paid. It is the responsibility of the paying authority to ensure the validity of the bank guarantees till the satisfactory execution of the contract. Hence the paying authority should keep a watch on the validity of the bank guarantees and remind the Purchase authorities for timely renewal/encashment.

30.14 Prorata Payments

Some times purchase orders are placed for large quantities and the supplier is willing to execute the order at periodical intervals or the user needs the item in staggered supply. In such cases pro rata payments for part supplied items/quantity are accepted in the purchase order. Normally in pro rata payment the part quantity/item received is such that it can be used independently even if the balance items/quantities indicated in the purchase order are not supplied by the firm at a later date. A certificate to this effect should be obtained from the user before incorporating pro rata payment clause in the purchase order. The proper record of items/quantity supplied has to be maintained and ensured that no payment for the excess items/quantity is made than the permissible limit as per the procedure without proper amendment to the purchase order.

30.15 Payment towards Insurance Premium

A deposit account is being maintained with the Insurance Company with whom a Contract has been entered into for arranging insurance against the imported consignments. As per the agreement a fortnightly statement of the materials shipped (upto a certain value) are being intimated to the Insurance Company to enable them to adjust the premium due for those consignments transported as per the statement issued. In the absence of sufficient amount towards adjustment of premium, in the deposit account, the consignments may not get insured and as a result any claim towards loss/damage will be disallowed by the Insurance Company. It should be ensured that sufficient balance is always maintained in the deposit account to avoid such contingencies. Hence the T&C Group and the Paying Authority should ensure that the claims for insurance premium are recouped immediately and proper account of deposit is maintained.

30.16 Payment of Freight & Customs Duty

These two claims are being settled on case to case basis. The free time allowed for clearance of the imported consignment is very limited. Hence Paying Authority should be geared up to settle such payments in shortest possible time as soon as the requisition is received from T&C Section to avoid wharfage/demurrage charges. The T&C Section should be alert to make

the requisition in time and also follow it up with the Paying Authority for collecting and depositing the cheque in time.

30.17 Payment of Agency Commission Bill

The claims towards agency commission bills are to be settled in time as per the purchase order terms. The exchange rate applicable should be correctly worked out as per the terms of the purchase order. Before settlement of their bills it should be ensured that their Principal has fulfilled all the contractual obligations as per the terms of the purchase order.

30.18 Payment of Clearing Agent's Bills

Another area which needs the attention of the Paying Authority is the settlement of the Clearing Agent's Bills. As per the contractual terms certain payments payable by the Department to the Customs/Port and other agencies are being paid by the Clearing Agents and claimed for reimbursements, in addition to their agency & attendance charges. In order to have prompt service and to ensure that the payments made by the Agency on behalf of the Department are reimbursed to them, Paying Authority should ensure prompt settlements of their claims.

30.19 Balance payment

30.19.1 Balance payment should be released only after verifying that the entire contract has been successfully completed in all respects and all the contractual conditions are fulfilled. All the payments till now made should be examined and the total payments due as per the purchase order/the quantity supplied and taken on charge should be worked out and difference being the balance payment only should be released. Before the final payment is released, whether PBG wherever required has been received and accepted has to be checked. In the case where installation and commissioning is involved, it should be ensured that the balance payment is released only after receipt of the certificate from the User confirming satisfactory completion of installation & commissioning, performance of the equipment and satisfactory training, if any. In the case of free issue material issued, free issue material accounting should be obtained and verified for its correctness. Any other charges like packing, forwarding, safe delivery, and testing etc., as admissible as per the terms of the purchase order can be admitted after verification of documents wherever necessary. Regarding duties and taxes, the same can be admitted as applicable on the date of supply subject to the condition that the rates admissible do not exceed what is admissible within the committed delivery period. In case the contract contains any provision for price variation clause, the same should be admitted as per the formula indicated in the purchase order. The firm should furnish the details of the indices for the month for which the variations are admissible. The same has to be verified and the correctness of the claim as per the formula should be examined before the same is admitted. The escalation payment should not exceed the maximum ceiling if any fixed. Normally PVC should be restricted to the original committed delivery period unless an amendment modifying the same is issued.

30.19.2 Liquidated damages, if any, to be levied as indicated by the Purchase Section after confirmation from I/O has to be recovered from the payment due to the firm. Any other recoveries towards wharfage/demurrage charges or handling charges, if any, intimated by the

concerned Stores, T&C Section or any recovery intimated by the User towards electricity/water charges, etc., should be recovered from the payment due to the firm before releasing the final payment.

30.20 Payment to Overseas Suppliers

The following are the various modes of payment to the foreign suppliers being followed in DPS:-

- 1) Sight Draft
- 2) Telegraphic Transfer/Wire Transfer
- 3) Mail Transfer
- 4) Demand Draft
- 5) Letter of Credit.

30.21 Sight Draft

Based on the past business relationship the seller relies on the buyer, agrees to supply the goods and to receive payment after documents reached the buyer. In such cases the relevant documents as per the purchase order are sent to the buyer through the bank by the seller. On receipt of documents the banker sends an intimation indicating the details of the documents received and informs the buyer to collect the documents on payment of the amount indicated. On receipt of the intimation, the paying authority should satisfy himself that all the necessary documents as called for in the purchase order have been received, arrange for collection of the documents by making the payment at the exchange rate applicable on the date of payment. The banker makes arrangement for remittance to the supplier through their channel. In this case the bank acts only as an intermediary and there is no commitment from the bank for payment on behalf of the buyer as in the case of L/C.

30.22 Telegraphic Transfer/Wire Transfer

30.22.1 The telegraphic transfer is an instruction issued by telex or cable to pay a certain sum of money to a specified person. The instruction may be issued by a branch of a bank in one country on another branch of the bank in another country or by a bank on its correspondent bank in another country.

30.22.2 The instruction is transferred by cable or telex or SWIFT under 'text code' arrangement between the two banks and hence no other instrument arises. The bank which issues TT would have credited the account of the paying bank with it at the time of issue of it or as per arrangement. The firm should be requested to furnish the SWIFT details of their bankers in their tender for suitable action in this regard.

30.23 Mail Transfer

The mail transfer is an instruction by the issuing bank to pay a certain sum to a beneficiary named therein. It is a written order sent by mail to the paying bank. After ensuring the authenticity, the paying bank would effect the payment. Depending upon the arrangement between the issuing bank and paying bank the amount paid would be reimbursed to the paying bank either at the time of issuing MT or upon claiming the reimbursement.

30.24 Demand Draft

30.24.1 A demand draft is an order to pay a certain sum to a certain person or to his order issued by the bank on its overseas branch or on its correspondent bank. The demand draft is issued by the bank against payment made to them by the buyer based on the exchange rate applicable. The draft is handed over by the issuing bank to the Purchaser of the instrument. The Purchaser sends the same to the beneficiary. The beneficiary obtains payments on presentation to the bank on which the draft is drawn and identify himself to the paying bank. Depending upon the arrangement the paying bank would get reimbursement either at the time of issue of DD or upon claim on issue bank.

30.24.2 In all the above mentioned payment terms, prompt action should be taken by the paying authority to release the payment at the shortest possible time, else the supplier may not agree to these payment terms for future contracts.

30.25 Letter of Credit

For details please see Chapter on 'Letter of Credit'.

30.26 Advance Payment

In certain cases where the value of procurement is small, the foreign supplier generally insists for advance payment as it is not economical for them to claim payment by any other mode of payment. The buyer after satisfying himself regarding the credibility of the supplier and the past experience agrees for advance payment with the approval of the competent authority or otherwise agrees to pay the documentation charges for other mode of payment. In certain high value orders some percentage of payment as advance payment is agreed. In such cases the advance payment should be made only against bank guarantee from an International Bank of repute or confirmation by a reliable Indian Bank for equal amount. Such payments are generally made by telegraphic transfer after receipt and acceptance of bank guarantee.

30.27 Need for finalization of cases in time

30.27.1 A contract, unless otherwise cancelled or discharged, is completed when the supplies against the contract have been received in full and accepted and full payment thereof having been made to the supplier. However, in certain cases, full payment may not be made to the supplier on receipt of full quantity and accepted by the Department.

- 1) Pending settlement of variable prices etc.
- 2) Regularization of delivery period, where the supplies have been made beyond the stipulated delivery period.
- 3) Settlement of claims on account of excise duty, sales tax, etc.
- 4) Settlement of claims on account of delay and other claims if any.
- 5) Quantity received in marginal excess or deficiencies.

30.27.2 In all such cases the Purchase Officer should examine and finalise the amendments without delay so that the payments due to the suppliers are not held up thereby affecting the Purchaser-Supplier relationship. As per the Purchase Procedure, quantity $\pm 10\%$ not exceeding Rs. 50,000/- can be accepted without a formal amendment and payment can be released. Anything in excess or short the Purchase should consider an amendment at the earliest to avoid delay in settlement of the firm's claims. Usually the firms readily put forward their claim for an increase in price whenever there is a rise in the cost of raw materials or other elements on which price variation has been accepted, but fails to notify government of the corresponding decreases. Hence all contracts in which price variation clause has been included should be carefully watched before payments towards PVC is settled. Wherever excise duty, sales tax, etc. is payable extra at actual as per the contract terms, the Pay & Accounts Officer will admit the claim without a formal amendment letter from Purchase. Normally no claim for increase in taxes and duties will be entertained if such increase takes place during the extended period. Hence, the question of payment of such increase in price will not arise where delivery period is extended with denial clauses.

30.28 Payment Against Time Barred Claims

30.28.1 Ordinarily all claims against government are time barred after a period of three years calculated from the date when the payment falls due. However limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. Claims for recovery of which the remedial action in a civil court is barred under the law of limitation are not to be rejected on the ground of limitation alone.

30.28.2 The following procedure will be followed while dealing with the time barred claims:-

30.28.3 If the bills are presented by the contractor within 3 years from the date when becomes due (i.e. the date of despatch of stores in the case of initial payment i.e. payment against delivery or receipt certificate whichever is later, in the case of balance payment), the Accounts Officer will not refer the bill to the Purchase Officer because such bills are not time barred. In such cases he will proceed to effect payment, if the bills are otherwise in order. The limitation for balance payment is to be counted from the date of issue of finalization amendment letter, if required.

30.28.4 If the bills are presented after expiry of limitation of three years from the date when the payment becomes due as stated in above paragraph, the Accounts Officer will refer the matter

to the Purchase Officer to ascertain whether the limitation has been saved by the acknowledgement and if not obtain sanction of the government for admitting the payment of the time barred payment. Before submitting the bill to the Purchase Officer, the Accounts Officer will conduct a preliminary investigation and certify that the payments claimed in the bills referred by him are due to the firm concerned and that they have not been paid previously. Copies of the inter-departmental correspondence shall not be endorsed to the supplier nor any reference made to him.

30.28.5 Claims which are submitted after an abnormal delay i.e. more than 7 years beyond the normal limitation period of 3 years, should not be considered at all and be rejected straightway, unless there are compelling circumstances which should be clearly stated, while obtaining government's sanction for admission of such claims.

30.28.6 Petty value time barred claims which are to be rejected straightway and which are not defined in the GFR in terms of money, will be taken as bills for an amount of Rs. 500 or less.

30.28.7 In respect of time barred claims which are proposed to be admitted, the following procedure would be followed:-

30.28.8 The Purchase Officer should ensure that a confirmation from the Accounts Officer concerned is available to the effect that no payment has been made in the past in respect of the subject claim. It should further be ascertained that the stores for which payment has been claimed have been actually received by the consignee, that there is no contractual claim of the government against the supplier on account of shortage, damage, discrepancy in the material supplied, etc. and or on account of delay in supply, price escalation clause in the contract.

30.28.9 The firm should be asked to certify that the claim was overlooked inspite of their own internal auditor's check and annual audit by external audit. The firm should be asked to send the confirmation to the above effect duly certified by their internal auditor or by the proprietor of the firm if they have no internal auditor. While making a reference to the firm in this regard, it should be clearly mentioned that the information called for is purely on ex-gratia basis without prejudice to the legal right of the government.

30.28.10 Before putting the sanction letter, it should be ensured that the indenter has certified about the availability of funds to meet the payment. The sanction letter should contain a certificate to this effect.

30.28.11 Payment arising out of time barred claims should be made only with the consent of Finance.

CHAPTER - 31

OTHER LAWS & STATUTORY PROVISIONS RELATING TO PURCHASE & SALE OF GOODS

31.1 Introduction

Although not directly invoked, certain other laws and statutory provisions come into operation in the process of purchase or sale of goods. These relate to carriage, insurance, statutory levies, etc. Laws relating to carriage are of the following categories:-

31.2 Carriage by Railways

31.2.1 Railway's Act 1890, which deals with the carriage by railways. The responsibility of the Railway Administration as carrier is laid down in the Railway's Act. Some of the important provisions are as follow: -

31.2.2 Railway administration functions as a bailee as per the Contract Act for loss, destruction, damage, deterioration or non-delivery of goods carried by railways within the period of seven days after the termination of the transit. This rule does not apply in the case of goods carried at owner's risk rate, certain valuable and other specific goods.

31.2.3 Railways are generally responsible for transit loss except those caused by act of God, act of war, act of public enemy, arrest restraint or seizure under legal process, orders or restriction imposed by the Central Govt. or a State Govt. or by any Officer or Authority sub-ordinate to them, authorised in this behalf, act or omission or negligence on the part of the consignor or the consignee or their agent or servant, natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods, latent defect and fire explosion or any unforeseen risk.

31.2.4 Railways are also absolved of all the responsibilities in the following cases: -

- 1) Where goods have been despatched with false description, which has caused loss/damage.
- 2) Where the consignee or the consignor or their agents practice any fraud.
- 3) Where damage has been caused by improper loading or unloading by the consignor or the consignee or their agents or by riot, civil commotion, strike, lockout, stoppage or restraint of labour from whatever cause partial or general.
- 4) For any indirect or consequential damages or for loss of a particular market.

31.2.5 Every consignor of the goods must execute forwarding note in the prescribed form.

Each forwarding note contains particulars of goods carried, the terms of carriage including a statement to the extent of liability of the railway administration for loss or damage. If goods carried at owner's risk are damaged, the railway administration is bound only to disclose how the consignment was dealt with during carriage. Where, from the disclosure, it cannot be inferred that there was negligence or misconduct, the burden of proof for negligence, etc. devolves on the consignor.

31.2.6 Railway administration is responsible for damages by delay or detention unless it proves that the delay or detention arose without negligence or misconduct on its part or any of its servants.

31.2.7 There is no breach of contract by reason only of deviation of route, if such deviation is due to reason beyond the control of the administration.

31.2.8 Railways are absolved of all the responsibilities after the wagon is placed at the siding where the delivery is required to be taken and the consignee is duly informed. At any rate railways will not be liable for any damages after the expiry of seven days after the termination of transit.

31.2.9 Where the goods are in defective condition or are defectively packed and the fact is noted in the forwarding note, the railways will not be responsible for the loss or damage except where negligence or misconduct on their part is proved.

31.2.10 When goods, which, under ordinary circumstances, would be carried in closed wagons, are carried at the request of the sender in open wagons, the railways will not be responsible for transit losses/damages.

31.3 Carriage by Road Transport/Inland Water Transport

31.3.1 According to Common Carriers Act, 1865 a Common Carrier/Public Carrier may be an individual, firm or a company (other than Government) who transports goods as regular business for money over land or inland waterways without discrimination between different consignors.

31.3.2 Under the provisions of Act a carrier must deliver the goods at the fixed time or within a reasonable time where no time is specified in the Contract. The goods must be carried with reasonable precaution for their safety and over usual and ordinary road. Deviation is not permitted unless this becomes unavoidable due to exceptional circumstances.

31.3.3 A common carrier can limit his liability by special agreement with the consignor but he is responsible for loss or damage caused by negligence or acts done by himself or his agents. In case of loss or damage the claimant must notify the carrier within six months of the date of knowledge of the loss or damage.

31.3.4 The measure of damages for delay is the difference between value of the goods at the time when they ought to have been delivered and at the time when they were actually delivered.

31.4 Carriage by Sea

31.4.1 Carriage of goods by sea from any part of India to any other parts in or outside India is governed by Carriage of Goods by Sea Act of 1925 which is based on the recommendation of the International Conference on Maritime Law which aimed at securing uniformity of Laws as regards the rights and liabilities of carriers by sea and rules regarding bills of lading.

31.4.2 The merchant-shipping Act of 1958 was passed with the object of amending or consolidating the Indian Law relating to merchant shipping.

31.4.3 Contract of carriage of goods by sea is evidenced by bill of lading, which is the receipt for goods delivered to a ship for marine carriage. The bill of lading is also acknowledgement of goods from the carrier and document of title to the goods. The normal duties and liabilities of a carrier by sea are as follow:-

- 1) The carrier shall be bound, before and at the beginning of voyage, to exercise due diligence to (a) make the ship seaworthy (b) properly man, equip and supply the ship and (c) make the holds and all other parts and facilities in the ship in which goods are carried fit and safe for their storage and preservation.
- 2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.
- 3) The carrier is not responsible for the loss or damage arising due to (a) neglect or default of the servants of the carrier in the navigation and management for the ship, fire, unless caused by fault or the privity of the carrier, (b) perils, dangers and accidents of sea or other navigable waters (c) Act of God (d) Act of War (e) Act of public enemies (f) seizure under legal process (g) quarantine restrictions (h) acts or omission of the shipper or his agents (i) strike or lock out, riots or civil commotion, saving or attempting to save life or property at sea, inherent defects in the goods, insufficiency in packing, inadequacy in marking, etc.

31.4.4 The carrier is not responsible for any loss or damage of goods exceeding hundred pounds or its equivalent unless the nature and value of such goods have been declared by the shipper and inserted in the Bill of Lading.

31.4.5 The carrier and shipper shall be discharged from all liabilities for loss or damage unless a suit is brought within one year of the delivery of the goods or the date when the goods should have been delivered.

31.5 Clean Bill of Lading

When it is stated in the Bill of Lading that all the goods are in good order and condition, the bill is said to be a Clean Bill of Lading. When a Clean Bill of Lading has been issued, the ship owner is stopped from claiming later on that the goods were in bad condition.

31.6 Demurrage

If loading and unloading is not completed within the period agreed upon, the carrier is entitled to damages. Such damages are called demurrage. Demurrage is calculated upon the number of days the ship is detained beyond the agreed period. Railways in India charge demurrage if goods are not loaded or unloaded or collected within the time mentioned in the railway receipt. Port/Airport Authority claim demurrage if the goods are not cleared within the specified time.

31.7 General Average Loss

Where under the pressure of a common danger, an extraordinary expenditure or sacrifice becomes necessary for salvation of both, the ship and its cargo, the burden thus incurred is proportionately distributed upon all interested that have been benefited by the sacrifice. A familiar example is throwing overboard a cargo for safety. In such circumstances, a ship declares a general average. A general average loss is a loss caused by or directly consequential on general average act. It includes the general average expenditure as well as general average sacrifice. There is a General Average Act where any extraordinary sacrifice or expenditure is voluntary or reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in common adventure. Where there is general average loss, the party on whom it falls is entitled subject to the conditions imposed by maritime law to a rateable contribution from other parties interested and such contributions is called General Average. When a shipping agent declares general average with regard to cargo on board a particular ship, in accordance with the provisions in the Bill of Lading, such amount as may be deemed by the shipping agent is required to be paid before obtaining delivery order of the cargo from the shipping agent. Usually, an agreement or bond has to be signed to abide by the terms of the ultimate awardees in connection with the general average.

31.8 Particular Average Loss

As opposed to the term 'general average' the term 'particular average' refers to any loss occasioned to any of the interest which is not for benefit of all parties or which has arisen through an accident. For example, loss of anchor, the damage to the goods by seawater or the falling of the goods over board or any such losses. A loss of this kind remains where it falls and must be borne by the owner or its insurer unless the policy is in FPA term. Where a marine policy covers a partial average loss, it covers a partial loss of the subject matter caused by a peril insured against and which is not a general average loss.

31.9 Carriage by Air

The Law relating to carriage by air in India is laid down in the carriage by air Act 1972. This Act provides that certain documents are to be issued when goods and passengers are carried by air.

31.10 Air Consignment Note or Airway Bill

31.10.1 For all air consignments three copies of the Note or Airway Bill containing the following particulars shall be made:-

31.10.2 The place and date of issue, the place of departure, destination and stoppages, the name and address of the carrier, consignor, consignee, nature of goods, number of packages, the nature of packing, their weight, quantity, volume and dimensions and the apparent condition of the goods, the amount of freight and the persons liable to pay it, the period of carriage and the route and the condition that the carriage is subject to the rules contained in the Act.

31.10.3 The Note/Way Bill is issued in triplicate. The carrier keeps one copy, another copy signed by both the carrier and consignor accompanies the cargo, and the third is given to the consignor. The Airway Bill prima facie is evidence of the conclusion of contract, the receipt of the cargo and of the condition of carriage.

31.10.4 The consignee is entitled to take delivery of the goods at place of destination. If the goods are lost or do not arrive at the place of destination within seven days of the date of delivery, he can enforce his rights under the contract of carriage.

31.11 Insurance

When consignments are insured in transit, a contract comes into existence between the insured and the insurer. Under this contract the insurer agrees to indemnify the other party from losses arising from certain specific events, the consideration being payment of a specified amount to the insurer by the insured, called premium. Marine insurance have been separately codified under Marine Insurance Act 1963.

31.12 Damages

31.12.1 This is the usual remedy against breach of contract, specially the contract for sale/purchase.

31.12.2 The general principal for awarding damages is that the aggrieved party is to be placed in the same financial position as he would have been but for the breach.

31.12.3 If the contract is broken, law will endeavour so far as money can do it, to place the injured party in the position as if the contract has been performed. Being in the nature of compensation for actual loss, vindictive or personal damages are out of question in case of commercial contracts. In fact, the aggrieved party is also expected to take reasonable steps within his means to mitigate the extent of damage caused by the breach. He has to conduct himself reasonably even after the breach.

31.12.4 Generally in sale/purchase contract, damages are given on the basis of the difference between the contract price and the market price prevailing at the time of breach.

31.13 Types of Damages

31.13.1 The loss or damage should arise naturally in the usual course of things, from the breach. Compensation will not be awarded for any remote or indirect loss or damage. Compensation thus assessed is called 'ordinary or general damages'.

31.13.2 The Court may allow remote damages i.e. damages not arising naturally from the breach, if such damages may reasonably supposed to have been in the contemplation of both the parties at the time they made the contract. This is called 'special damages.'

31.13.3 In some contracts the quantum of compensation in the event of breach is predetermined and stipulated. This quantum, though agreed upon by the parties, should be a genuine estimate of loss or damage arising from the breach and must not be of punitive proportion by way of penalty. Section 74 of the Contract Act lays down that if the parties have fixed where the damages will be, the court will never allow more. But the court may allow less.

31.14 Supervening impossibility or Doctrine of Frustration

31.14.1 This may occur in many ways, some of which are destruction of the subject matter of the contract, death of the promisor, out break of war, change of law and failure of pre-condition, etc. This doctrine does not, however, normally cover (a) difficulty in performance (b) impossibility caused by the behaviour of a third person and (c) partial impossibility. Strike, lockout and civil disturbances are also normally outside the scope of the concept of doctrine of frustration.

31.14.2 In the purchase contract however some of the contingencies mentioned above which render performance of the contract impossible either totally or over a period, are generally provided in the shape of 'force majeure' clause.

31.15 General Landing Date

The General Landing Date is computed on the date on which two thirds of the cargo has been discharged.

31.16 GR1 Form

It is a form prescribed by RBI, which contains all the details of the consignment and the amount receivable on the sale of goods. This form is to be filled in duplicate duly endorsed by the bankers through whom the amount is to be received. The original of the form is being retained by Customs for onward transmission to RBI and the duplicate copy of this form is to be submitted by the exporter to his banker along with remittance received by him. RBI allots code numbers to exporters for convenience purpose.

31.17 Invoice

It is a bill drawn by the seller i.e. exporter in the name of the buyer indicating total/net value payable by the buyer. The amount of the invoice should indicate FOB value of the goods, packing charges, freight charges and repair charges, if any and commission payable to any agency. It should also indicate number of packages and gross weight and description of goods, quantity and the rate at which the goods have been charged.

31.18 Import General Manifest (IGM)

As soon as information of arrival of a vessel is available to the steamer agent, they present the manifest to the import department. IGM is only a list of goods brought by the vessel. A steamer agent can lodge manifest 14 days in advance of arrival of the vessel. The concession is given to facilitate importer to keep their documents ready so that on arrival and unloading of cargo, the same could be cleared without loss of time.

31.19 Licensed Measure

The shipping companies charge freight for transportation of export cargo on the basis of weight, volume and values whichever is higher. For the purpose of taking measurement and weight, individual/firms are licensed to carry out the job of measuring the packages inside the docks and they issue certificate on payment of usual charges per package giving exact dimension, such as length, breadth and height of the individual package in centimeters and this measurement is accepted by all the shipping companies, port trust authorities for calculation of payment of freight charges and port charges, if any. Weighment of the consignment is done by the licensed weighing bridges located inside the port area or outside the port area whose certificates are acceptable to the shipping companies and the port authorities. The licensed weighing bridges issue certificate indicating gross weight of the vehicle including export cargo and the net weight of the vehicle excluding export cargo and the date on which the weighment is taken. The difference of the weight between the gross weight and net weight is taken as the weight of the consignment.

31.20 Mate Receipt

This receipt is issued by the Chief Officer of foreign going vessel for having received the cargo on board for carriage. The mate receipt indicates the number of packages, shipping bill number and gross weight as declared in the shipping bill. This is issued before issue of bill of lading. This is not a negotiable document.

31.21 Packing List

It is a list drawn for the items packed case wise which indicates the description of the item, quantity, net weight of the goods, gross weight of the package for identification purpose. If possible, it should indicate value of the item packed in the case.

31.22 Port Trust Chappa

This is a form provided by the Port Trust for filling in particular of export cargo for the purpose of assessment of warehouse charges and demurrage charges, if any applicable, on respective consignment in question. This is a document on the basis of which the Superintendent of the respective shed will hand over the Mate Receipt to the exporter or CHA for taking further action for obtaining B/L from the shipping company.

31.23 Shipping Bill

It is an application made to Customs for allowing export of a particular consignment. The Customs authorities for convenience purpose have colour coded the shipping bill and at present the following shipping bills are in use:-

1. Pink colour for export of goods by air.
2. White colour for export of goods by sea.
3. Yellow colour for export of dutiable goods.
4. Green colour for export of goods by sea/air under duty draw back.

31.24 Spot Remission

The Port Trust authorities allow remission of demurrage till the date of tracing. This is known as Sport Remission.

31.25 Stevedores

They are the cargo handling agents employed/hired by steamers for loading of the cargo inside the vessel. In the docks, their functions are to allow the exporter to cart the cargoes inside the warehouse and after completion of the customs formalities, segregate the cargo port wise, and plan the loading in such a way that the cargo is safe from damage during its transit. The loading of the cargo is done by them in consultation with the Chief Officer or the Captain of the vessel.

31.26 Airway Bill/House Airway Bill

This document is issued by Airlines for having booked the consignments from one point to another on payment of freight charges at the rate as specified or negotiated with the airlines. House Airway Bill used by freight forwarders and Master Airway Bill is issued by airline to cover the packages booked by the freight forwarder.

CHAPTER - 32

REJECTION & LODGING OF CLAIMS

32.1 Introduction

32.1.1 Claim may arise for loss, damage, short supply, rejection of items and refund of advance. In respect of imported consignments, claims for loss, damages or short supply are required to be lodged within the prescribed time with the underwriter/carrier as otherwise they will either reject the claim or settle the same only partially. Recovery of advances paid to the foreign suppliers will also become difficult if the matter is not taken up with the suppliers for refund in time.

32.1.2 The Purchase & Stores Units which are directly responsible for procurement, receipt and accounting of materials have to shoulder greater responsibilities to avoid any loss to government exchequer and have to work in close coordination with each other and also with the Accounts/User to ensure lodging of claims in time with the appropriate authorities.

32.1.3 The following procedure should be strictly followed while dealing with different types of claims:-

32.2 Claim for Loss, Damage and Short Supply in respect of Imported Items

Custom clearance of imported consignments is under taken by custom house agent (CHA) appointed by DPS who is responsible for timely clearance of the goods from airport/sea port. The Transport & Clearance Section should coordinate with the CHA on day to day basis to ensure that the imported goods are cleared immediately on arrival within the free period allowed.

32.3 Claim for partial loss/damage and missing consignment

If a consignment is missing or part of the consignment is found damaged on landing, the importer or his CHA has to apply to the shipping company in writing to hold the ship survey. A ship survey will be granted if the survey is sought within three days from the date of landing of the goods beyond which the claim become time barred. After survey, a survey report is issued to the consignee. The consignee can clear the goods and submit the claim to the shipping company for partial loss/damage or for the missing consignment. The claim should be made for CIF value of the goods missing/damaged plus proportionate custom duty thereof. Along with our claim in four copies other documents to be submitted are copies of invoice, bill of entry, survey report and bill of lading.

32.4 Claim for Short Landing

32.4.1 If the port authority's tally show a consignment is short and the missing packages are not traced at the dock and the shipping company confirms that the missing goods are not traced at other ports of call of the vessel and that the port of shipment has confirmed that shipment is full then the port authority will out turn the missing goods as short landing and issue a short landing certificate. The claim has to be submitted to the shipping company.

32.4.2 In case of inordinate delay, consignee can submit claims on insurance company and accept claim after signing letter of subrogation. In such case the underwriter will approach the shipping company seeking settlement of claim. Under the Indian Carriage of Goods by Sea Act 1925 unless a suit is brought within 1 year from the date of arrival of the ship at the port of destination, the claim become statutorily time barred. As per this Act the maximum liability of the carrier is limited to 100 pounds in respect of package or freight unit, unless the nature and value of such goods have been declared by the shipper and inserted in the Bill of Lading.

32.4.3 During the course of custom clearance, if any shortage or external damage or doubt about the packages are noticed, the CHA has to insist the warehouse handling agency for a joint survey and report the matter to the Transport & Clearance Section for arranging a joint insurance survey in the presence of carrier, underwriter, customs, user and local agents of the suppliers if any. After the survey a provisional claim is to be lodged with the underwriter and the carrier by the T&C Section and copies should be endorsed to all concerned.

32.4.4 The imported consignments which are found externally in good condition on physical inspection, are cleared and delivered to the Stores Unit by CHA. It is the responsibility of the concerned Stores Unit to check the consignment once again while taking delivery from CHA to see whether there is any damage or shortage before accepting. In case of any shortage/external damage to the packages, appropriate remarks are to be entered on the challan copies of the CHA. The Stores Units should lodge provisional claim immediately with the underwriter and CHA and endorse copy to the Transport & Clearance Section, Purchase and Accounts Units and retain the original package/packing and subsequently the T&C Section will also lodge a final claim on the underwriter/CHA/carrier. The formalities of lodging the claim should be completed within the validity period of insurance policy and the time allowed for lodging the claim. In respect of imported goods received against purchase order placed on 'high sea sale basis' where the insurance cover provided by the supplier ceases to be valid after arrival of the goods at port of destination, packages should be inspected at the port itself and the claims should be lodged if there is any suspected damages. The T&C Section will give suitable instructions to the CHA to arrange for an insurance survey at the port of destination itself if possible and lodge the claim with the insurance company and the supplier with whom the purchase order is placed immediately instead of arranging such an insurance survey at the departmental premises.

32.4.5 Where consignments are received in externally good condition in the Stores Unit, the Stores staff should ensure that necessary action is taken to get the final inspection done expeditiously by the Indenting Officer say within seven days from the date of delivery of the imported consignment. The Stores Unit should closely follow up with the Indenting Officer to expedite the final inspection of the goods as the claim for any damage/short supply, etc. is to be lodged within the allowed time frame. In case of an adverse inspection report from the Indenting Officer, the Stores Unit should immediately lodge a provisional claim with the concerned agencies, underwriter/supplier/local agent/carrier, etc. and forward the details to the T&C

Section for further action from their end. The Stores Unit shall also retain the original package/packing for inspection if any by the underwriter. T&C Section shall lodge the final claim on priority basis with the underwriter/supplier/local agent/carrier and endorse the copies to Purchase, Stores and Accounts Units.

32.4.6 It is the responsibility of the T&C Section to follow up till the final settlement of the provisional/final claim. The T&C Section will maintain a register of all import orders placed with the suppliers taken up for clearance. The Officer-in-charge, Transport & Clearance Section shall regularly review this register and ensure that timely action is taken for clearance of the consignments and lodging of claims wherever necessary. A monthly report of all pending claims with the current status shall be sent to the respective higher authorities (Deputy Director/Joint Director/Regional Director) for necessary action.

32.4.7 Lodging of claims is time bound. The claims are to be lodged with the underwriters within 30 days in respect of air shipment and within 60 days in the case of sea shipment from the date of landing. The claims with the carrier are required to be lodged within three days from the date of landing. The T&C Section/the Officer-in-charge of Transport & Clearance should coordinate with all concerned and put in all efforts to ensure that the customs clearance of the imported consignments is completed in time and lodging of claims wherever necessary is done within the allowed time frame.

32.4.8 In cases, where consignments cannot be cleared, delivered and inspected at the ultimate destination within 30 days and 60 days of landing for air and sea cargo respectively, necessary extension for insurance coverage for a further period of 30 days should be taken well before the expiry of the initial period of insurance coverage with the concurrence of Finance and approval of Director, P&S/Ex-Officio Director, P&S.

32.4.9 In cases where the loss/damages cannot be recovered from suppliers/insurance companies/carriers, write off action should be initiated by the T&C Section or the Stores Unit as is appropriate. In case of short supply the write off action should be initiated by the Purchase Group.

32.5 Claims for loss, damage, short supply and Rejection in respect of indigenous goods

32.5.1 The goods against the purchase orders issued by the Purchase Unit are generally delivered to the respective Stores Units. While receiving the goods, the Stores staff should inspect each package for any external/visible damage and endorse suitable remarks on the carrier's copy of LR/RR/Delivery Challan and lodge a formal claim immediately with the carrier/supplier under intimation to the concerned Purchase Group/Accounts. The discrepancy report will also be communicated to the supplier as per the Stores Procedure and copy endorsed to all concerned. The Stores Unit should follow up the case with the supplier/carrier as is appropriate till final settlement. The Purchase Group will also parallelly write to the supplier to get the item repaired, deficiency rectified and replacement effected and follow up the case periodically at least once in fifteen days till the job is completed by the supplier. A suitable discrepancy register should be maintained by the Stores Unit and Purchase Group which should be periodically reviewed by the Officer-in-charge in Purchase/Officer-in-charge in Stores and submitted to the next higher authority for taking appropriate action against the supplier.

32.5.2 Where the consignments are received in externally good condition but on inspection by the Indenting Officer the items are found to be defective, short supply, broken, damaged, not meeting the purchase order specifications, etc., the Stores Unit on receipt of the Indenting Officer's inspection report shall immediately inform/lodge a formal claim with the supplier under intimation to the Purchase Group/Accounts about the details of defects/deficiencies noticed. The final inspection and reporting of the damages/discrepancies by the Indenting Officer should be completed immediately latest within two weeks of delivery of the goods in respect of cases where suppliers are not responsible for installation and commissioning of the equipment. The Stores Unit should closely follow up with the Indenting Officer and ensure that the final inspection of the goods is completed and the inspection report is sent to the Stores Officer as well as the Purchase Officer concerned latest within two weeks of receipt of the material failing which the claim can be rejected by the supplier as time barred. The concerned Purchase Group should periodically follow up with the supplier till the final settlement of the claim. In order to monitor such cases the Receipt Section of the Stores Unit will maintain a discrepancy register and keep a constant follow up with the supplier and respective Purchase Group for expeditious settlement of the discrepancies. The discrepancy register shall be reviewed at least once in a month by the Officer-in-charge in the Stores Unit and submitted to the next higher authority for scrutiny and appropriate action.

32.5.3 A monthly report of purchase orders against which our claim in respect of discrepancies/shortages have not been settled by the suppliers/underwriters/carriers, etc. will be sent by the Stores Officer-in-charge to the respective Officer-in-charge/Deputy Director/Joint Director/Regional Director of the Purchase Units. The report should indicate the details of the purchase orders, name and address of the suppliers with telephone/fax numbers, details of discrepancies and number of reminders issued for further suitable action by the concerned Officers-in-charge/Deputy Directors/Joint Director/Regional Directors. In respect of cases where advance payment had been made against these supplies an intimation has to be sent to the paying authority to withhold the amount equal to the advance payment made against the order from any other pending bills of the firm till the discrepancy is settled.

32.6 Claims by the Purchaser against Damages/Losses occurring in Railway Transit

The consignee is responsible for verifying at the time of taking delivery from the railway authorities that the stores have been received intact without loss or damages. When the stores are dispatched in full wagon loads, consignee should verify that the seals on the wagons are intact. If there is evidence of loss or damage, the consignee should arrange to secure necessary certificate from the appropriate railway officials before taking delivery. The consignee should also lodge necessary claim with the Railways. The loss or damage should in every case, be promptly reported to the contractor, Purchase Officer concerned as well as the Paying Authority.

32.7 Contracts stipulating delivery FOR Station of Destination

The Contractor is responsible to deliver the ordered quantity of goods complete and in good condition to the consignee at station of destination. The contractor is liable in such cases for any loss or damages that may occur in transit and to make good the same by replacement free of charges for the quantity lost or damaged in transit. The consignee will only lodge the claim with the carrier and report the fact to the suppliers immediately after arrival of stores at the

destination. It will be for the supplier to pursue the claim with the railways and settle the matter.

32.8 Contract stipulating delivery as FOR Station of Despatch without Transit Insurance

In this case the responsibility of the contractor ceases as soon as the goods are accepted by the railway authorities for carriage, the railway acting as a bailee. The contractor is normally not responsible for any loss or damage to goods that may occur in transit, if he has been able to book the goods in rail worthy conditions under clear receipts without any adverse remarks as to the condition of the goods on the packing. In case the goods are sent under 'said to contain' receipt, the supplier should not be absolved of his responsibility for loss/damage in transit. For consignments dispatched on 'said to contain' basis, payments shall be made only with the consignee's receipt certificate. Where the stores have been dispatched under clear R/R, the consignee will take up the matter with the railways for direct settlement within six months. If such claims are rejected by the railways, the Department shall bear the losses. A formal claim should be preferred showing the deficiencies and breakages etc. against the carrier for the loss or damages.

32.9 Procedure for effecting recovery of Government Claims

32.9.1 The government cannot recover or appropriate any sum when the claim of the govt. is disputed by the firm unless the same has not been finally determined or adjudicated upon by arbitration or the court in terms of the contract. The amount claimed cannot be recovered unilaterally from the payment due from the bills of the firm against the same contract or other contracts. However, the payment due may be withheld pending settlement of govt. claim. When a decision is taken with the approval of the competent authority to claim damages from a contractor a demand notice has to be issued to the firm by which the contractor is called upon to deposit the amount stated by the date stipulated therein. If the amount claimed is not deposited by the contractor by the target date, steps should be taken to have the claim finally determined by the arbitrator or the court, as the case may be, in terms of the contract. Simultaneously, the court may be moved for an interim injunction restraining the firm from claiming the withheld amount pending final determination of the dispute by the arbitrator. In case the court is not inclined to grant such an injunction, a further prayer should be made that the firm be asked to give a guarantee, preferably bank guarantee to protect the interest of the government.

32.9.2 In case where bills are not forthcoming from the contractor and recovery has to be made of government dues, the Purchase Officer will furnish the full particulars of the purchase order details, quantity received and accepted, etc. with a request to carry out necessary adjustment in Accounts.

32.9.3 In respect of payments of amounts attached to courts, if the firms fail to submit the bills, the Purchase Officer will send a communication to the Pay & Accounts Officer directing him to draw the cheque for deposit in court. The communication should contain full particulars of the transaction and be supported by the duplicate copies of the relevant documents like inspection report, acceptance report, etc.

32.10 Advance Payment to Foreign Suppliers

32.10.1 In respect of advance payment made to the foreign suppliers the Officer-in-charge of the Purchase Unit will be responsible for coordinating and taking timely action for settlement and accounting of these cases. Normally the foreign suppliers are required to effect supply within a period of three months from the date of receipt of advance payment. The Purchase Group should closely monitor such cases and coordinate with the Transport & Clearance Section as well as Stores Unit to ascertain about the delivery and receipt of the materials. In case the supply is not received within the above period the Officer-in-charge should take up the matter with the foreign supplier concerned for expediting shipment of the item or refund of the advance payment.

32.10.2 The Officer-in-charge in the Purchase Unit should maintain an advance payment register and review the same periodically at least once in a month. The register should indicate the purchase order number and date, name and address of the supplier with telephone/fax number, description of the item, amount of advance, the date on which the advance payment was remitted, the date of follow up, the date on which refund/supply was received and a remark column.

32.10.3 They should also send the advance payment register to the higher authority (Officer-in-charge/Joint Director/Regional Director) every month indicating the purchase orders against which neither supply nor refund of advance payment has been received.

32.10.4 The Officer-in-charge/Joint Director/Regional Director after scrutiny of the register will take appropriate action as deemed fit with the supplier in case neither supply nor refund is received back within a period of 4 months.

32.10.5 The Officer-in-charge in the Accounts Unit should also keep a close watch on the adjustment of advance payment and report the cases to the higher authorities where adjustment of advances are not made within 4 months from the date of advance.

32.11 Claim in respect of Departmental material transported from one Unit to another Unit through Transport Contractor

32.11.1 Before arranging the transportation, the Officer-in-charge in the Stores Unit should intimate the transport contractor, the complete details of the material to be transported such as the description of the item, nature of the item, quantity, value, dimensions, weight, number of packages and make it clear to the contractor that it is his responsibility to ensure the safe transportation and delivery to the consignee at the destination and take necessary insurance coverage at his cost. The above particulars should be part of NIT/Tender documents to make the Contractor to be aware of his responsibilities before submitting the tender and quote accordingly.

32.11.2 As soon as the goods are loaded on to the truck, a clean LR (Consignment Note) should be obtained from the transport contractor. The details of the consignment along with consignment note number and date, lorry/truck number and the date of departure should be intimated to the concerned Stores Unit to whom the consignment is sent.

32.11.3 While receiving the consignment at the destination, the Officer-in-charge should carefully check the total number of packages received with reference to the consignment note number and material despatch note/delivery challan as well as the condition of each and every package. In case any of the packages are outwardly found damaged or tampered and in case of any doubt, open delivery of the consignment must be insisted and taken in the presence of the representative of the transport contractor.

32.11.4 On open delivery of the consignment in case any shortage/breakage or damage to the stores is found in any of the packages the matter should be immediately reported in writing to the transport contractor as well as the Officer-in-charge of the concerned Stores Unit/Contracting Officer from where the consignment has been sent and a provisional claim should also be sent to the transport contractor. Wherever the insurance is arranged by the Transport Contractor, a claim has also to be lodged with the Insurance Company on behalf of the Transport Contractor.

32.11.5 After ascertaining the extent of loss or damage from the Stores/User final claim should be lodged with the transport contractor and the case should be followed up with the transport contractor till settlement of the claim.

32.12 Claims on Port Trust and Airport Authority

32.12.1 When the consignment has landed but found missing in the Port Trust/Airport it is necessary to lodge a complaint to the Police Station in the Dock/Airport and also make the claim on the insurance company after obtaining non-delivery certificate within the period allowed for lodging the claim. Simultaneously it is also necessary to lodge a claim on the Port Trust/Airport authority for compensation on the lost consignment under relevant Port Trust/Airport Rules. If the Port Trust/Airport Authority rejects our claim, their original rejection letter should be forwarded to the insurance company for settlement of the claim under the open insurance policy.

32.12.2 In case of consignment declared as landed but missing it is necessary to lodge a provisional claim on the insurance company asking them to immediately employ their cargo tracers if necessary and if the consignment is traced subsequently and accepted by the user, the insurance claim can be withdrawn.

32.13 Premature cancellation of Contracts

Some times it becomes necessary due to various circumstances to close the contract prematurely. The terms of the contracts are binding on both the parties and a contract during its currency can be cancelled or modified only by mutual consent. The department should not proceed to cancel a contract in whole or part straightway on receipt of the indenter's request. Each case has to be examined with reference to the terms and conditions of the contract by the Officer within whose powers of purchase the contract falls and where necessary, legal opinion should be obtained. If the legal opinion confirms that the Purchaser is within his rights with reference to the terms and conditions of the contract to cancel it, example: where the delivery period has expired, action should be taken to give effect to cancellation straightaway. Where the contract does not permit cancellation without the contractor's consent, the firm should be approached and persuaded to agree to cancellation/short closing without any financial repercussions. If the firm agrees, the formal amendment or cancellation will be issued, making it clear that the cancellation/short

closing is with the mutual consent. Where the firm do not agree for the above without financial repercussions, the contractor should be asked not to make further supply and not to incur further expenditure pending decision as to whether the contract should be terminated pursuant to the termination of the contract clause and what quantum of compensation payable, if any should be. The indenter should also be advised of the position. Arrangements should be made for independent inspection of the stores in an unfinished state of supply with a view to ascertain the correct position of the stores contracted for and the reasonableness or otherwise of the compensation claimed by the contractor. If the contracting officer in consultation with the Indenter and the Finance is satisfied that the amount of compensation claimed is reasonable, the Indenting Officer should be requested to confirm with the approval of the competent authority whether the contract can be closed with the compensation amount decided. Such cases involving financial repercussions should be disposed of expeditiously as delay can lead to disputes, arbitration claim and payment of higher amount of compensation in the long run. Further, as the contractor may not be willing to hold the manufacture in abeyance for longer period the early decision will be advantageous to the government. It is the responsibility of DPS to ensure that all these cases are disposed of expeditiously under the personal supervision of Director, P&S/Joint Director, P&S.

CHAPTER - 33

PROCEDURE FOR ARBITRATION/LITIGATION

33.1 Introduction

Normally there should not be any scope of dispute between the Purchaser and the Supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to disagreement between the buyer and seller. Therefore, the condition governing the contract shall contain an Arbitration provision for settlement of such disputes/differences binding on both the parties. In case of any arbitration proceedings the method of dealing the same is explained below:

33.2 Settlement of Disputes through Sole Arbitrator

33.2.1 DPS General Conditions of Contracts provide that in the event of any question, dispute or difference arising under the conditions of or in connection with the contract (except as to matters the decision of which is specially provided for) the same shall be referred to the Sole Arbitration of an Officer appointed to be the Arbitrator by Director, Purchase & Stores and that 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 & Reconciliation Act 1996 and Rules thereunder.

33.2.2 Where the contractor has agreed to accept DPS General Terms & Conditions including the sole arbitration, in the purchase order it should be clearly mentioned that all other terms and conditions of the contract including arbitration shall be as per DPS General Terms & Conditions.

33.2.3 Occasion may arise where in respect of a contract, the contractor has earlier not agreed to the sole arbitration clause but later agrees to the settlement of the dispute arising out of the contract through arbitration by signing an agreement to refer the dispute to the sole arbitration by an officer appointed by DPS.

33.2.4 Before an agreement is executed the Purchase Unit should consult the Legal Advisor in DAE to determine whether the case is fit for referring to arbitration. If the view arrived at is to refer the dispute to arbitration the approval of the competent authority should be obtained. After such an approval is obtained the competent authority in concerned Purchase Unit should sign the agreement (as per format given in the Annexure - 1).

33.3 Settlement of Disputes through Court of Law of Competent Jurisdiction

33.3.1 Where a contractor has not agreed to sole arbitration clause of the general conditions of the contract, the dispute/claim arising out of the contract entered into with him will be subject to

the jurisdiction of the competent court of law.

33.3.2 In the acceptance of the tender (purchase order) under the terms and conditions of the contract under the heading jurisdiction the following should be inserted:-

“This Contract is subject to jurisdiction of court at _____”.

(The name of the place from where the purchase order is issued should be inserted in the blank space).

33.4 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 DPS contract through arbitration and to the appointment of arbitrator in a particular manner, the consent of other party would not be necessary for the appointment of arbitrator and for reference of the dispute to him when the aggrieved party asks the concerned authority to do so.

33.5 Procedure leading to the appointment of 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 Purchase Unit should verify that the arbitration clause is included in the contract. On such verification the Officer-in-charge should 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, DAE 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 required in the rulings are clearly brought out 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 competent authority for according administrative approval for referring the dispute to arbitration as well as for appointment of an Arbitrator.

33.6 Procedure leading to the appointment of Arbitrator when it is proposed to refer dispute on behalf of the Purchaser

33.6.1 In respect of the Department claims where DPS contemplates taking recourse to arbitration the Officer-in-charge in the Purchase Unit should verify the financial standing of the firm and prospect of recovery of the amount claimed.

33.6.2 A complete summary of the case shall be prepared and referred to the Legal Adviser, DAE 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's opinion is in the affirmative the Officer-in-charge should obtain the administrative approval of the competent authority to the institution of arbitration proceedings and appointment of an Arbitrator.

33.6.3 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 the interest within fifteen days from

the date of issue of the notice. The specimen draft notices to be served on limited firms, etc. and partnership firms are given for guidance at Annexure - 2 & 3.

33.7 Reference of Dispute to Arbitration on the direction of Courts

33.7.1 DPS Contracts are usually governed by the standard arbitration clause. On a request received from the contractor, efforts 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 firm files petitions in court for directions to Union of India for reference of dispute to arbitration in terms of the arbitration clause. On receipt of such an order of the court, the Purchase Unit will examine the case and obtain the administrative approval of the competent authority for reference of the dispute to arbitration and for appointment of an arbitrator.

33.7.2 The reference to particulars of the suit filed by the firm and the order of the court in terms of which disputes are being referred to arbitration shall be indicated in the file.

33.8 Information to Indentors/Consignee, etc. regarding reference of disputes to Arbitration

As soon as it has been decided with the approval of the competent authority that the disputes be referred to arbitration the Officer-in-charge in the Purchase Unit should immediately inform the indenting officer, consignee, paying authority, etc. about the reference of the case to arbitration so that all relevant files, records and documents are retained and kept ready by them for use in the arbitration proceedings as and when necessary. They should also be informed to retain all the records till the settlement of the disputes in arbitration. Besides, they should be informed of the amount of claim preferred against the purchaser with a request to make necessary provision for making available the funds.

33.9 Preparation, examination and finalisation of pleading to be filed before the Arbitrator

33.9.1 In cases where the government is the claimant, before the arbitrator is appointed by issue of a formal letter of appointment in terms of the nomination made by DPS, the Officer-in-charge shall prepare the statement of claim to be filed on behalf of the Union of India. It is the responsibility of the respective Purchase Section to prepare the self contained history of the case duly referencing the relevant documents and also quantifying the exact amount of claim to be prepared on behalf of the Government. It should be ensured that the claim should include all sorts of claims in the particular contract for which the reference is made to arbitration.

33.9.2 The concerned Purchase Unit should specify the documents in support of the claim preferred by them. It will also be the responsibility of the concerned Purchase Unit to collect the required particulars from finance, the consignee and the user for formulating the claim on behalf of the Union of India.

33.9.3 In cases in which the Government is the respondent, on receipt of the claim statement from the claimant contractor, the concerned Officer in the Purchase Unit shall prepare detailed

parawise comments on all the paragraphs of the claim filed by the claimant contractor. The Department has to admit or deny categorically all the allegations made in the firm's claim statement and should also give explanatory note about the stand taken by the Department giving reference to the legal opinion/advice which might have been obtained earlier.

33.9.4 The Officer-in-charge should also examine the copies of the documents filed on behalf of the claimant firm and should also give explanatory note whether documents, the copies whereof have been filed by the claimant firm are also available in the purchase files and whether they are true and correct copies of the original available with the Purchase Unit.

33.9.5 If there are some mistakes in the copies filed by the claimant firm the same should also be pointed out. The Purchase Unit should also consult the Accounts, Stores and Indenting Officer if some particular item referred to in the claim statement or some particular item necessary for substantiating the government counter claim is required to be ascertained from them under the existing administrative instruction and in the manner provided.

33.9.6 The draft claim statement/counter statement of claim shall be prepared by the concerned Officer-in-charge and then put up to next higher authority for approval. It should be ensured that all defences are taken and all claims/counter claims are included in the pleading. The Officer-in-charge should also decide the documents to be filed along with the statement/counter statement with the approval of the competent authority. The advice of the Legal Adviser, DAE should be taken before the statement/counter statement of the claim is finalised.

33.9.7 DAE will decide to entrust the case to a Government Counsel by reference to the Ministry of Law for nomination of a Govt. Counsel borne on the panel of that Ministry for conduct of the cases in arbitration. The engagement of such Counsel is made in accordance with the rules, instructions and scale of fees prescribed by the Ministry of Law but approval of Director, P&S is necessary before issuing a formal letter appointing the Government Counsel.

33.9.8 In cases where the Govt. Counsels are engaged the detailed para-wise comments or the self contained statement of facts shall be prepared and submitted to the Govt. Counsel so appointed and the said Counsel will be requested to prepare the claim/counter claim

33.9.9 If the Govt. Counsel engaged for conduct of the case, require prior consultation with the conversant Officer of the Purchase Unit to enable him to prepare or settle the claim/counter claim the concerned Purchase Unit should depute the conversant Officer for such consultation. The Officer so deputed shall record on the file the date, time and duration of the discussion held with the Govt. Counsel to enable verification of the bills of the Counsel.

33.9.10 After the draft claim/counter statement of claim is settled the fair will be typed with as many copies as required which should be signed by the Officer-in-charge dealing with the contract after verification of the factual position and swearing in of affidavits wherever required, by presenting themselves before the oath commissioner. The pleading shall then be signed and filed by the Officer who are authorised.

33.9.11 The pleadings are to be verified or the affidavits are to be sworn in by any person who is acquainted with the facts of the case. Accordingly the pleadings are to be verified or the affidavits are to be sworn in by the Officers who are dealing with the case and who are acquainted with the

facts of the case. Thereafter the pleadings will be signed by the Govt. Counsel who will be conducting the case.

33.9.12 In order to expedite preparation and finalisation of statement of claim together with supporting documents, model drafts of such statements of claims separately for cases involving claim on account of risk purchase, price variation, LD, general damages are placed at Annexure 4, 4A, 4B, 4C.

33.9.13 These model drafts also indicate broadly the type of supporting documents required to be filed along with the statements of claim in order to substantiate the claims of the Union of India. These model drafts not only help the Officers/Govt. Counsel in the preparation of statement of claim but also guide the Officers to know what documents are normally required for conduct of the cases in arbitration. The Officers in the Purchase Unit may however note that these drafts only serve as model which should be adopted with modifications here and there in individual cases to meet the requirements of a particular situation and they should not be blindly followed lest any other points of importance germane to a given situation should escape notice.

33.9.14 If as a result of examination, any additional documents/details is required by the Government Counsel the same shall be furnished by the concerned Purchase Unit.

33.9.15 In cases where the firm file counter statement of claims raising inter alia certain fresh points and it is decided to file a rejoinder on behalf of the Union of India, the concerned Purchase Unit should furnish detailed comments on each of the fresh points/allegations and also furnish complete information/data to substantiate the view points of the Union of India so that the Govt. Counsel may prepare draft rejoinder.

33.9.16 The list of documents referred to in the statement/counter statement of claim/replication/rejoinder as also in the advice of the Legal Adviser/Ministry of Law to support the claims of the Government shall be prepared and finally settled with the approval of the Counsel who is to conduct the case.

33.9.17 It will be the responsibility of the Purchase Unit to arrange for the presence of witnesses to give evidence on behalf of the Government where so desired by the Govt. Counsel.

33.9.18 The Officer dealing with the cases will be completely responsible for watching the progress of each case for production of evidence and rendering all assistance to the Govt. Counsel as may be required and to see to the successful conduct of the case.

33.10 Foreign Arbitration

33.10.1 All disputes or differences arising out of or in connection with the present contract, including the ones connected with the validity of the present contract or any part thereof, shall be settled by bilateral discussions.

33.10.2 In case of import contract, the Arbitration is normally in the International Court of Law. DPS must consult the Legal Adviser and the Govt. Counsel in all cases of Arbitration.

33.10.3 CVC have advised that 'parties approaching court of law for appointment of an

independent Arbitrator should be discouraged as far as possible by taking corrective action. Arbitration in respect of import contracts through International Court of Law should be an exception rather than a rule.'

33.10.4 The Arbitration & 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:

- 1) The parties can choose either Indian or foreign law governing arbitration.
- 2) To minimize interference of courts in stalling arbitration proceedings.
- 3) Arbitrator can be changed by mutual consent without approaching court.
- 4) Vesting of enhanced powers to Arbitrator.
- 5) Clearly defining obligations of the Arbitrator.
- 6) Arbitrators award to be enforceable as if it were a decree of court.

33.10.5 The Ministry of Law & Company Affairs has advised that Arbitration clause should specify that all our contracts have to be interpreted in accordance with the laws of Union of India and Arbitration proceedings shall be conducted in India under this Act.

33.10.6 Any disputes, disagreement of question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided by these conditions), which cannot be settled amicably shall be within sixty days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to Arbitration Tribunal consisting of three arbitrators.

33.10.7 Within sixty days of receipt of the said notice, seller shall nominate one arbitrator in writing and buyer shall nominate one arbitrator.

33.10.8 The third arbitrator, who shall not be a citizen or domicile or of the country of either of the parties or of any other country unacceptable to any of the parties shall be nominated of the parties within ninety days of the receipt of the notice mentioned above, failing which the third arbitrator may be nominated by the President of the International Chamber of Commerce, Paris, at the request of either party but the said nomination would after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned. The arbitrator nominated under this clause shall not act as an umpire.

33.10.9 The Arbitrator Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

33.10.10 The Arbitrator proceedings shall be conducted in India under the Indian Arbitration & Conciliation Act, 1996 and the award of such arbitration Tribunal shall be enforceable in Indian Courts only.

33.10.11 The decision of the majority of the arbitrator shall be final and binding on the parties to this contract. Each party shall bear its own cost of preparing and presenting its case. The seller and buyer shall share the cost of the arbitration including the fees and expenses of the third arbitrator equally.

33.10.12 In the event of vacancy caused in the office of Arbitrators, the party, which nominated such arbitrator, shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.

33.10.13 In the event of one of the parties failing to nominate its arbitrator within sixty days as above or if any of the parties does not nominate another arbitrator within sixty days of the place of the arbitrator falling vacant, then the other party shall be entitled after due notice of at least thirty days to request the President of the International Chamber of Commerce to nominate another arbitrator as above.

33.10.14 If the place of the third arbitrator falls vacant, his substitute shall be nominated according to the provision herein above stipulated.

33.10.15 The parties shall continue to perform the respective obligation under this Contract during the pendency of the arbitration proceedings except in so far as such obligation are the subject matter of the said arbitration proceedings.

33.10.16 A standard arbitration clause is included as Annexure- A.

33.11 Settlement of dispute of claim through Arbitration in case of Contract entered into with Public Sector Undertakings (PSUs)

33.11.1 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 Enterprise (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.

33.11.2 As the arbitration machinery is designed to be financially self supporting, the disputants are required to share equally the costs of the service rendered by the machinery.

33.11.3 In case the Department of Public Enterprises fails to settle the dispute/claim, the matter may be referred to the Cabinet Secretariat through the Department of Atomic Energy in line with the instructions issued by the Cabinet Secretariat vide their Office Memorandum No. 53/3/6/91-Cab dated 31.12.1991 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
- 2) Secretary, Department of Industrial Development
- 3) Secretary, Department of Public Enterprises

- 4) Secretary, Department of Legal Affairs
- 5) Finance Secretary
- 6) Secretary of the concerned Ministry/Department

33.11.4 The Department should refer the case of dispute with the Public Sector Undertaking to the Cabinet Secretariat with a self contained note for placing before the above constituted Committee for a decision.

33.11.5 Accordingly, insofar as contract entered into with the 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 provision of the contract 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.

33.12 Examination of Awards/Decrees and actions thereafter

33.12.1 Arbitration awards may be classified as

33.12.1.1 Declaratory award:

This is an award which either dismisses claim made but award no sum of money whether by way of costs or otherwise or only declares an interpretation of the contract. In the case of such an award the Purchase Unit should 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 Ministry of Law that a suit relating to the dispute referred to arbitration has become barred by time.

33.12.1.2 Other awards:

These are awards which direct payment of a sum of money by one party to other.

33.12.1.3 Speaking awards:

Speaking awards made by an arbitrator contain reasons for admission or rejection of claim.

33.12.1.4 Non-speaking awards:

Non-speaking awards do not contain reasons for admission or rejection of claim.

33.12.2 When the Arbitrator/Court has delivered the award the Purchase Unit shall arrange to obtain copies of the award through the Govt. Counsel.

33.12.3 The Govt. Counsel would examine the awards carefully and after the detailed study pinpoint any unusual features, defects, infirmity or weakness and advice the Purchase Unit

for obtaining the approval of the competent authority for acceptance of the award or to go for an appeal of such award. Depending upon the merits and demerits of the case the Purchase Unit should take appropriate action if necessary in consultation with the Legal Adviser of the Department.

33.12.4 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 thirty days from the receipt of the award unless another period of time has been agreed upon by the parties.

33.13 Procedure for follow up action

33.13.1 Award in favour of the Government:

33.13.1.1 Immediately on receipt of the award or the decree as the case may be the Purchase Unit should initiate necessary action to obtain the decision/approval of the competent authority as to the acceptance or otherwise on behalf of the Government of the award or the decree.

33.13.1.2 Reference to the Ministry of Law would not be necessary where

1) The arbitrator/court has allowed the claim of the Union of India to the full extent,

OR

2) The arbitrator/court has dismissed the claim of the contractor against the Union of India and the Union of India preferred no counter claim.

33.13.1.3 If the award is fully in favour of the Union of India, the question of challenging the same does not arise and a reference to the Ministry of Law is normally not required unless advice or any question of law is still required.

33.13.1.4 In respect of cases where award generally is in favour of the government and it has been advised by the Legal Adviser/Ministry of Law, that it may be converted into a decree, after obtaining the approval of the competent authority the Purchase Unit should arrange for moving an application in the court under Section 14 & 17 of the Arbitration Act within thirty days of the service of the notice for making the award a rule of the court.

33.13.1.5 An Arbitrator has to make an award within four months of the date of which he enters upon reference or within such time as is extended by the parties through mutual consent.

33.13.1.6 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 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 & 17 of the Arbitration Act for making the award a rule of the court.

33.13.1.7 In respect of cases, coming under the Arbitration & Conciliation Act, 1996 that is cases referred to arbitration after 25.1.1996, an application for setting aside an award is to be

made under Section 34 of the Act within three 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.

33.13.1.8 The Purchase Unit concerned shall serve thereupon a demand notice in the form given in the Annexure 5 for recovery of the awarded amount from the contractor.

33.13.1.9 The Purchase Unit 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.

33.13.1.10 In case payment is not made by the Contractor within thirty days of the issue of the demand notice the Purchase Unit shall forthwith institute investigation through appropriate civil and police authorities to find out the financial assets of the judgement debtor and also ascertain the immovable properties and other assets held by them and initiate execution proceedings for getting an order of the court for attachment of the properties in question in anticipation of the decree. It must be noted that the 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.

33.14 Award not in favour of Government

33.14.1 Where the award is against the government or partly in favour and partly against the government for e.g. 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 Department accept the award and the 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 in the ensuing para.

33.14.2 Purchase Unit immediately after obtaining approval of the competent authority to accept the award shall communicate as per Annexure - 6 to the contractor the fact of such acceptance and offer payment in terms of the award. If the contractor communicates acceptance of the award within the 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 & Narsing Shah AIR 1961 SC 1077.

33.14.3 It may be clarified that a letter of consent from the firm can serve the purpose and in case 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 such cases discharge is obtained by payment of 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.

33.14.4 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.

33.15 Recovery of Government Dues consequent to award of Decree

33.15.1 On receipt of the copy of the decree the Purchase Unit should serve a demand

notice on the judgement debtor demanding the amount and also simultaneously ascertain from Accounts if any of the bills of judgement debtor are pending with the Department from which the amount decreed in favour of the Government can be recovered.

33.15.2 On receipt of the details of the pending bills along with the relevant purchase orders from Accounts Unit action should be taken to have the bills attached through the court.

33.15.3 If there are no such bills and there is also no response to the demand notice from the judgement debtor, the Purchase Unit should consult the Legal Adviser/Ministry of Law and take necessary action for execution of the decree as may be advised by the Ministry of Law.

33.15.4 The Purchase Unit should also make where necessary discreet and confidential enquiry through police/civil authorities concerned or otherwise as to the available assets of the judgement debtor from which the recovery of decretal amount may possibly be made.

33.15.5 Where it is not possible to realise the decretal amount by means of attachment and sale of properties of the judgement debtor, a decree holder may ask for detention in the civil prison of the judgement debtor in accordance with the existing law.

33.15.6 Under Section 56 of the Code of Civil Procedure, decree holder can request the appropriate court, after having exhausted the remedy of recovery of the decretal amount from the property of the judgement debtor, for the arrest of the judgement debtor who can be detained in the prison in the execution of the decree for six months provided the decree is for a minimum sum of Rs. 50/. The existing law also provides that in case the judgement debtor is detained in prison, the decree holder will have to deposit diet allowance for such prisoner for the period of detention. The diet allowance is fixed by the court. In some States the State Govt. have fixed the allowance. In any case this will be nominal amount and vary from State to State. It may however be added that the committal of judgement debtor to a civil prison does not absolve him from the liability to pay. He can make the payment at the time of his arrest or at any subsequent time. The moment he makes the payment judgement debtor is released from the civil prison. Even if he had undergone the full term of imprisonment i.e. 6 months, he can still be compelled to pay by attachment and sale of his movable and immovable properties. Thus a committal to the civil prison will not prejudicially affect the interest of the government. Further the amount paid by the government by way of subsistence diet allowance is a cost of the suit and is also recoverable along with the decretal amount from the judgement debtor if he has sufficient assets.

33.15.7 The above procedure will apply in the case of an individual, sole ownership firm and partnership firm. After the life of the decree has run out or if at an earlier stage it becomes apparent that recovery is not possible and the Ministry of Law advise that it is no use pursuing the matter of recovery further, the Purchase Unit shall then take necessary steps to obtain the approval of the competent authority to the closure of the case and/or to write off of the loss involved as the case may be.

33.15.8 Under the limitation Act 36 of 1063, an application for execution of a decree (other than a decree granting a mandatory injunction) or order of any civil court must be made within twelve years of the date when the decree or order becomes enforceable and where decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, application for execution must be made within twelve years of the date when default in making the payment or delivery in respect of which execution is sought takes place.

33.15.9 Till such time as the decree runs out of its normal life of twelve years, application for execution of a decree shall be made frequently at suitable intervals in consultation with the Ministry of Law. With a view to keep a constant watch on the progress of recovery as well as proceedings in court the Purchase Unit shall maintain a register as in the proforma given in Annexure - 7 and enter in this register particulars of all courts decrees/orders under which any sum of money has been awarded to the Government against the party. A separate file shall also be opened in respect of each such case as soon as a certified copy of the decree or order is received.

33.16 Procedure regarding payment of Decretal and awarded amount when the award is in favour of the Contractor

33.16.1 Prompt payment of decretal and awarded amount is essential especially when such amount carry interest.

33.16.2 As soon as a decision as to acceptance or otherwise of the award has been taken by the Purchase Unit with the approval of the competent authority, the Purchase Unit shall examine if

- 1) The awarded amount is contractually due to the contractor,
- 2) The amount sufficient to satisfy the award has been previously recovered/withheld by the Accounts at the instance of the Purchase Unit.
- 3) Where the decree is not accepted and where an appeal is filed on behalf of the Government, the prompt payment would be necessary in the event the court orders payment with or without security for restitution pending decision on the appeal (in the event of Government succeeding in an appeal from the decree).
- 4) In cases where the arbitration award is backed by the court decree, on receipt of the decree Purchase Unit concerned after obtaining the approval of the competent authority should send a note to the Pay & Accounts Officer giving the details of the claim, the approval of the competent authority, the amount and full name and address of the payee i.e. the contractor in whose favour the cheque is to be drawn, as per the format given in Annexure 8 & 9. The Pay & Accounts Officer will draw a cross cheque in the name of the contractor as given in the note and forward the same to the Officer concerned in the Purchase Unit who shall arrange to deliver to the contractor after proper identification and after obtaining from the contractor concerned acceptance of the award and a receipt.
- 5) In the case of a court decree if execution proceedings started then the cheque shall be made out in the name of the court and after it is received from the Pay & Accounts Officer, the Purchase Officer concerned without any avoidable delay, shall arrange to have the sum deposited in the court by the stipulated date.

33.16.3 It is of utmost important that those cases especially where payment of interest is involved receive immediate attention at all the stages. The Officer concerned in the Purchase Unit shall be personally responsible for processing the cases from the time of receipt of the award/decreed till payment is made.

33.17 Legal Proceeding

33.17.1 All legal notices, summons or other legal processes regarding contract for procurement and disposal of stores entered into by DPS shall be received and attended to with utmost priority by the concerned Officers in the Purchase Unit.

33.17.2 It may be noted carefully that according to Order No. 37 (as amended by Section 84 of the Code of Civil Procedure Amendment Act, 1976, in all suits arising out of written contracts there is no right to the dependent to defend the suit unless -

- 1) he enters appearance within ten days of service of the notice in the suit,
- 2) applies for leave to defend the suit within ten days of the service of the summons for judgement served on the dependent after he enters/appears.

33.17.3 Thus, the importance and urgency in handling the notice needs emphasis and should be noted by all officers concerned in the Purchase Unit.

33.17.4 If on preliminary scrutiny, it is established that the notice/summons etc. received are actually for the DPS, the officers concerned shall take appropriate timely action to defend the case in consultation with the Legal Adviser in the Department/Ministry of Law as is necessary after obtaining the approval of the competent authority.

33.18 Institution and Defence of Law Suits/Filing of Appeal

DAE is authorised to sanction

- 1) Institution of suit and other legal proceedings wherever necessary for the recovery of any amount due from the contractors in respect of contracts for the purchase of or sale of stores. The Legal Adviser in the Department/Ministry of Law shall be consulted before instituting any suit.
- 2) Appeals are to be filed after due consideration in exceptional cases where the circumstances of the case so require. The Legal Adviser in the Department/Ministry of Law should be consulted and prior approval of the Department shall be obtained before filing an appeal against orders of a court.
- 3) Defence of suits and other legal proceedings including appeals which are brought against DPS.

33.19 Nature of Cases in Courts

33.19.1 Cases in Courts may broadly be categorised as:-

- 1) Court proceedings initiated under Section 28 of the Arbitration Act 1940 to seek extension of time for making of award by the Arbitrator in cases where the parties do not mutually agree to extend such time and the proceedings were adjourned sine die.
- 2) Application under Section 14 or under Sections 14 & 17 of the Arbitration Act 1940 (under Section 34 of 1996 Act) to have the award filed in a court, for challenging the award or for making it a rule and obtain decree in terms thereof.
- 3) Under Section 5 & 11 of the Arbitration Act 1940 (under Section 12 of 1996 Act) where the authority of the Arbitrator is sought to be challenged.
- 4) Application under Section 33 of the Arbitration Act 1940 (under Section 8 of 1996 Act) moved by the firms in the court challenging the existence of validity of arbitration agreement or an award or to have the effect of either determined.
- 5) Sometimes firms also file suits even in cases where arbitration clause is applicable. In such cases however the Union of India is required to move an application under Section 34 of the Arbitration Act 1940 (under Section 8 of 1996 Act) before taking any other steps to defend the suits brought by the contractor.
- 6) When after request is made by firms DPS do not appoint Arbitrator within fifteen days, the firms file petition in court under Section 8 & 20 of Arbitration Act 1940 (or under Section 11 of 1996 Act) seeking direction from the court to DPS for appointment of Arbitrator either in accordance with the Arbitration agreement or otherwise. Such objections are to be defended appropriately.
- 7) Firms file declaratory suit seeking clarification that no contract exists or contract is frustrated. These suits are to be defended.
- 8) In cases where the contracts do not contain arbitration clause, suits are filed for settlement of disputes.
- 9) Contractors file writs for enforcement of the alleged rights under the provisions of Article 226 of the Constitution.
- 10) Appeals, petitions for review/revision filed in courts of appropriate jurisdiction against various orders/judgements.
- 11) Petitions before the Supreme Court of India for special leave under Article 136 of the Constitution.

33.19.2 Execution Proceedings

When judgement debtors fail to pay the decretal amount through normal channels,

execution proceedings are initiated by the decree holders so as to obtain an attachment order from the court for getting the assets and properties of judgement debtors attached in satisfaction of the decrees. The courts having jurisdiction on the area where such assets/properties of judgement debtors exist are competent to entertain such petitions.

33.19.3 Summary Suits

These suits are filed under Order 37 Rule (2) & (3) of CPC in various courts against recovery of certain amount from the bills of the firms. These are very important suits where immediate action is required to be taken and it has to be ensured that the defendant or his counsel appears in the appropriate court within ten days of receipt of first notice failing which the court may proceed to pass a summary order or decree against which there is normally no appeal.

33.20 Court Proceedings initiated by Union of India

33.20.1 In cases where the contracts are not governed by the standard arbitration clause as per DPS General Terms & Conditions of the Contracts or where existence of such a clause is held void, before instituting litigation proceedings in courts against the contractor for settlement of disputes, the Purchase Unit concerned shall consult the Legal Adviser in the Department and/or the Ministry of Law by a self contained note bringing out clearly the view points of the Department and the supplier as also the doubtful points on which the ruling of the Legal Adviser/Ministry of Law is required and seek their categorical advice

- 1) Whether the stand taken by the Purchase Unit is legally tenable and whether such a stand can be taken before the court,
- 2) In case the stand taken by the Purchase Unit is not legally tenable and whether the claim of the contractor is to be accepted and acceded to so that frivolous litigation in court is not resorted to, or
- 3) Whether the matter could more appropriately be settled through negotiations in order to minimise avoidable expenditure on litigation proceedings.

33.20.2 If the advice of the Legal Adviser/Ministry of Law to initiate litigation proceedings in the court is in affirmative, the Purchase Unit concerned will immediately obtain the approval of the competent authority and take necessary action for institution of suits in court through the Ministry of Law. The Purchase Unit should also keep the indenting officer, consignee and the paying authority informed on the court proceedings.

33.21 Defence of Suits filed against Union of India - Notice under Section 80 of CPC

33.21.1 Before a suit is filed against the Union of India, a notice under Section 80 of CPC is issued by the contractor. The object of such notice is to provide an opportunity to the opposite party to examine the claim and make amends if necessary and settle the issue amicably and avoid fruitless litigation proceedings.

33.21.2 Immediately after such a notice is received the concerned Purchase Unit should take action as per instructions contained in Ministry of Law O.M.No. 93(1)57-OM dated 11.12.1957 as amended from time to time.

33.21.3 The concerned Purchase Unit should examine thoroughly the various claims/allegations made in the notice and make a self contained reference to the Legal Adviser, DAE giving inter alia the complete history of the case, para-wise comments together with reference to all relevant documents/papers duly flagged. Whether a reply to be sent to the notice or not the decision will be taken by the Purchase Unit in the light of the advice given by the Legal Adviser, DAE.

33.21.4 In case the dispute is not settled mutually, any time after the expiry of two months of the date when the notice was received, the party who served notice is entitled to file a suit in the court of appropriate jurisdiction.

33.22 Receipt of Notice of Suit filed by the Contractor in the Court

33.22.1 Immediately on receipt of a court notice, the case has to be submitted to the competent authority for approval for seeking legal advice from the Legal Adviser of the Department and for engaging a Government Counsel through the Ministry of Law for causing appearance before the court on the appointed day as mentioned in the notice.

33.22.2 The Officer concerned should make out two copies of the court notice and the petition if any enclosed with it. The notice and the petition in original together with copies of other relevant papers should be forwarded to the Govt. Counsel to enable him to draft a reply on behalf of the Union of India. In case the copy of the petition is not received along with the court notice, the Govt. Counsel should be requested to obtain a copy of the petition filed by the firm. The draft reply received from the Govt. Counsel should be got vetted by the Ministry of Law.

33.23 Engagement of a Counsel for Institution/Defence of Suit/Filing of Appeal on behalf of the Union of India

For filing a suit in a court of appropriate jurisdiction or for defence of suits filed against the Department (Union of India) the Ministry of Law should be requested for engagement of a Counsel. All relevant documents required for filing/defence of a suit should also be forwarded to the Govt. Counsel to enable the Counsel to draft the requisite petition. The draft petition should be got vetted by the Ministry of Law.

33.24 Finalisation of Pleading in Court Cases

33.24.1 For preparation of draft petitions, written statements/replications, etc. and settle supporting documents for filing/defence of suits on behalf of the Union of India, if the Government Counsel requires prior consultation with the conversant officer in the Purchase Unit, the concerned officer shall discuss with the Govt. Counsel and shall assist the Govt. Counsel in the Court. If need arises the concerned Officer can take assistance of the higher authorities.

33.24.2 Before the draft written statement/replication, etc. are got fair typed they shall first be checked and verified by the concerned officer in the Purchase Unit as to the factual accuracy. Fair copies will thereafter be made and signed by the concerned officer in the Purchase Unit and returned to the Govt. Counsel.

33.24.3 Where affidavits are to be filed the draft affidavits are fair typed and sworn in by the concerned officers in the Purchase Unit presenting themselves personally before the oath commission.

33.24.4 Admission and denial of documents is made in courts. On receipt of an intimation from the Govt. Counsel about the date fixed for admission and denial of documents, the concerned officer in the Purchase Unit should contact the Govt. Counsel with the required records to admit/deny the documents in courts. In case the Govt. Counsel desires prior discussion with the officer concerned he should do so immediately before actual admission and denial take place in court.

33.24.5 In cases where oral evidence is to be adduced the Purchase Unit should finalise the list of witnesses in consultation with the Govt. Counsel. As soon as the information is received about the date on which oral evidence is to be held, the Purchase Unit shall arrange presence of witnesses in the court on the date and time so fixed.

33.25 Delivery of Final Order/Judgement by the Court and obtaining a copy thereof

The officer concerned in the Purchase Unit attending to the court cases shall arrange to obtain copies of the judgement/decree from the relevant court as expeditiously as possible. He should ensure timely follow up action with the Ministry of Law/Govt. Counsel for obtaining copies of the judgement. In case of extreme urgency kucha copy may be obtained through the Ministry of Law.

33.26 Examination of Court Orders, Judgements and taking a decision as to their acceptance or otherwise

33.26.1 After receipt of the copy of the order/judgement the Purchase Unit shall analyze the various points, examine and decide in consultation with the Legal Adviser/Ministry of Law whether the order/judgement is to be accepted or appealed against with the approval of the competent authority.

33.26.2 In cases where a petition was filed for making the award as rule of the court and the order/judgement of the court is to make the award a rule exactly in terms in which it was published by the arbitrator and accepted by the Department with the approval of the competent authority, there is no need to refer the case to Ministry of Law for obtaining fresh administrative approval for acceptance of the order/judgement.

33.26.3 Similar shall be the position in respect of awards which were challenged in courts with the approval of the competent authority and the court passed an order/judgement exactly in terms of the petition filed by the Union of India.

33.26.4 In cases where the time for making the award by the arbitrator was sought to be extended by filing the petition in the court under Section 28 of the Arbitration Act, on receipt of the final order/judgement the Purchase Unit shall obtain the approval of the competent authority to the acceptance or otherwise of the court order/judgement.

33.26.5 In cases where petitions were filed under Section 20 of the Arbitration Act, 1940 or Section 8 of the new Arbitration Act, 1996 seeking a direction of the court for reference of disputes to arbitration and the court passes an order accordingly, the Purchase Unit should obtain approval of the competent authority to the acceptance or otherwise of the court order/judgement as the case may be in consultation with the Legal Adviser, DAE.

33.27 Filing of Appeals/Revision/Review against a Court Order/Judgement

Filing of petition for appeal, revision or review within the statutory period is the responsibility of the concerned Purchase Unit. Prior approval of the Department of Atomic Energy is necessary for going in appeal against an order/judgement of the court. All actions are to be taken well in time so as to save expiry of limitation period prescribed.

33.28 Production of official documents before Arbitrators/Courts and claiming of privilege concerning the same

33.28.1 Section 123 & 124 of Indian Evidence Act, 1872 which are relevant in this connection is reproduced below for reference:-

33.28.2 Section 123 evidence as to affairs of State No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the Head of the Department concerned who shall give or withhold such permission as he thinks fit.

33.28.3 Section 124 Official communication No public officer shall be compelled to disclose communication made to him in official confidence when he considers that the public interest would suffer by the disclosure.

33.28.4 Section 162 Production of Documents A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of such objection shall be decided on by the court. The court if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

33.28.5 It will be observed from the provisions of Section 123 & 124 *ibid* that privilege can be claimed for not producing official documents, the disclosure of which may be considered detrimental to the public interest. Such a privilege may invariably be claimed in respect of all unpublished records of the Govt. i.e. documents which have not come to the knowledge of the other party. For this purpose, 'note portion' of the file and all communications and letters other than those emanating from or are sent to the party should be treated as unpublished record. The privilege may be claimed by producing declaration before the court/arbitrator given in the

prescribed form. Detailed instructions on the subject are contained in the Ministry of Law O.M. No. F.37 (1)/63-J dated 23.6.1966 read with Cabinet Secretariat O.M. No. 74/1/2/72-CS dated 2.6.1973. Where the summons have been served on the Head of the Department or on a government servant who has the custody of the documents, in any special circumstances, it should be firstly determined whether the documents called for is on the privilege class under Section 123 or privilege if:

- 1) It is an unpublished official record relating to any affairs of the State
- 2) It contained any communication made to a public officer in official confidence, provided that in neither case the disclosure of the document would cause injury to the public interest.

33.28.6 If the document(s) required to be produced in the court is (are) in the custody of Government servant who has been summoned he should inform the court or in the case of High Court, or the Supreme Court, the Registrar of the court accordingly by an official letter in the form prescribed in this regard (vide Ministry of Law O.M. No. F.37 (1)/82-J dated 23.6.66 and also send a copy of the letter to both the parties to the proceedings in which the production has been required.

33.28.7 If the documents required to be produced is in the custody of the government servant and is either of the opinion that the document belongs to a privilege class or has any doubt in the matter, he should refer the matter to the Head of the Department unless the documents fall under (ii) above. In the latter case the government servant has himself to take a decision whether the public interest would suffer by the disclosure of the document.

33.28.8 If he decides that injury to the public interest would be caused by the disclosure of the document he should claim privilege under Section 124 of the Evidence Act in the manner herein after stated:

“For claiming privilege under Section 124 of the Evidence Act, the officer concerned should make an affidavit in the form no. 3 given in the Ministry of Law Office Memorandum quoted earlier. If he is summoned to give oral evidence he should attend personally and then called upon to produce the document or give any evidence relating to the communication contained therein he should claim privilege by filing the affidavit. If summoned to produce the document and not to give oral evidence, he may depute the subordinate officer to attend the court with the document (in a sealed cover) and the affidavit. The court, it should be noted, is entitled to inspect such documents for the purpose of determining the claim of privilege. If the claim is rejected and it is considered advisable to move the High Court, an application in the prescribed form should be made. If the production is still insisted upon, the document should be produced in a sealed cover and it should be submitted though time may be given to the public officer to consider whether the High Court should be moved in revision and that in the mean time if he sees no objection the document may be kept by the court in a sealed cover. The government servant should then abide by such order as the court may make it in the matter”.

33.28.9 Where it is desired to claim privilege for an official document under Section 123, the

matter is to be considered by the Head of the Department whether the document is an unpublished official record relating to any affairs of the State. If it is decided by the Head of the Department to claim privilege under Section 123 of the Evidence Act, and the summons is only for the production of the document, a subordinate officer should be deputed to attend personally.

33.28.10 In either case the government servant attending the court should take an affidavit in the prescribed form (vide Ministry of Law O.M. quoted earlier) which should be sworn by the administrative Head of the Department.

33.28.11 The government servant should also take along with himself in a sealed cover the document(s) which is (are) required to be produced.

33.28.12 When called upon to produce the document the government servant attending the court should present the affidavit from the Govt. Counsel and explain that he is not at liberty to produce the document or give any evidence derived therefrom. It is however, left to the court either to grant the privilege claimed or to reject the claim. If the claim is rejected, the government servant attending the court should make an application in the prescribed form vide Department of Legal Affairs O.M. quoted earlier. If the production is insisted upon, the document should be produced in a sealed cover and it should be submitted that the Head of the Department had instructed him to stake that he would desire to consider whether the High Court should be moved in revision and that if the court sees no objection, the document may be kept in sealed cover pending decision of the High Court. The Government servant should then abide by such order as the court may make.

33.28.13 It should be noted, however, that where a claim is made that a particular document relates to the affairs of the State, the court is not entitled in view of the provision of Section 162 of the Evidence Act to inspect the document, although it must notwithstanding the objection, be taken to the court; the court has only power to take other evidence to assist it in determining the nature of the document and may for this purpose require the officer who make the claim of privilege to appear for cross examination.

33.29 Oral Evidence derived from privileged document

The privilege recognised by Section 123 of Evidence Act, 1872 extends not only to the production of the document but also to the giving of any other evidence as to either contents or as the facts derived therefrom. No person, whether a Government servant or not, may give such evidence. Then a public officer summoned as a witness to give oral evidence is asked in the course of the examination as a witness any question concerning the matter which has come to his knowledge from any unpublished official records relating to affairs of the State, if no summons has been issued to the Head of the Department for production of documents and its prior permission to give evidence derived there from has not been obtained, he should decline to answer the question unless such permission is given. If the witness be the Head of the Department himself, he should object to the question on the ground that it relates to the contents of a privileged document. If the question is pressed and allowed by the court he should claim privilege after considering the document in the light of the preceding instruction. If an affidavit is required he should request for time to file it. If the witness is not himself the Head of the Department and the question is allowed by the court, he should pray that the Head of the Department may first be summoned to produce the document and decline to answer the question

until it is produced. The instructions contained in para 33.22 to 33.22.5 above apply as well to the cases in which the Government is party to the case as 'others'. These also apply to summons from tribunals such as arbitrators, etc.

33.30 Persons appointed to act as Arbitrator, payment of fees, cost of Arbitration proceedings, etc.

33.30.1 The services of the officers in the Ministry of Law are made available to DPS for appointment as Sole Arbitrator at the request of DPS. Since they are whole time officers drawing pay and allowances from the Ministry of Law, no fees are payable to them.

33.30.2 In case none of the officers in the Ministry of Law are available for appointment as an arbitrator in a case for reasons to be recorded in writing, any other officer may be appointed to act as an arbitrator in consultation with the Ministry of Law. Ordinarily, a departmental officer should not be appointed arbitrator/umpire in a matter concerning the department. Any officer of the Government appointed as arbitrator is entitled to be paid honorarium as per the provision made under FR-46(b).

33.31 Appointment of Retired Judges of High Court/Supreme Court to act as Arbitrators

33.31.1 Although the contract placed by DPS are generally governed by the standard sole arbitration clause, some times firms file petition in the court challenging the existence of an arbitration agreement and pray that the court may direct reference of dispute to the arbitration of a retired judge of the High Court / Supreme Court. If, in such cases the court pass an order in favour of the petitioner and direct reference of dispute to a retired judge of the High Court or Supreme Court, the Union of India should appropriately use the ruling of Supreme Court dated 12.7.96 as per which the Hon'ble Supreme Court set aside the order of the High Court appointing a retired judge as a sole arbitrator with a direction to appoint an arbitrator in terms of DGS&D General Terms & Conditions of the Contract (verdict of Supreme Court dated 12.7.96 is placed at Annexure - 10).

33.31.2 Fees Payable to the Retired Judges of High Court/Supreme Court acting as an Arbitrator/Umpire

Retired judges of the Supreme Court/High Court acting as Arbitrators/Umpires in Central Govt. arbitration cases are entitled to be paid fees as fixed by Ministry of Law, Justice & Company Affairs, Department of Legal Affairs.

33.31.3 Payment of charges for Typing or Shorthand notes as part of Arbitration costs

The Arbitrator may award the cost of typing or short hand notes as part of the costs if the award does not contain any direction for payment of such charges the court may direct payment of the same. In the absence of an award or an order of court directing the payment of expenses of the description aforesaid, the payment of typing charges, etc. can be made in case the Arbitrator or the Umpire has issued direction for payment of typing charges and such charges as considered reasonable.

33.32 Appointment & Remuneration of Govt. Counsel

33.32.1 In any legal proceeding, unless otherwise provided by general or special orders, the Govt. shall normally be represented by one or more Counsels who may be a person or persons notified as Govt. Pleader under XXVII Rule 8-B of the Civil Procedure Code or a person or persons appointed specially to act for the Govt. in any particular case in connection with the Ministry of Law and Finance or in accordance with any special or general instructions of the Ministry of Law.

33.32.2 The Counsel shall be paid such fees as per the standard scale laid down by the Ministry of Law and where for any reason, fees higher than those laid down in the standard scale are to be paid, such higher fees will be paid in consultation with the Ministry of Law and Finance.

33.32.3 In the event of engagement of a State Govt. pleader in any case he will be paid in accordance with the State Govt. rules or under the High Court rules as the case may be.

33.32.4 Besides, the expenditure on payment of fees of the Counsel, expenditure incidental to arbitration and legal proceedings has also to be incurred with the approval of the competent authority.

33.33 Settlement of Bills of Arbitrators/Counsels

As soon as the bills are received from the Arbitrators/Counsels, the same should be checked by the Officer concerned and passed on to the Pay & Accounts Officer for necessary payment after obtaining approval of the competent authority.

33.34 Procedure for dealing with Criminal Prosecution

In case it is proposed to institute a criminal prosecution or lodge a complaint with the police the officer concerned should make a self contained note explaining the reason for such a course of action and obtain the legal opinion and prior approval of the Department before initiating the action.

33.35 Monitoring of Arbitration/Court Cases

The Purchase Units shall maintain a separate register/data for arbitration and court cases as per Annexure 8. The register should be regularly reviewed/monitored by the Officers concerned every month and appropriate action should be taken. The register should be submitted to the next higher authority at least once in three months for review and any further action.

ANNEXURE A

ARBITRATION

1. All disputes or difference arising out of or in connection with the present contract, including the ones connected with the validity of the present Contract or any part thereof shall be settled by bilateral discussions.
2. Any dispute, disagreement or question arising out of or relating to this Contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicable, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to the Arbitration Tribunal consisting of three arbitrators.
3. Within sixty (60) days of the receipt of the said Notice, CONTRACTOR shall nominate one arbitrator in writing and CUSTOMER shall nominate one arbitrator.
4. The third arbitrator, who shall not be a citizen or domicile or of the country either of the parties shall be nominated of the parties within (90) days of the receipt of the notice mentioned above. Failing which the third arbitrator may be nominated by the President of International Chamber of Commerce, Paris, at request of either party by the said nomination would after consultation with both the parties and shall preclude any clause shall not act as an umpire.
5. The ARBITRATOR Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.
6. The Arbitrator proceeding shall be conducted in India under the Indian Arbitration and Conciliation Act. 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Counters only.
7. The decision of the majority of the arbitrator shall be final and binding on the parties to this contract.
8. Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the third arbitrator shall be shared equally by the Seller and Buyer.

9. In the event of vacancy caused in the office of the arbitrators, the party, which nominated such arbitrators, shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.
10. In the event of one of the parties failing to nominate its arbitrator within 60 days as above if any of the parties does not nominate another arbitrator within 60 days in the place of the arbitrator falling vacant, then the other party shall be entitled after due notice of at least 30 days to request the President of the international chamber of commerce to nominate another arbitrator as above.
11. If the place of the third arbitrator falls vacant his substitute shall be nominated according to the provisions herein above stipulated.
12. The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

ANNEXURE - 1

AGREEMENT IN TERMS OF STANDARD ARBITRATION CLAUSE

THIS AGREEMENT IS MADE this _____ day of _____ between M/s. _____ a company registered under the _____ and carrying out business at _____, hereafter referred to as the 'CONTRACTOR' (which term shall, unless excluded by or repugnant to the subject or context, include herein their executors, administrators, representatives and/or assigns) on the one part and the President of India, hereinafter referred to as the "PURCHASER" (which term shall, unless extended by or repugnant to the subject or context, include his successor or successors in office and/or assigns).

2. Whereas the parties to this Agreement had entered into a contract more specifically described in the Acceptance of Tender No. _____ dt. _____ (hereinafter referred to as the said contract).

3. And whereas the contractor did not agree to refer their disputes and differences arising under the terms of the contract to the sole arbitration of an officer in the Ministry of Law appointed to be the Sole Arbitrator by the Director, Purchase & Stores of Directorate of Purchase & Stores, Department of Atomic Energy in the manner hereinafter appearing.

4. NOW THIS AGREEMENT WITNESS AS FOLLOWS:-

- (i) In the event of any question, dispute or difference arising under the conditions printed in form DPS-P-11 as amended or any special conditions of contract or in connection with the contract (except as to any matters the decision of which is specially provided for under the conditions printed in for DPS-P-11 as amended or the special conditions) the same shall be referred to the Sole Arbitration of an officer in the Ministry of Law, appointed to be the Sole Arbitrator by the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy. There will be no objection that the arbitrator is a Government servant; that he had to deal with the matters to which the contract relates or that in the course of his duties as a Government servant, he has expressed views on all or any of the matters in dispute or difference. The award of the Arbitrator shall be final and binding on the parties to the contract.
- (ii) In the event of the Arbitrator dying, neglecting, refusing to act, or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.
- (iii) It is further a term of this contract that no person other than the person appointed by

the Director, Purchase & Stores of Directorate of Purchase & Stores, Department of Atomic Energy, as aforesaid should act as Arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitrator at all.

- (iv) The arbitrator may from time to time with the consent of all the parties to the contract on large the time for making the award.
- (v) Upon every and any such reference, the assessment of the costs incidental to the reference and award respectively shall be in the discretion of the arbitrator.
- (vi) Subject as aforesaid, the Arbitration and Conciliation Act, 1996 and the Rules there under and any statutory modification thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this Agreement.
- (vii) If the value of the claims in a reference exceeds Rs. 1 lakh the Arbitrator shall give reasoned award. The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the Director, Purchase & Stores, Directorate of Purchase & Stores, Department of Atomic Energy at his discretion may determine.
- (viii) In this Agreement the expression 'the Director, Purchase & Stores, means the Director, Directorate of Purchase & Stores, Department of Atomic Energy for the time being and includes, if thee be no Director, Purchase & Stores, the officer who is for the time being the administrative head of the Purchase & Stores Organisation, whether in addition to other functions or otherwise.

6. That the stamp duty on the present shall be borne by the Purchaser.

7. In witness whereof the parties to these presents have here to set their hands and seals, the month, day and year first above written.

Signed for and on behalf of _____

The contractor through _____ their Director Secretary in terms of the Memorandum and Articles of the Company. And its Resolution No. _____ dt. _____ in the presence of

- 1.
- 2.

signed and delivered for and on behalf of the President of India/Purchaser.

()
Director, Purchase & Stores
For and on behalf of the President of India
The Purchaser

ANNEXURE - 2

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

M/s. _____

Subject:- _____

Dear Sirs,

Since you have failed to comply with the terms and conditions of the above referred contract and since the above referred contract has already been cancelled you are liable to pay a sum of Rs. _____ as to the risk purchase loss/general damages due to the aforesaid breach committed by you.

2. In the connection, your attention is invited to the earlier demand notice dated _____ already served upon you. As you have failed to deposit the said amount you are also liable to pay interest also on the aforesaid sum of Rs. _____.

3. You are, therefore, hereby again called upon to pay the aforesaid sum of Rs. _____ along with the interest at the rate of 9% on the said sum immediately so as to reach this office latest by _____ (15 days from the date of issue of the notice may be given). You may pay the aforesaid amount along with interest by crossed demand draft on State Bank of India in favour of the Pay & Accounts Officer, payable at immediately so as to reach this office latest by _____ (15 days time from the date of issue of the notice may be given). In default of the payment of the aforesaid date, the purchaser will be constrained to take appropriate steps under the terms and conditions of the contract and will also be constrained to refer the dispute to arbitration as per the agreed conditions of contract contained in form DPS-P-11 without making any further reference to you.

4. This is, however, without prejudice to other rights and remedies of the purchaser under the terms and conditions of the contract.

Yours faithfully,

Joint Director, P&S
For & on behalf of the President of India
(The Purchaser)

ANNEXURE - 3

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Ref: DPS/

Date:

To

Subject:- _____

Dear Sirs,

The contract referred to in the subject cited above was placed upon M/s._____. Since you have failed to comply with the terms and conditions of the above referred contract and since the above referred contract has already been cancelled, you the addressee No. 1 and you the partner of the above referred firm mentioned as addressee No. ____ above are jointly and severally liable to pay the sum of Rs. _____ as to the risk purchase loss/general damages due to the aforesaid breach committed by you.

2. In this connection, your attention is invited to the earlier demand dated _____ already served upon you. As you have failed to deposit the said amount you are also liable to pay the interest by way of damages. You are, therefore, called upon to pay interest also on the aforesaid sum of Rs. _____ at the rate of _____% per annum with effect from _____.

3. You are, therefore, called upon to pay the aforesaid sum of Rs. _____ along with the interest at the rate of _____% on the said sum immediately by means of crossed demand draft drawn in favour of Pay & Accounts Officer, _____ payable at SBI _____ . The payment of the aforesaid amount along with interest till the date of the payment may please be made positively by _____ (15 days from the date of the issue of the notice may be given). In default of the payment of the aforesaid amount along with the interest by the aforesaid date, the purchaser will be constrained to take appropriate steps under the terms and conditions of the contract and will also be constrained to refer the disputes to arbitration as per the agreed conditions of contract

contained in the form DPS-P-11 without any further reference to you, and you the addressee No. _____ and you the partners mentioned at addressee No. _____ above shall be jointly or severally liable for payment of further cost etc.

4. This is without prejudice to other rights and remedies of the purchaser under terms and conditions of the contract.

Yours faithfully,

Joint Director, P&S
For & on behalf of the President of India
(The Purchaser)

N.O.O.

Copy to :

The Dy. Controller of Accounts - for information and necessary action and also to advise further any recoveries have been made in respect of the aforesaid Government claim and if so, how much amount has been recovered until now.

- : Indentor.....
- : Stores Officer.....
- : Inspecting Authority.....

ANNEXURE - 4

(Portions which are not applicable may be deleted)

BEFORE SHRI _____ SOLE ARBITRATOR, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS), NEW DELHI

IN THE MATTER OF
BETWEEN
UNION OF INDIA/STATE GOVERNMENT/PUBLIC UNDERTAKING
_____ CLAIMANT

AND

M/S. _____ RESPONDENT
ARBITRATION CASE NO. _____
STATEMENT OF CLAIM ON BEHALF OF CLAIMANT

Showeth as under:-

1.That pursuant to the tender of the respondent firm dated _____ a formal Purchase Order No. _____ dt. _____ in continuation of advance acceptance of tender of even number dated _____ was placed on the respondent firm for the supply of _____. The full details are indicated in clause _____ of the Purchase Order. The aforesaid contract was governed the General Conditions of Contract as contained in DPS-P-11 as amended (any other condition acceptable to be indicated).

2. That the Purchase Order dated _____ was accepted by the respondent contractor by letter dated _____ by putting up stores for inspection/delivery on _____.

3. That as per clause _____ of the Purchase Order, the date of delivery was _____. The aforesaid D/P was later on extended without/with R/R and denial clause on _____ upto _____ at the request of the contractor firm which was accepted by the respondent contractor firm.

4. That the respondent firm failed and neglected to supply the goods within the original D/P/ extended D/P and hence committed a breach of the contract.

5. That because of the breach on the part of the respondent, the purchaser cancelled

the contract for the unsupplied quantity on _____ at the risk and expense of the respondent firm, reserving the right to claim damages.

6. That due to breach committed by the respondent firm, the claimant suffered damages as set out below and is entitled to the said damages.

7. That the claimant had floated a market rate enquiry to the trade for ascertaining the market rate on or about the date of breach i.e. _____ pursuant thereto replies were received from _____. The claimant considered as rates supplied by M/s. _____ as representing the market rate prevailing on or about the date of breach.

OR

That no response indicating the market rate on or about the date of breach was received from the trade to the aforesaid market enquiry. However, the Department had placed another Purchase Order on M/s. _____ on _____ and had purchased identical/similar stores. These rate(s) indicate the market rate ruling on or about the date of breach.

OR

That as no market rate was available pursuant to the aforesaid enquiry the ruling price of the market on or about the date of breach has been calculated on the basis of cost structure i.e. price of raw material, wages, over-head expenses, bonus, margin of profit etc.

OR

That pursuant to the aforesaid market enquiry no rates were intimated by any of the firms. Department has also not placed any contract on or about the date of breach and it is also not possible to calculate exactly the cost structure of the goods as the goods are not marketable. However, the purchaser did suffer inconvenience/damage by reason of contractor's failure to supply. Hence the claimant is entitled to claim nominal damages, which are estimated at the rate of 7 ½% of the price of the case.

8. That in this way the general damages comes to Rs. _____ and the aforesaid sum was claimed from the respondent firm by demand notice dated _____. On their failure to pay, dispute arose which was referred to arbitration in these proceedings.

PRAYER

Under these circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs. _____ in favour of the claimant and against the respondent firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

The claimant reserves the right to amend, alter or modify its statement of claim as and when so advised.

CLAIMANT

Undertaking/Union of India/State Government of

Additional Legal Adviser (Lit.)

Through

Additional Legal Adviser/DD(Lit.)/AD

Mumbai

Dated, the _____ 200 _____

VERIFICATION

It is verified that the facts stated above statement of claim are true and correct on the basis of official records available and nothing has been concealed therefrom.

Joint Director, P&S

LIST OF DOCUMENTS

1. Tender of the firm.
2. Letter of Intent and firm's acceptance by cor/conduct, if any
3. Formal Purchase Order and firm's acceptance by cor/conduct, if any.
4. A copy of the general or special conditions of contract as applicable to the acceptance of the tender as for example DPS-P-11 which is applicable to the subject Purchase Order.
5. All the A/Ls by which the D/P was extended.
6. To prove the D.O.B., documents are required to be filed to show that the aforesaid A/L has been granted on the basis of the firm's request and/or that the firm has either expressly or by conduct accepted the aforesaid A/L. If goods supplied partially-documents to show (i.e. I/Notes).
7. Documents, if any, to show admission of increase in market rate on or near about the date of breach by the contractor.
8. Cancellation letter.
 - (i) Where the claim is by proof of market rate by trade enquiry.
 1. To prove actual loss, the repurchase purchase order, if repurchase has been made.
 2. Circular letter to trade for market rate with list of firms to whom sent.
 3. Documents to indicate market rate on or about D.O.B. on the basis of response from trade.

4. List of the firms who have responded to the trade circular.
5. If the goods are of such nature whose raw material prices are fixed by some other authority like JPC or MMTC etc. the price circular issued by them during the period.
6. Demand Notice.

(ii) Where the claim is by proof of market rate by purchase order placed by DPS on or about the date of breach.

1. To prove actual loss, the repurchase purchase order if repurchase has been made.
2. Circular letter to trade for market rate with list of firms to whom sent.
3. List of the firms which responded to the trade circular.
4. Documents to indicate market rate on or about the date of breach (copy of Purchase Order or supply order on which DGS&D is relying to prove the market rate on or about the D.O.B.)
5. Tender enquiry relating to the issue of the above Purchase Order.
6. Documents to show that Purchase Order relied on have been executed/supplied without deviation and full payment made.
7. Demand Notice.

(iii) Where claim is on the basis of @ 7.5%.

1. Documents to indicate that goods are non-marketable, i.e. specification/Drawing etc.
2. Documents to prove actual loss, if repurchase has been made.
3. Demand Notice.

(iv) Where claim is on the basis cost structure.

1. To prove actual loss, repurchase Purchase Order if repurchase has been made.
2. Circular letter to trade for market rate with list of firms to whom sent.
3. List of the firms with response on the rate circular.
4. Break up of cost as accepted by the contractor or as is normally accepted by the trade on the basis of standard cost analysis made by specified authorities (Institute of Cost and Works Accountants etc.).
5. Cost of raw material on D.O.B.
6. Documents to show the wage rate on/or about the date of breach or the Industrial Cost Index on the respective dates which determines the basis for payment of industrial wages.
7. Documents to show over-heads on D.O.B.
8. Documents to show bonus rates on date of breach.
9. Documents to establish normal margin of profit kept by the particular trade.
10. Demand Notice.

ANNEXURE - 4 A

DRAFT FOR CLAIMS OR RISK PURCHASE

(Portions which are not applicable may be deleted).

BEFORE SHRI _____ SOLE ARBITRATOR, MINISTRY OF LAW, JUSTICE
AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS), NEW DELHI.

IN THE MATTER OF

BETWEEN

UNION OF INDIA/STATE GOVERNMENT/PUBLIC UNDERTAKING
.....CLAIMANT

AND

M/S. _____RESPONDENT
ARBITRATION CASE NO. _____.

STATEMENT OF CLAIM ON BEHALF OF CLAIMANT

Showeth as under:

1. That pursuant to the tender of the respondent firm dated _____ a formal Purchase Order No. _____ dt. _____ in continuation of Letter of Intent of even number dated _____ was placed on the respondent firm for supply of _____. The full details are indicated in clause _____ of the Purchase Order. The aforesaid contract was governed by the General Conditions of Contract as contained in DPS-P-11 as amended/any other condition applicable to be indicated.
2. That the Purchase Order dated _____ was accepted by the respondent contractor by letter dated _____ by putting up stores for inspection/delivery on _____.
3. That as per clause _____ of the Purchase Order, the date of delivery was _____. The aforesaid D/P was later on extended without/with R/R and denial clauses on _____ upto _____ at the request of the contractor firm which was accepted by the respondent contractor firm.
4. That the respondent firm failed and neglected to supply the goods within the original

delivery period/extended delivery period and hence committed a breach of the contract.

5. That because of the breach on the part of the respondent, the purchaser cancelled the contract for the unsupplied quantity on _____ at the risk and expense of the respondent firm reserving the right to claim damages.

6. That due to the breach of the contract committed by the respondent, the claimant had to repurchase the stores at the risk of the respondent firm. For this purpose a risk purchase tender enquiry was floated under notice to the respondent firm on _____. The respondent firm also participated/did not participate in the R/P tender. But their offer could not be considered _____. The R/P Purchase Order No. _____ dt. _____ was placed on M/s. _____ within six months of the date of breach.

7. That R/P P/O was placed on the lowest tenderer that while placing the R/P P/O on M/s. _____ the lower offer(s) of M/s. _____ have been ignored on the grounds (s) :-

- 1.
- 2.
- 3.

8. That the R/P P/O placed on _____ has materialized and full payment has been made to the supplier.

9. That by resorting to the risk purchase the claimant has suffered a loss amounting to Rs. _____ and the same was demanded from the respondent firm on _____ and on failure to pay by the respondent firm, the dispute has arisen giving rise to the present reference to the arbitrator.

10. That the details of the calculation of the R/P loss sustained by the claimant are shown in the Annexure.

PRAYER

Under these circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs. _____ in favour of the claimant and against the respondent firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

The claimant reserves the right to amend, alter or modify its statement of claim as and when so advised.

CLAIMANT

Undertaking/Union of India/State Government of
Additional Legal Adviser (Lit.)

Through

Additional Legal Adviser/DD (Lit.)/Ad (Lit.)

Mumbai Dated, the _____ 200 _____

VERIFICATION

It is verified that the facts stated above statement of claim are true and correct on the basis of official records available and nothing has been concealed therefrom.

(Joint Director, P&S)

(In appropriate cases, claim for General Damages is to be preferred in the alternative)

LIST OF DOCUMENTS

1. Tender of the firm.
2. Letter of Intent and firm's acceptance, if any.
3. Formal P/O and firm's acceptance, if any.
4. A copy of the general or special conditions of contract as applicable to the acceptance of the tender as for example DPS-P-11 which is applicable to the subject P/O.
5. All the A/Ls by which the D/P was extended.
6. To prove the D.O.B. documents are required to be filed to show that the aforesaid A/L has been granted on the basis of the firm's request and/or that the firm has either expressly or by conduct accepted the aforesaid A/L. If goods supplies partially, documents to show (i.e. I. Notes).
7. Documents, if any, to show admission of increase in market rate on or about the date of breach by the contractor.
8. Cancellation letter.
9. Notice to defaulter firm under which R/P T/E was sent to the them.
10. R/P tender enquiry and tender.
11. Advance R/P P/O.
12. Formal R/P P/O.
13. If the R/P P/O is placed on the last day of six months from D.O.B. postal proof to show that it was put into transmission within time.
14. Comparative statement of R/P tenders while placing R/P P/O.
15. While placing R/P P/O if lower offers were ignored documents to substantiate the reasons for ignoring the lower offer, e.g. capacity report, banning orders etc.
16. Demand Notice.
17. Documents to indicate the R/P P/O has fully materialized without deviation. (File Inspection Note).
18. Document to show that full payment against R/P P/O has been made.

ANNEXURE - 4 B

DRAFT CLAIM OF LIQUIDATED DAMAGES

(Portions which are not applicable may be deleted)

BEFORE SHRI _____ SOLE ARBITRATOR, MINISTRY OF LAW,
JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS), NEW DELHI

IN THE MATTER OF

BETWEEN

STATE GOVERNMENT/UNION OF INDIA/PUBLIC UNDERTAKING
CLAIMANT

AND

M/S. _____RESPONDENT

ARBITRATION CASE NO. _____

STATEMENT OF CLAIM ON BEHALF OF CLAIMANT

Showeth as under:-

1. That pursuant to the tender of the respondent firm dated _____ a formal Purchase Order No. _____ dated _____ in continuation of advance purchase order (Letter of Intent) of even number dated _____ was placed on the respondent firm for supply of _____. The full details are indicated in clause _____ of the P/O. The aforesaid contract was governed by the General Conditions of Contract as contained in DPS-P-11 as amended/any other condition applicable to be indicated.
2. That the Purchase Order dated _____ was accepted by the respondent contractor by letter dated _____ by putting stores for inspection/delivery on _____.
3. That as per clause _____ of the P/O, the date of delivery was _____. The aforesaid D/P was later on extended without/with R/R and denial clause on _____ upto _____ at the request of the respondent contractor firm.
4. That the following is the chart showing the lot No., quantity, tendered on, released on, R/R date, date of receipt of stores by consignee and remarks:-

Lot No.	Qty. of Stores	Tendered on	Released on	R/R date	Date of receipt	Remarks

5. That it will be seen from the above table that the supplies in respect of lots _____ have been tendered within P/O D/P. The Lot Nos. _____ have been tendered within extended D/P with R/R and denial clauses. Lot No. _____ was offered when there was no D/P.

6. That there was delay in supplying the goods and as per terms of the contract agreed between the parties, the respondent is liable to make good the loss suffered by the petitioner due to delay in supplies. The claimant has suffered loss/damages/inconveniences quantified and claimed as liquidated damages as per Annexure 'A' amounting to Rs. _____ which is calculated @ 10% of 2% of value of the stores supplied for the delayed period/on the basis of the difference between the contract rate and the market rate on the date of delivery which amounts to Rs. _____. Liquidated Damages calculated on the basis of 2% of the value of the stores supplied as provided in the contract clause revised amount to Rs. _____. Hence the lesser amount is being claimed. The L/D is not claimed by way of penalty but is a genuine pre-estimate of loss suffered.

7. That the P/O was regularized on _____ with the L/D amounting to Rs. _____ which the claimant is entitled to claim and the aforesaid sum was claimed from the respondent firm on _____ and on their failure to pay dispute arose which was referred to arbitration in these proceedings.

PRAYER

Under these circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs. _____ in favour of the claimant and against the respondent firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

The claimant reserves the right to amend, alter or modify its statement of claim as and when so advised.

CLAIMANT

Undertaking/Union of India/
State Government of

by
Joint Director, P&S
Through

Addl. LA(Lit)/DD(Lit)/AD(Lit)
Mumbai Dated,
The _____ 200

VERIFICATION

It is verified that the facts stated in the above statement of claim are true and correct on the basis of official records available and nothing has been concealed therefrom.

Deputy Director, P&S

LIST OF DOCUMENTS

1. Tender of the firm.
2. Letter of Intent and firm's acceptance, if any.
3. Formal P/O and firm's acceptance, if any.
4. A copy of the general or special conditions of contract as applicable to the acceptance of the tender as for example DPS-P-11 which is applicable to the subject P/O.
5. All A/Ls by which the D/P was tended.
6. All A/Ls under which D/P has been extended with R/R and denial clauses.
7. Documents to indicate:-
 - (a) When stores were put up for inspection.
 - (b) When stores were inspected and cleared from inspection.
 - (c) When dispatched.
 - (d) When received by consignee.
8. Document to indicate loss/inconvenience.
9. Documents to show delay in supplies was entirely attributable to contractor.
10. Finalisation letter.
11. Demand letter.
12. If the case is of potential loss then documents to indicate that on the dates when the supplies were made there was lower trend in price. Documents for lower trend.
13. Documents to show market rate on the date on which the stores were delivered.
14. Chart showing the manner in which L/D has been calculated.
15. Cost working is required to quantify the inconvenience to file before Arbitrator.
16. Documents to show actual loss, if any.
17. Documents to show the loss that would have been incurred in case stores were hired etc.

ANNEXURE - 4 C

DRAFT FOR CLAIM OF PRICE PREFERENCE

(Portion which are not applicable may be deleted)

BEFORE SHRI _____ SOLE ARBITRATOR, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (DEPARTMENT OF LEGAL AFFAIRS), NEW DELHI.

ON THE MATTER OF ARBITRATION

BETWEEN

UNION OF INDIA/STATE GOVERNMENT/PUBLIC UNDERTAKING
_____ CLAIMANT

AND

M/S _____ RESPONDENT

ARBITRATION CASE NO. _____

STATEMENT OF CLAIM ON BEHALF OF CLAIMANT

Showeth as under:-

1. That pursuant to the tender of the respondent firm dated _____ a formal Purchase Order No. _____ dated _____ in continuation of Letter of Intent of even number dated _____ was placed on the respondent firm for the supply of _____. The full details are indicated in clause _____ of the P/O. The aforesaid contract was governed by the General Conditions of Contract as contained in DPS-P-11 as amended/any other condition applicable to be indicated.
2. That the Purchase Order dated _____ was accepted by the respondent contractor by letter dated _____/by putting up stores for inspection/delivery on _____.
3. That as per clause _____ of the P/O, the date of delivery was _____. The aforesaid D/P was later on extended without/with R/R and denial clause on _____ upto _____ at the request of the contractor-firm which was accepted by the respondent contractor firm.
4. That clause _____ deals with the price preference which is quoted as under:-

PRICE PREFERENCE FOR EARLIER DELIVERY TO BE INTRODUCED FRIMP/O

5. That the D/P as mentioned in the P/O was _____ .
6. That the respondent's tender quoting higher rates was given preference over the lowest acceptable tenderer for earlier delivery offered and that the respondent was fully made aware of the special circumstances under which he would be liable if he failed to adhere to the delivery dates offered and accepted by the claimant.
7. That since the firm failed to complete supplies within the original D/P as stipulated in the contract the same was extended with L/D and denial clauses on _____ from _____ to _____ and finally from _____ to _____. These amendment letters extending the D/P were accepted by the firm.
8. That the following is the chart showing the quantity put up for inspection, released by the Inspector and dispatched by the contractor firm:

Lot No.	Qty.	Tendered on	Released on	R/R No. & Date

9. That it would appear from the above chart that the contractor firm supplied the stores after the original D/P of _____. Hence they are liable under the price preference clause.
10. That the amount for which the respondent is liable under the price preference clause comes to Rs. _____ which the claimant is entitled against the contractor firm.

PRAYER

Under the circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs. _____ in favour of the claimant and against the respondent-firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

CLAIMANT

Undertaking/Union of India/
State Government of

By
Joint Director, P&S
Through
Addl. LA (Lit) / DD (Lit) / AD (Lit)
Mumbai Dated,
The _____, 1999/2000

VERIFICATION

It is verified that the facts stated in the above statement of claim are true and correct on the basis of official records available and nothing has been concealed therefrom.

Joint Director, P&S

LIST OF DOCUMENTS

1. Tender of the firm.
2. Letter of Intent and firm's acceptance, if any.
3. Formal P/O and firm's acceptance, if any.
4. A copy of the general or special conditions of contract as applicable to the acceptance of the tender as for example DPS-P-11 which is applicable to the subject P/O.
5. All A/Ls by which the D/P was extended.
6. All A/Ls under which D/P has been extended with L/D and denial clauses and specific notice showing the liability under price preference clause.
7. Acceptance of A/Ls by Contractor.
8. Tender of the lowest offerer.
9. Finalisation Letter.
10. Demand Letter.

ANNEXURE - 5

(Form for use when award is in favour of Government)

FORM 'A'

To

Subject:- Award dated _____ made by S/Shri _____
Arbitrator in regard to dispute arising out Purchase
Order No. _____ and referred to
Arbitration case No. _____ .

Dear Sir,

With reference to the award mentioned above I hereby on behalf of the Purchaser (Name of Indentor) call upon you to remit the awarded amount by means of demand draft in favour of the Pay & Accounts Officer, payable at within 15 days of the receipt hereof by you. Please note that in the event of your failure to do so, the Government/(Indentor) shall take steps to cause the award to be filed in Court and obtain decree in terms thereof for the costs and consequences of which you will be responsible.

Yours faithfully,

()
Purchase Officer / Dy. Director, P&S / Joint Director,P&S
For and on behalf of the President of India/ other Purchaser.

ANNEXURE - 6

(Form for use when some payment is to be made by Central Government in terms of the award).

(Form B)

To

Subject: - Award dated _____ made by S/Shri _____
_____ Arbitrator / Umpire in regard to the
disputes arising out of Purchase Order No. _____
and referred to arbitration in Arbitration case (s).

Dear Sirs,

With reference to the award mentioned above, you are requested to intimate by (the date to be specified) that you agree to accept the Award and the payment of the sum awarded in full and final settlement of all you claims constituting the subject matter of the reference to Arbitration in the above cited case (s).

Yours faithfully,

()
Purchase Officer/Dy. Director, P&S/Joint Director,P&S
For and on behalf of the President of India/other Purchaser.

ANNEXURE - 7

FORMAT OF THE REGISTER TO BE MAINTAINED BY LITIGATION SECTION.

S.No.	No. & Date of the P/O.	Name of the Judgement Debtor	Suit No.	Goshwara No.
1	2	3	4	5
Name of the Court		Amount recoverable from the firm	Amount payable to the firm	
6		7	8	
Date of decree order	Date on which application for execution is made		Date (s) of disposal of the application (s) for execution	
9	10		11	
Date on which next Application is due	Result		Remarks	
12	13		14	

ANNEXURE - 8

GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE & STORES

V.S. Bhavan
Anushaktinagar
Mumbai - 400 094

Dated, the.....

To
The Pay & Accounts Officer
Central Accounts Unit,
Directorate of Purchase & Stores
V.S. Bhavan
Anushaktinagar
Mumbai 400 094

(Through Authentication Cell)

Sub: Sanction to the payment of the awarded amount
of Rs. _____ in terms of the award
dated _____ given by the Sole Arbitrator
in respect of disputes arising against P/O No.
Datedplaced with M/s.

Sir,

I am directed to convey the sanction of the Director, Purchase & Stores, in consultation with the DAE to the payment of Rs. _____ (Rupees _____) to M/s. _____ towards satisfaction of the award dated _____ given by Shri _____ Sole Arbitrator (copy enclosed).

2. The cheque for the awarded amount may please be drawn in favour of the firm and should be non-negotiable. Shri _____, Deputy Director, P&S will present the Bill for the awarded amount of Rs. _____ (in words) and he will be responsible for the safe custody of the cheque and its delivery to the firm after obtaining clear receipt from the payee that their claim against the award stands fully satisfied.

3. The _____ (Indentor) has confirmed the availability of funds to meet the liability of the sanctioned amount. The cost is debitable to Head _____.

Yours faithfully,

(_____)
Joint Director, P&S

Encl: Copy of Award
Copy to : Indentor
: Section Officer, SUS Section, DAE

ANNEXURE - 9

Received Cheque No. _____ dated _____ for
Rs. _____ in terms of the sanction letter No. _____
dated _____ in connection with P/O No. _____
dated _____ placed on M/s _____
_____.

Note: The Cheque is to be drawn in favour of

M/s. _____ for Rs. _____

(
Joint Director, P&S

ANNEXURE - 10

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. _____ OF 1996
(Arising out of SLP(C) Nos. 8086-87 of 1006)

DGS&D & Others
Versus ----- Appellants

U.P. Asbestors Ltd.
-----Respondent

ORDER

Special Leave granted

Heard Counsel on both sides.

The short grievance of the appellant is that while the court could have appointed as Arbitrator on the failure of the department to appoint one the Court had to remain within the parameter of the Arbitration clause 24 which clearly states that the reference shall be made to the Sole Arbitration of an officer in the Ministry of Law. The Arbitrator appointed in the instant case is a retired Judge. Whereas the Arbitration clause envisages the appointment of a person who is 'an officer' in the Ministry of Law, meaning thereby who is in service at the relevant point of time. This is also the purport of this Court's decision in S. Rajan, State of Kerala (AIR 1992 S.C. 1918). We, therefore, set aside the order of the High Court appointing a retired Judge as Sole Arbitrator and quash the appointment and direct that the High Court shall appoint an Arbitrator in terms of clause 24 of the Agreement. The appeal will stand disposed of accordingly with no order as to costs.

Sd/-
----- CJI

Sd/-
-----K.S. Paripoornar.....J

New Delhi
July 12, 1996.

CHAPTER - 34

CVC GUIDELINES

34.1 Introduction

34.1.1 The Central Vigilance Commission ordinance 1998 empowers CVC to “exercise superintendence over the vigilance administration of various ministries of the Central Government or corporations established by or under any central act, government companies, societies and local authorities owned or controlled by that government”. The CVC have been working towards system improvements to encourage transparency and the culture of honesty. In order to achieve this objective, the CVC have issued number of instructions and guidelines. All procurement agencies must disseminate these guidelines to all concerned so as to ensure compliance at all levels.

34.1.2 Greater transparency in administration in general and procurement in particular is essential to instill the confidence in the staff as well as those who deal with the department. In order to obviate corruption or unethical practices, every department should constitute their own vigilance section. An effective internal communication system should be put in place so as to freely disseminate instructions, orders and guidelines amongst the staff.

34.2 Purchase Manual

The cardinal principle of any public buying is to procure the materials/services of the specified quality, at the most competitive prices, and in a fair, just and transparent manner. In order to achieve this, it is essential to have uniform and well-documented policy guidelines in the organisation so that this vital activity is executed in a well coordinated manner with the least time and cost over runs. A purchase manual containing the detailed purchase procedures, guidelines and proper delegation of powers needs to be formulated in each department so that there is systematic and uniform approach in the decision-making. Such an integrated approach is likely to put a cap on the corruption and would also ensure smoother and faster decision-making.

34.3 Guidelines

Some of the guidelines issued by CVC are summarized below for information and guidance of the officials involved in procurement, so that such lapses do not recur in future:-

34.3.1 Provisioning

34.3.1.1 Provisioning is the basis of any purchase. Excessive provisioning without taking into consideration the important aspects like available stock, outstanding dues/supplies, past consumption pattern and the average life of the equipment/item, etc. results in infructuous

expenditure both in terms of procurement cost and the inventory carrying cost. The projection and provisioning must be judicious and justified depending on various factors including usage pattern. One time purchase for projects or capital equipments/spares should be properly justified taking into account the obsolescence factor, etc.

34.3.1.2 These excessive/infructuous purchases were at times made in collusion with the firms.

34.3.1.3 The factors like shelf life and past consumption pattern were ignored while placing the order.

34.3.1.4 The demand for the stores was simultaneously received from different Sections/ Units but they were not clubbed together and were rather processed individually against the established principle of bulk buying.

34.3.2 Estimated Rate

Estimated rates are often worked out in an adhoc, unprofessional and perfunctory manner, at times by extrapolating the price of the lowest capacity equipment or by applying a uniform yearly compounded escalation over the prices of similar equipment purchased few years ago. As estimated rate is a vital element in establishing the reasonableness of the prices, it is important that the same is worked out in a realistic and objective manner on the basis of prevailing market rates, last purchase prices, economic indices for raw materials/labour, other input costs and assessment based on intrinsic value of the item, etc.

34.3.3 Contract Amendment

After conclusion of the contract, any relaxation in the contract terms/conditions should be severely discouraged. However, in exceptional cases where the modification/amendment are considered to be absolutely essential, the same should be allowed only after taking into account the financial implications for the same and with the approval of the competent authority.

34.3.4 Contract Monitoring

34.3.4.1 It is essential that all contracts are closely monitored and all follow up actions should be taken promptly. Delivery compliance including offering the stores for inspection in time should be monitored and timely expeditor sent, where required. Delivery period extension should be granted only on bonafide request and not in a routine and casual manner. In case of delay in supply of item, the LD, to the extent possible, should be recovered. Also if the delay is attributed to the supplier, the LC amendment charges should be borne by the supplier.

34.3.4.2 There is a need to discipline the suppliers so that non-performers could be weeded out and the suppliers who can be relied upon with consistent performance, in terms of quality and delivery schedule are encouraged.

34.3.5 Notice Inviting Tenders (NIT)

34.3.5.1 Against the most preferred and transparent mode of global tender enquiry/advertised

tender enquiry, some of the organisations are generally issuing limited tender enquiry to select vendors, irrespective of the value of the purchase.

34.3.5.2 The credentials of the firms and the criteria adopted for selection of such vendors in most of the cases are not put on record. This not only results in lack of competition but also favouritism to the select vendors.

34.3.5.3 It has been noticed that in cases where advertised/global tender enquiries were issued, the same were published in the local dailies and not in any national newspaper and particularly in Indian Trade Journal, Kolkata which is a government publication and is regarded as the standard medium for advertising tender notice in India.

34.3.5.4 Copies of tender notices have not been forwarded to the registered/past/likely suppliers.

34.3.5.5 For advertised tender, against the normal time of 4 to 6 weeks, there are instances wherein time for tender opening of only 12 to 15 days was given.

34.3.5.6 In case of limited tender, against a normal time of 21 to 30 days, there are cases where tenders were opened in short period of 7 days.

34.3.5.7 The tender opening on such a short duration is normally resorted to in case of reco-rded emergencies, wherein the Purchaser sends the tender enquiries by faster means like fax, speed post, etc. However, in most such cases, neither urgency nor proof of having sent the enquiries by fax/speed post could be established.

34.3.5.8 In a few cases it was also noticed that though short term tenders were invited, expre- ssing urgency of the requirement, however, the cases were processed in a very routine and casual manner without any consideration for urgency.

34.3.5.9 In some cases, it was observed that though the time of 6 to 8 weeks for tender opening was given but the tender sale was closed 2 to 4 weeks in advance of tender opening, thereby effectively giving only 1 month time to bidders for purchase of tender documents.

34.3.5.10 The very purpose of floating public tender which is to give wide publicity and sufficient time to bidders to get the bidding documents and submit their offers, in such cases seems to have been defeated.

34.3.5.11 In addition to the existing rules and practices regarding giving publicity of tenders through newspapers, trade journals and providing tender documents manually and through post, etc. the complete bid documents along with the application form shall be published on the website of the organisation. It shall be ensured that the parties making use of this facility of website are not asked to again obtain some other related documents from the department manually for purpose of participating in the tender process i.e. all documents upto date should remain available in the website and shall be equally legally valid for participation in the tender process as manual documents obtained from the department through manual process. The complete application form should be available on the website for purposes of downloading and application made on such a form shall be considered valid for participating in the tender process. The website address must be given in the advertisement/NIT published in the newspapers. The

firm can pay the required charges by demand draft along with the tenders submitted.

34.3.5.12 The Commission desires that there should be wide publicity through the websites as well as through the other traditional channels at regular intervals for registration of contractors/suppliers. All the required proforma for registration, the pre-qualification criteria, etc. should be always available on the website of the organisation and it should be possible to download the same and apply to the organisation. There should not be any entry barriers or long gaps in the registration of the suppliers/contractors. The concerned organisation should give web based publicity for limited tenders also except for items of minor value. If the organisation desires to limit the access of the limited tender documents to only registered contractors/suppliers they can limit the access by issuing passwords to all registered contractors/suppliers. But it should be ensured that password access is given to all registered contractors/suppliers and not denied to any of the registered suppliers. Any denial of password to a registered supplier/contractor will lead to presumption of malafide intention on the part of the tendering authority.

34.3.5.13 In case of proprietary purchases, the detailed justification for purchase from a single vendor is not being placed on record. As by issuing single tender, the competition is totally eliminated and possibility of paying higher prices cannot be ruled out.

34.3.6 Tender/Bid Documents

34.3.6.1 The terms and conditions being stipulated in the bid documents are quite insufficient and sketchy.

34.3.6.2 Some times, the bid documents contain obsolete, unwanted matter and conflicting and vague manner resulting in wrong interpretation, disputes and time and cost overheads.

34.3.6.3 Even the time/date for receipt and opening of tenders is not being incorporated in the documents.

34.3.6.4 The important clauses relating to earnest money, delivery schedule, payment terms, performance/warranty, bank guarantees, pre-despatch inspection, arbitration, liquidated damage/penalty for the delayed supply and risk purchases, etc., are not being incorporated in the bid documents.

34.3.6.5 All these clauses are important for safeguarding the interest of the purchaser and also have indirect financial implications in the evaluation of offers and execution of the contracts.

34.3.7 Earnest Money Deposit

34.3.7.1 It was noticed that the amount of EMD stipulated in the tender documents was grossly insufficient to protect the government interest in case of breach committed by the bidder.

34.3.7.2 Instead of ignoring the bids not accompanied with the earnest money deposit along with the tenders as per bid requirements, the bidders were asked to submit EMD, after tender opening.

34.3.7.3 In case of tenders invited in two-bid system, some of the organisations stipulated EMD as percentage of tender cost instead of fixed amount.

34.3.8 Delivery Period

In NIT a specific delivery schedule is incorporated inter alia mentioning that bids offering delivery beyond the stipulated date will be treated as non-responsive and will be summarily rejected. However, after opening the tenders, the bid by one of the bidders with slightly longer delivery period was not rejected as per the bid guidelines, rather that offer was also considered and evaluation was made after loading the offer by applying some unilateral criteria. The same resulted in inter se change of ranking position.

34.3.9 Evaluation/Loading Criteria

34.3.9.1 The evaluation/loading criteria on account of acceptable range of deviation in the commercial terms and conditions with payment terms, delivery period, PBG, etc., is not being incorporated in the bidding documents.

34.3.9.2 The evaluation of the offers is being made simply on the price quoted which is not in order. The comparative assessment of offers in true sense would be complete only if it is made on equal footing taking into account the financial implications for the deviations in terms of conditions, in line with unequivocal evaluation criteria specified in the bidding documents.

34.3.9.3 In one of the cases, it was noticed that due to non-stipulation of payment terms in the tender documents, the bidders quoted prices based on varying advance payment. The offers were evaluated by the organisation simply on the quoted prices, even though the L1 bidder had asked for much higher advance payment in comparison to the L2 bidder. As such the evaluation done by the organisation was not on equitable basis as the payment of higher advance evidently had financial implications.

34.3.10 Specifications

34.3.10.1 Some times only broad technical details are incorporated instead of generic specifications with complete details of performance parameters and the technical evaluation criteria.

34.3.10.2 At times the technical evaluation matrix is decided after opening of the tenders and is kept confidential.

34.3.10.3 In the absence of the detailed specifications/technical evaluation criteria, the evaluation of offers on equitable basis and in transparent manner would not be possible and would rather be prone to subjectivity in the decision-making.

34.3.10.4 In one of the cases of hiring of coolers, the requirement was bifurcated into two categories viz, “new cooler” and “as good as new coolers”. The quantitative requirement of each category of coolers and the specifications description given was quite vague and susceptible to manipulation as it gives full leverage to the bidder to supply coolers of any vintage. 34.3.11 Purchase/Price Preference

34.3.11 Purchase/Price Preference

34.3.11.1 The exemptions/reservation of a particular item, which normally applies to SSI Units, is not being specified in the tender notice/bid document.

34.3.11.2 The applicable purchase preference to public sector enterprises as per the guidelines circulated by Department of Public Enterprises is also not being incorporated in the bid document leading to lot of complaints from SSI/PSUs.

34.3.12 Discounts

Some tenders offer conditional discounts for coverage within a shorter period, for early inspection/payment, etc., and, such discounts are being considered, at the time of evaluation of tenders.

34.3.13 Receipt of Tenders

34.3.13.1 Some organisations do not have proper arrangement for receipt of tenders.

34.3.13.2 There is no tender box for receipt of tenders at scheduled date and time fixed for tender opening. Instead the trade representatives leave the tender with the receptionists or the concerned purchase officers. This procedure is highly objectionable as the possibility of tampering and interpolation of offers cannot be ruled out.

34.3.14 Postponement of Tender Opening

Wherever extension in the tender opening is done due to reasons like change in the specifications or on the basis of request of the vendors, it has been noticed that firstly, sufficient time to submit the bids as per the revised specifications and secondly, the intimation of tender opening extension is not being sent to all the bidders who had purchased the bidding documents. Also such notice of extension is also not being published in newspapers/ITJ.

34.3.15 Opening of Tenders

34.3.15.1 Some of the organisations are not opening the tenders in public i.e. in the presence of the trade representatives.

34.3.15.2 The system of not opening the tenders in public is against the sanctity of the tender system, and is a non-transparent method of handling tenders.

34.3.15.3 There could be possibility of tampering and interpolation of offers in such cases.

34.3.15.4 The rates at times are not quoted in figures and words, cutting/over writing are not attested by the bidders.

34.3.15.5 In the case of two-bid system, it has been noticed that after opening of the technical bids, the price bids, which are to be opened subsequently, are kept as loose envelopes. In such cases, the possibility of change of bids prior to tender opening cannot be ruled out. In order to make the system foolproof, it need to be ensured that not only tender opening officer/committee should sign on the envelopes but also the signatures of two trade

representatives should also be obtained on all the envelopes containing the price bids. Thereafter, all the envelopes should be put in a bigger envelope/box and the same should be properly sealed duly signed by the tender opening officer/committee and the trade representative.

34.3.16 Post-Tender Negotiation

34.3.16.1 As per CVC guidelines circulated vide letter no. 8(1)(H)/98(1) dated 18.11.1998, it has been brought out that 'the tenders are generally a major source of corruption, post tender negotiations are banned with immediate effect except in the case of negotiation with L1 (i.e. lowest tender)'. In continuation of these instructions further clarifications were issued vide Circular No. 98/ord/1 dated 15.3.1999 and No. 4/3/07 dated 3.3.2007.

34.3.16.2 As post tender negotiation could often be a source of corruption, it is directed that there should be no post tender negotiation even with L1, except in certain exceptional situations. Such situations are procurement of proprietary items, items with limited source of supply and items where there is suspicion of a cartel formation, etc. Justification and details of such negotiations should be duly recorded and documented in case negotiation is to be held.

34.3.16.3 At times where it is felt that retendering may jeopardise the essential operation, maintenance and safety, negotiation would be permitted with L1 bidder for the supply of bare minimum quantity required to avoid such situation. The balance quantity should, however be procured expeditiously through a retender following normal tender process.

34.3.16.4 Negotiation should not be allowed to be misused, as a tool for bargaining with L1 with dubious intentions which lead to delays in decision-making. The recommending authority for negotiation must record convincing reasons. Competent authority should exercise due diligence while accepting a tender or ordering negotiation or calling for a retender and a definite time frame should be indicated so that the time taken for according requisite approval for the entire process of award of tender does not exceed one month from the date of submission of recommendation. Further it should be ensured that the tenders are invariably finalised within their validity period.

34.3.16.5 As regards the splitting of quantities, some organisations have expressed apprehension that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of the L1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is far more than what L1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among other bidders in a manner that is fair, transparent and equitable. It is essentially in cases where the organisations decide in advance to have more than one source of supply (due to critical or vital nature of the item) that the commission insists on pre-disclosing the ratio of splitting the supply in the tender itself.

34.3.16.6 Counter Offer to L1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter offer thereafter to L2, L3, etc. (at the rate accepted by L1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

34.3.16.7 It is reiterated that in case L1 backs out, there should be a retender.

34.3.17 Tender Committee Proceedings

The decisions/deliberations of the individuals or the tender committees are not properly documented or recorded which dilutes the accountability of the officers and may result in the “interested” officers going scot free, even if serious lapses are established against them. The decision and deliberations of the individuals or the tender committees need to be properly recorded and well documented.

34.3.18 Technical Evaluation of Tenders:

34.3.18.1 Based on certain additional features, which were never part of the specifications, the offers were graded as “good”, “better” and “best” for award of contracts. Once it has been established that the offers meet the laid down specifications, the question of “grading” as well as any “pick and choose” should not arise. The contract needs to be awarded to the lowest bidder meeting the laid down specifications.

34.3.18.2 Some organisations insist on submission of tender sample by the bidders though detailed specifications for such items exist. The offers are rejected on the basis of tender sample not conforming to the requirements of the feel, finish and workmanship as per the “master sample” though the bidders confirm in their bids that supplies shall be made as per tender specifications in the bid documents. Rejecting tender sample at the time of decision-making is too subjective and is not considered suitable especially for items, which have detailed specifications. The lack of competition in such cases is also likely to result in award of contract at high rates. In such cases if required, provision for submission of an advanced sample by successful bidder may be stipulated for indeterminable parameters such as, shade/ tone, size, make up, feel, finish and workmanship before giving clearance for bulk production of the supply. Such system would not only avoid subjectivity at the tender decision stage but would also ensure healthy competition among bidders and thus take care of quality aspects as well as reasonableness of price.

34.3.19 Consideration of Indian Agents

34.3.19.1 The offers of Indian agents were entertained and also placed the contracts on them without bothering to examine the following aspects:

34.3.19.2 Foreign principal's proforma invoice indicating the commission payable to the Indian agent, nature of after sale service to be rendered by the Indian agent.

34.3.19.3 Copy of the Agency agreement with the foreign principal and the precise relationship between them and their mutual interest in the business.

34.3.19.4 The enlistment of the Indian agent with DGS&D under the compulsory registration scheme of the Ministry of Finance.

34.3.19.5 At times, the agent represents a foreign company in one particular tender and in another tender the foreign company participates directly and the agent represents another foreign company. There is a possibility of cartelisation in such cases and thus award of contract at higher prices. In order to maintain the sanctity of tendering system, it is advised that purchases should preferably be made directly from the manufacturers. Either the Indian agent on behalf of the

foreign principal or the foreign principal directly could bid in a tender but not both. Further, in cases where an agent participates in a tender on behalf of one manufacturer, he should be not allowed to quote on behalf of another manufacturer along with the first manufacturer in subsequent/parallel tender for the same item.

34.3.20 Reasonableness of Price

It is noticed that the purchases are being made at times in an adhoc and arbitrary manner without satisfying the prime requirement of establishing the reasonableness of rates in relation to the estimated rates, last purchase price or the prevailing market rate.

34.3.21 Advance Payment & Bank Guarantees

34.3.21.1 It is noticed that some of the organisations are quite liberal in allowing advance payments even to the extent of 30 to 40% and that too, totally interest free. In some organisations the payment of advance is being stipulated in the bid documents itself. The payment of interest free advance is in contravention of the guidelines issued by CVC.

34.3.21.2 In certain cases, despite provision in the contracts for releasing advance payments against bank guarantees the advance payments were released without obtaining the bank guarantees. Unfortunately in certain cases, suppliers fail to discharge their contractual obligations and huge advances are still outstanding for the last several years. It would be suicidal, if the advance payments were released without the bank guarantees for an equal amount.

34.3.21.3 In some cases, it has been observed that though the prospects of supplies were bleak, still timely action for revalidation/encashment of bank guarantees was not taken and the bank guarantees were allowed to lapse, jeopardizing the government interest.

34.3.21.4 In one of the cases, though the initial advance payment of 20% was released against the bank guarantee, however, further 65% progressive payments were made simply against certification that the amount claimed does not exceed the progressive expenditure. The payments were made in a span of hardly two months much before the bulk production clearance and without safeguards like bank guarantee, etc. The bank guarantee for 20% initial advance payment was also allowed to lapse. There after the firm did not make any supplies and was declared sick and huge government claim towards the advances made without protecting the government interest remains uncovered.

34.3.21.5 The bank guarantees accepted at times were defective/conditional and did not safeguard the interest of the purchaser. Normally the BGs permitting encashment without any demur merely on a demand from the purchaser are accepted.

34.3.21.6 In some cases it was noticed that the effective date of contract was linked with the date of receipt of bank guarantee for advance payment. This is detrimental to the purchaser's interest as in the absence of a specific date for submission of bank guarantee it would not be possible to establish specific date of breach to enforce contractual remedies. In such cases, the supplier will get full opportunity to wriggle out of the contract, if so desired without fulfilling contractual obligations.

34.3.21.7 The advance payments need to be generally discouraged except in specific cases.

Wherever payment of advance is considered unavoidable, the same should be interest bearing and be allowed after getting an acceptable BG for an equal amount with sufficient validity so as to fully protect the government interest. Some reasonable time should be stipulated for submission of BG so that contractual remedies could be enforced, if required. The BGs need to be properly examined with respect to acceptable format and any conditions deterrent to the government interest should be got withdrawn before acceptance besides verifying the genuineness of the BGs from the bankers. Timely action for revalidation/encashment of BGs also needs to be taken so as to protect the government interest.

34.3.22 Performance Bank Guarantee

34.3.22.1 Most of the organisations are not stipulating the requirement of PBG while others are stipulating different amount of security deposit/performance bond.

34.3.22.2 In some cases, it has been noticed that the amount of PBG is too low in comparison to the contract value.

34.3.22.3 The validity of the bank guarantees commensurate with the delivery period extension is not being sought resulting in loss to the government in the event of nonperformance of the contract.

34.3.23 Stipulation of Delivery Period in the Contract

34.3.23.1 Only the date of offering the equipment for pre-despatch inspection is stipulated as the delivery period, though terms of delivery are on CIF basis/FOR destination basis.

34.3.23.2 Only the date of completion of supply of the equipment is stipulated as the delivery period even though the installation and commissioning of the equipment is also to be carried out by the supplier. For installation and commissioning no specific date is stipulated.

34.3.23.3 In the absence of any contractual binding in this regard, the suppliers claim full payment for supplies of equipments and then tend to behave in a irresponsible manner and do not bother to take up timely installation/commissioning resulting in the equipment remaining uninstalled for months/years together.

34.3.24 Guarantee/Warranty Terms

34.3.24.1 The guarantee/warranty clause incorporated by some of the organisations is quite sketchy.

34.3.24.2 The modalities for enforcing the warranty obligations are not being incorporated.

34.3.24.3 Due to incomplete guarantee/warranty terms, the suppliers take full leverage and do not bother to honour guarantee/warranty obligations resulting in the equipment remaining defective and unutilized and thereby causing loss to the government.

34.3.24.4 It has been observed that in cases where the installation of the equipment is also included in the scope of the contracts but the standard guarantee/warranty clause of 15 months from the date of shipment/despatch or 12 months from the date of delivery, whichever is earlier is

being incorporated. With the results due to delay in installation of the equipment, the guarantee/warranty expires even before the installation of the equipment or some times a very short period of guarantee/warranty is available.

34.3.25 Post Contract Management

34.3.25.1 After award of the contract, amendments/modifications having financial implications are authorized in the contract terms/specifications giving undue benefits to the suppliers.

34.3.25.2 The specifications are diluted. Though specific makes/models of an equipment are specified in the contract as per the firm's tender, subsequently supply of some more alternative makes/models of the equipment are authorized without taking into account the financial implications thereof.

34.3.25.3 It has been observed that generally lower priced alternative makes/models are being included subsequently in the contract giving undue benefits to the suppliers.

34.3.25.4 The payment terms are amended favourable to the suppliers eg. advance payments are authorized even when there was no provision in the contract for making advance payments.

34.3.25.5 At times higher advance payments than stipulated in the contract are authorized.

34.3.25.6 The pre-despatch inspection though was incorporated in the contract but the same was subsequently waived without any reasons, thus jeopardizing the quality aspects as per contractual requirements.

34.3.25.7 The submission of PBG was waived.

34.3.25.8 Even though the contracts were placed on FOR destination basis, the locations of the consignee were changed nearer to the supplier's premises without taking into account the benefit of freight charges.

34.3.26 Project Monitoring

34.3.26.1 Post contract monitoring is being handled in a very casual and lackadaisical manner.

34.3.26.2 Due to lack of coordination and diversified approach followed by various agencies in the implementation of the projects the same resulted in time and cost over runs.

34.3.26.3 In some cases even after expiry of the delivery schedule stipulated in the contract and without extension of time granted by the purchaser, the consignee keep on exchanging correspondence with the supplier and thereby keep the contract alive. This may result in serious legal complications if it is intended to cancel the contract.

34.3.26.4 Some times materials are being accepted and payments are released as and when the supplier makes the supplies.

34.3.26.5 There is utter disregard to the contracting norms relating to delivery period, which is the essence of the contract.

34.3.26.6 Generally, the purchaser extends the delivery period of the contracts. However, in some cases it was recorded that the “supplier” has extended the delivery period of the contract.

34.3.26.7 Some of the organisations do not incorporate LD/penalty clause for imposing the penalty in case of failure of the supplier to deliver the equipment within the stipulated schedule.

34.3.26.8 The supplier quote short delivery period and in the absence of deterrent condition in the contract, manage repeated extensions.

34.3.26.9 In some of the cases it has been observed that LDs for delay in supplies are not being levied and recovered from the suppliers.

34.3.26.10 Although there had been delay attributable on the part of the suppliers in making the timely supplies, however, the organisations are extending the letter of credit with the proviso that the LC extension charges shall be borne by the organisation, thereby giving undue benefit to the supplier.

34.3.27 Filing System

34.3.27.1 The filing system adopted in most of the organisations is not satisfactory. Even the files are not being paginated. Part files are opened as and when new action is initiated and these part files are not merged with the main file, which interalia results in break in continuity and arbitrariness in decision-making. The procurement files are very important and sensitive documents and thus there is a need to have a single file system with proper page numbering. In case of urgency if opening of the part file is unavoidable the same should thereafter be merged with the main file.

34.3.27.2 The tender documents and the agreements are maintained in loose conditions, are not page numbered and not signed by both the parties. This is highly objectionable. In order to ensure that the agreements are enforceable in court of law, it is imperative that the agreements are well bound, page numbered, signed by both the parties and well secured. This shall also prevent any possibility of interpolation and tampering of the documents.

CHAPTER - 35

DELEGATION OF FINANCIAL POWERS (DAE) FOR PROCUREMENT

35.1 Introduction

35.1.1 In pursuance of Clause (3) of Article 77 of the Constitution, and Article 7 of the Resolution of the Government of India setting up the Atomic Energy Commission, the President hereby makes the following Rules for the exercise of financial powers namely

“Exercise of Financial Powers (Department of Atomic Energy) Rules”.

35.1.2 These rules may be called the Exercise of Financial Powers (DAE) Rules 1978.

35.1.3 They shall come into force with effect from 1st January 1979. The Department of Atomic Energy, with the concurrence of Member Finance, Atomic Energy Commission, may, at any time, by amendment of these rules, revise any provision under these rules. The President may by general or special orders revise, modify or relax any of the provisions of these rules.

35.1.4 The extent of powers delegated to the Department of Atomic Energy relating to procurement of goods is discussed below. The powers delegated to various subordinate authorities at present under DAE are included as Annexures.

35.2 Exercise of Powers

35.2.1 The exercise of the powers delegated under these rules shall be subject to the principles and procedures laid down in the GFR 2005, except to the extent these have been modified by these rules.

35.2.2 The powers vested under these rules in the Department of Atomic Energy may by order be delegated by it to the extent considered necessary to the Heads of the Departments and/or to other Senior Officers in charge of the Constituent Units or major Projects with due regard to their levels of responsibilities. The Officer to whom powers have been so delegated may by order authorise gazetted officers serving under them to exercise their powers on their behalf to the extent specified in that order. The officers redelegated these powers shall, however, be generally responsible to ensure that the officers to whom they have redelegated their powers exercise them with due regard to correctness, regularity and propriety.

35.2.3 No expenditure shall be incurred against a sanction unless funds are made available to meet the expenditure by valid appropriation or re-appropriation. The sanction relating to recurring expenditure becomes operative when funds to meet the expenditure of the first year are made available by valid appropriation or re-appropriation or by an advance from

the contingency fund and remain effective for each subsequent year subject to appropriation in such years and also subject to the terms of the sanction.

35.3 Powers of DAE

35.3.1 Sanction of Expenditure on purchase of stores & equipments

35.3.1.1 The sanction of the competent authority for executing a work, project or scheme carries with it the sanction to incur necessary expenditure on the purchase of stores or equipments required therefor, provided that the outlay can be met from the provisions of such work, project or scheme in the approved cost estimates. Where enhanced provision therefore is found to be inevitable, the approval of the competent authority shall be obtained for revision of the cost estimates.

35.3.1.2 DAE shall have full powers in respect of sanctioning stores and equipments such as workshop equipments, apparatus, tools, etc. required by R&D Centres, their supporting facilities and ancillary establishments, subject to the availability of funds and provided specific provision has been made for the purchase of the item in the approved budget, the details of which are included in the budget proposal submitted to the Atomic Energy Commission. In the absence of such a specific provision, the powers of the Department in respect of sanctioning of such stores and equipments shall be Rs. 10.00 lakhs.

35.3.2 Conclusion of Contract for purchase of stores

35.3.2.1 Subject to provisions of EFPR (DAE) Rule 1978, and the provisions of GFR 2005 governing its purchase of stores, DAE has full powers to effect purchase and to execute contracts.

35.3.2.2 The Department shall have powers to approve contracts against open tender the value of which does not exceed Rs. 8.00 crore. Contracts whose value exceed Rs. 8.00 crore but do not exceed Rs. 10.00 crore can be approved in consultation with the nominee of Member for Finance. DAE can approve any contract finalised on a limited tender, the value of which does not exceed Rs. 3.00 crore. The contracts against limited tender, the value of which exceeds Rs. 3.00 crore but does not exceed Rs. 5.00 crore can be concluded in consultation with the nominee of Member for Finance. Further, DAE has powers to finalise any contract through single/negotiated tender, the value of which does not exceed Rs. 2.00 crore. Further the contracts where the value exceeds Rs. 2.00 crore but does not exceed Rs. 3.00 crore can be finalised in consultation with the nominee of Member for Finance. The previous concurrence of Member for Finance shall be obtained in respect of contracts whose value exceeds these limits.

35.3.3 Advance Payments to suppliers

The Department may make advance payments to Indian suppliers to the extent of 90% in normal course and 100% after relaxation both on concurrence by IFA and against bank guarantees and with the approval of Member for Finance in case of waiver of bank guarantee. Payment of advance to foreign suppliers in foreign exchange, the value of which does not exceed US \$ 25,000/- may be made subject to the clearance of RBI.

35.3.4 Current Duties

An Officer appointed to perform the current duties of a post in addition to his own, may exercise administrative or financial powers vested in the regular incumbent of the post, but he shall not exercise statutory powers derived direct from an act of Parliament or rules, regulations and by-laws made under any provisions of the Constitution (e.g. FR, CCS (CCA), Rules 1965, etc.).

35.3.5 Insurance of Government Property

No government property whether movable or immovable shall be insured. No liability shall be incurred in connection with the insurance of such properties without the prior approval of the Department of Atomic Energy in consultation with Member for Finance. DAE, shall however, be competent to incur expenditure on the insurance of materials and equipments received on loan or aid from International or other organizations, if according to the terms of the contract or agreements entered into with the organizations concerned, insurance of such material or equipment is necessary or insurance is in accordance with any approved policy or practice. DAE shall also be competent to incur expenditure on transit insurance in respect of any imported equipment, material or other items. Where for the booking of goods by railways, an alternative railway risk rate is provided, the additional charges above those prescribed for booking the goods at owner's risks though being in the nature of insurance charges, DAE/HOD/Head of Office shall be competent to sanction such charges.

35.3.6 Freight/demurrage/wharfage charges

35.3.6.1 Heads of Departments shall have full powers to sanction freight, demurrage/wharfage charges and port trust dues and Head of Office shall have full powers to sanction freight charges, and powers upto Rs. 5000/- in each case for sanction of demurrage/wharfage charges. Each case where demurrage/wharfage charges paid exceeds Rs. 500/- shall be reported by the Head of Office to the Head of the Department and each payment of demurrage/wharfage charges exceeding Rs. 1000/- shall be reported by the Head of the Department to DAE.

35.3.6.2 Airlifting of stores shall be resorted to only in extreme urgency. In order to ensure that this condition is not violated a report of all cases of airlifting of stores sanctioned by the Constituent Units of DAE shall be submitted by them periodically to the next higher administrative authority, provided that Director, P&S need not send such reports.

35.3.7 Internal Financial Adviser

35.3.7.1 The Internal Financial Adviser is an important adviser to the competent authority with expertise in financial matters as well as about rules and regulations. The IFA must participate in the decision making process as a team member and be accountable for optimal use of resources allocated and achievement of organizational targets/goals. The Department of Atomic Energy shall be competent to lay down the procedure for Internal Financial Advice in respect of the exercise of some or all the powers, which are delegated to the Department of Atomic Energy. The function of the Internal Financial Adviser of rendering financial advice within the field of financial powers delegated to the Department is performed by the Joint Secretaries/Additional Secretary as per allocation of work. All cases having financial implications will require clearance from the IFA concerned. The IFA system as indicated below

is being followed in DAE:-

All matters dealt with by	Internal Financial Adviser
1) Additional Secretary	Jt. Secretary (I&M)
2) Joint Secretary (I&M)	Jt. Secretary (R&D)
3) Joint Secretary (R&D)	Additional Secretary

35.3.7.2 Under the organizational set up of the Constituent Units of the Department, the Heads of Accounting function in the major Units, designated as Internal Financial Advisers/Joint Controller (F&A), also perform the function of rendering financial advice to the Heads of Units within the field of financial powers delegated to them. In smaller Units also, the Officer-in-charge of Accounting Unit has to perform internal financial advice functions though his designation does not specifically indicate this. The following are the areas requiring consultation/advice in which the IFAs/JC(F&A)s and other Officers-in-charge of Accounting Units should be associated in order to ensure effective working of the internal finance system in the Unit. The lists are only illustrative:-

- 1) Preparation and scrutiny of the budget of the Unit in accordance with the prescribed procedures and instructions.
- 2) Periodical review of expenditure for the purpose of budgetary control.
- 3) Monitoring of liabilities and commitment to facilitate realistic preparation of budget estimate, watching of debits for expenditure incurred outside the accounts circle, timely surrender of anticipated savings.
- 4) Proposal for supplementary demands of re-appropriations.
- 5) Proposal for creation of posts with special reference to orders issued regarding economy of expenditure.
- 6) Formulation of schemes from initial stage and screening of all expenditure proposals connected therewith.
- 7) Project monitoring, with special reference to periodical evaluation of progress/performance, the use of the results of evaluation in budget formulation.
- 8) Settlement of statutory and internal audit objections, inspection reports and draft audit paragraphs, etc.
- 9) Exercise of powers delegated to Heads of Units and their subordinate Officers, except all the powers exercised by Heads of Offices and those of Heads of Departments as are listed in DAE Circular No. PRAO/Control/2/1(76)/78-79/228 dated 31.03.1979.

- 10) Reference to DAE on all matters involving financial impact or seeking clarifications regarding interpretation of financial or service rules.

35.3.7.3 The above duties of Internal Financial Advice are exclusive of their duties regarding pre-audit, payment of bills and maintenance and submission of accounts as well as the prescribed returns relating to thereto.

35.3.7.4 IFA plays an important role in advising the competent authority as an advisor to the designated competent authority regarding the propriety of procedures and practices followed, ranking of bids, determination of L1, fixation of reasonable prices (bench marking) and assessment of price reasonableness as well as in conduct of effective negotiations, where considered necessary to ensure both financial probity and value for money.

35.3.7.5 Copies of formal orders sanctioning expenditure or advances of public money issued by the Department shall be forwarded to the Audit Officer concerned. Where concurrence of the Member for Finance is required under these rules, the fact that such concurrence has been obtained shall be mentioned in the sanction order.

35.3.8 Delegation of Powers to Heads of Departments

The question of delegating more powers to the Heads of Departments specially with regard to matters like works contracts and contracts for procurement of stores and equipments, etc. in the context of new projects and programmes being taken up by various Units were under consideration of the Department. It was therefore felt essential by DAE that the Officers, who have been entrusted with the task of setting up of new projects/schemes, should be delegated with powers commensurate with their responsibilities and financial requirements free from multiple scrutiny and avoidable delay. Keeping this objective in view and considering the enhanced financial powers available with the Department, Secretary, DAE has delegated enhanced financial powers to all Heads of Departments vide DAE O.M. No. 3/2/97-SCS/Vol.II/523 dated 2nd July, 1999. The powers delegated to the Heads of the Departments relating to contracts for procurement of stores and equipments and the powers delegated by the Heads of the Departments to the subordinate authorities of various Units are indicated in the annexures.

ANNEXURE - 1 A

BHABHA ATOMIC RESEARCH CENTRE

(Rupees in Lakhs)

Approving authorities	<u>Indents</u>		<u>Purchase</u>		
	Proprietary	General	Proprietary/ Single Tender	Limited Tender	Open Tender
Section Heads/Sub Project coordinators	-	10.00	-	2.00	2.00
Head of Division/Head of Independent Section/Apex Project Coordinator	5.00	20.00	2.00	7.50	7.50
Associate Directors	50.00	200.00	5.00	10.00	10.00
Directors of Groups/Controller	100.00	Full	10.00	15.00	15.00
Stores & Equipment Committee	-	-	50.00	50.00	50.00
Director, BARC	200.00	Full	200.00	300.00	800.00

Approval of Group Boards
(non-plan budget revenue):

Capital Equipment : above Rs. 20.00 lakhs
Consumable : above Rs. 10.00 lakhs

Capital Projects:

Approval of Group Director : as above.

Procurement of items both capital & consumables (imported as well as indigenous) of value more than Rs. 15.00 lakhs in respect of limited tenders and public tenders and value more than Rs. 10.00 lakhs for proprietary/nominated/single tender upto a value of Rs. 50.00 lakhs will require the approval of S&EC. Single tenders shall also include cases where in response to public/limited tender only single tender has been received/qualified.

In respect of open tender where the value exceeds Rs. 50.00 lakhs upto Rs. 300.00 lakhs the same will be approved by Group Directors of the respective Groups and in respect of single tender/proprietary item, the Group Directors will approve procurement beyond Rs. 50.00 lakhs and upto Rs. 100.00 lakhs.

In respect of purchase contracts relating to open tender whose value exceeds Rs. 300.00 lakhs and upto Rs. 800.00 lakhs Director, BARC will approve the purchase on the recommendations of the Trombay Council. Similarly, in respect of limited tenders, Director, BARC will approve the contracts whose value exceeds Rs. 50.00 lakhs and upto Rs. 300.00 lakhs on the recommendations of the Trombay Council. Single tender/proprietary item whose value exceeds Rs. 100.00 lakhs and upto Rs. 200.00 lakhs Director, BARC will approve on the recommendations of Trombay Council.

ANNEXURE - 1 B

NUCLEAR RECYCLE GROUP BARC

Special Purchase & Works Committee (NRG), BARC.

Purchase & Stores:

Public Tender/ Limited Tender	}	above Rs. 15.00 lakhs upto Rs. 100.00 lakhs
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Single tender/ proprietary/ nominated	}	above Rs. 10.00 lakhs upto Rs. 100.00 lakhs
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Steering Committee, NRG:

Public Tender/ Limited Tender/ Single Tender/ Proprietary/ Nominated	}	value exceeds Rs. 100.00 lakhs upto Rs. 200.00 lakhs
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Two Part Tender:

Public Tender - above Rs. 100.00 lakhs upto Rs. 200.00 lakhs

Limited Tender - above Rs. 50.00 lakhs upto Rs. 200.00 lakhs

Single Tender/ - above Rs. 10.00 lakhs upto Rs. 200.00 lakhs

Nominated

All purchase recommendations which are to be submitted to the Steering Committee are to be submitted directly to the Steering Committee without routing through Special Purchase & Works Committee (NRG) - BARC.

All the purchase proposals whose value exceeds Rs.200.00 lakhs will be submitted to Trombay Council for recommendation.

ANNEXURE - 1 C

PURCHASE OF DRUGS & MEDICINES (BARC HOSPITAL)

(Standing Order No. D-13 2000 dated 26.6.2000 issued by Director, BARC)

The normal channel of procurement would be through rates/running contracts concluded with the primary manufacturers or their authorized representatives. Such contracts would be finalised through DPS, Mumbai for drugs / medicines / injections / chemicals / pharmaceuticals / surgical dressings / consumables, etc. which are in common and regular demand and whose value exceeds Rs. 25,000/- in a year. Where such contracts finalised by DGS&D etc. are in force, orders could also be placed against such contracts for expeditious materialisation. In the event of non-materialisation of normal supplies through rate contracts as above local purchase of the medicines may be resorted to through DPS, Mumbai following normal purchase procedure. In order to carry out the above purchases Local Purchase Committee with Head, Medical Division as Chairman has been constituted. The value of such purchases shall not normally exceed Rs. 3.00 lakhs in a month.

To meet immediate unforeseen requirements or in emergency, cash purchase of drugs/medicines from authorised wholesale distributors of the manufacturers or stockists etc. would be permissible. The powers of emergency cash purchase would be Rs. 20000/- for Head, Medical Division and Rs. 5000/- for Zonal Incharge of Dispensaries/Unit Heads.

The purchase of drugs/medicines covered under rate/running contracts would be approved by a Drug Purchase Committee constituted by Director, BARC.

As per the purchase preference policy of the government for products of Pharma Central Public Sector Enterprise (CPSE) and their subsidiaries vide Memorandum No. 50013/1/2006-SO PI-IV dated 7.8.2006 from Ministry of Chemicals & Fertilizers, Department of Chemicals & Petrochemicals 102 drugs and medicines are reserved for purchase exclusively from the Pharma Central Public Sector Enterprise and their subsidiaries.

ANNEXURE - 1 D

BARC FACILITIES AT KALPAKKAM

INDENT APPROVAL:

In respect of capital equipment indents upto a value of Rs. 5.00 lakhs and in respect of consumable stores indents upto a value of Rs. 2.00 lakhs, shall be approved by Sr. Officers nominated by the Facility Director, BARC Facilities. Heads of Divisions will approve the indent for capital equipment upto Rs. 10.00 lakhs and consumable stores upto Rs. 5.00 lakhs.

Wherever there is definite requirement for obtaining equipment/material of a specific make/proprietary nature or for fabricating equipment through specific technically competent vendors, the same should be adequately justified at the indent stage itself.

The requirement of capital equipment above Rs. 10.00 lakhs and consumable stores in respect of ordinary stores above Rs. 5.00 lakhs shall be approved by the concerned Group Director. In case of a specific make/proprietary item or fabrication through specific technically competent vendors, approval of the concerned Group Director, shall be obtained where the value exceeds Rs. 5.00 lakhs.

APPROVAL OF PURCHASE:

In case of imported items of FOB value of less than Rs. 2,50,000/- and indigenous items less than Rs. 5.00 lakhs, Heads of Divisions may accord approval for the purchase.

In case of procurement (of both capital equipment and consumables) in value upto Rs. 25.00 lakhs will require the approval of Stores & Equipment Committee, BARC, Kalpakkam.

Cases of purchase of capital equipment and consumables above Rs. 25.00 lakhs in value shall require further approval of the Trombay Council.

In view of the enhanced powers now delegated and the need for a committee system of approving all purchases, the exemption presently available in respect of consumable stores like construction materials, POL, clothing, furniture & stationery items, etc. from the purview of these Stores & Equipment Committee shall stand withdrawn (Standing Order D 41 1999 dated 24th August, 1999 of Director, BARC).

ANNEXURE - 2

INDIRA GANDHI CENTRE FOR ATOMIC RESEARCH (IGCAR) / GENERAL SERVICES ORGANISATION, KALPAKKAM

INDENT APPROVAL:

Other than proprietary :-	Directors of the Groups	-	Full Powers
	Associate Directors	-	200.00 lakhs
	Head of Division	-	20.00 lakhs
	Head of Section	-	10.00 lakhs
Proprietary:-	Director, IGCAR/GSO	-	200.00 lakhs
	Director of Group	-	100.00 lakhs
	Associate Director	-	50.00 lakhs
	Head of Division	-	5.00 lakhs

All indents whose estimated cost is more than Rs. 5.00 lakhs should be got approved by the respective Group Advisory Committee.

All indents whose estimated cost is more than Rs. 15.00 lakhs in respect of PT/LT and whose estimated cost is more than Rs. 10.00 lakhs in respect of proprietary/single/negotiated tender should be got approved by Director's Advisory Committee.

Proprietary indents/single tender enquiries whose estimated cost is more than Rs. 200.00 lakhs should be got approved by Member for Finance at indent stage before processing the indent on single enquiry basis.

Indents for window air-conditioners including split air conditioners will be approved by the respective Group Directors after obtaining concurrence from Director, ESG.

Indents for construction materials, petrol, oil, lubricants, clothing items such as uniform, laboratory clothes, etc. and office furniture and stationery items need not be submitted to SPC/Council irrespective of value.

Single tender shall include cases where in respect of public/limited tender only single tender has been received/qualified.

Proposal for purchase of medicines will be considered and approved by the Drug Purchase Committee.

APPROVAL OF PURCHASE:

(Rupees in Lakhs)

Approving authority	Public Tender	Limited Tender	Single Tender/ Proprietary Item
Director	800.00	300.00	200.00
Group Director	15.00	15.00	10.00
Associate Director	10.00	10.00	5.00
Head of Division	7.50	7.50	2.00
Head of Section	2.00	2.00	-

In respect of tendered cost above Rs. 500.00 lakhs upto Rs. 800.00 lakhs, in Public Tender, Director, IGCAR will approve the purchase with the recommendation of IGC Council after due consideration of the proposals on the recommendations of SPC/IGCAR.

In respect of Limited Tender, Director, IGCAR will approve the purchase proposals beyond Rs. 200.00 lakhs and upto Rs. 300.00 lakhs with the recommendation of IGC Council after due consideration of the proposals on the recommendation of SPC/IGCAR.

In respect of Single/Negotiated/Proprietary Tenders, Director, IGCAR will approve the purchase proposal beyond Rs. 100.00 lakhs and upto Rs. 200.00 lakhs with the recommendation of IGC Council after due consideration of the proposals on the recommendation of SPC/IGCAR.

In respect of open tender where the value of the purchase exceeds Rs. 15.00 lakhs and upto Rs. 500.00 lakhs, Director, IGCAR will approve the proposal with the recommendation of the SPC/IGCAR.

In respect of limited tender where the value of the purchase exceeds Rs. 15.00 lakhs and upto Rs. 200.00 lakhs, Director, IGCAR will approve the proposal with the recommendation of the SPC/IGCAR.

In respect of single/negotiated/proprietary tender where the value of the purchase exceeds Rs. 10.00 lakhs and upto Rs. 100.00 lakhs, Director, IGCAR will approve the proposal with the recommendation of the SPC/IGCAR.

ANNEXURE - 3

RAJA RAMANNA CENTRE FOR ADVANCED TECHNOLOGY (RRCAT), INDORE

APPROVAL OF INDENT

Head of the Lab	- Upto Rs. 5.00 lakhs
Head of Section	- Beyond Rs. 5.00 lakhs upto Rs. 10.00 lakhs
Head of Division	- Beyond Rs. 10.00 lakhs upto Rs. 20.00 lakhs
Head of Division with the concurrence of Accelerated Group Board (AGB)	- Beyond Rs. 20.00 lakhs upto Rs.50.00 lakhs
Head of Division with the concurrence Laser Group Board (LGB)	- Beyond Rs. 20.00 lakhs upto Rs.50.00 lakhs

Indents whose estimated cost exceeds Rs. 50.00 lakhs will be approved with the concurrence of the concerned Group Board and Scientific Committee, RRCAT.

APPROVAL OF PURCHASE

Head of Lab/ Head of Section/ Head of Division	- Upto Rs. 5.00 lakhs in consultation with IFA.
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Where the value of purchase exceeds Rs. 5.00 lakhs and upto Rs. 20.00 lakhs will be approved by the Purchase Sub-Committee (PSC). Where the value exceeds Rs. 20.00 lakhs PSC will submit its recommendation to PC for further scrutiny.

Where the value of purchase exceeds Rs. 20.00 lakhs and upto Rs. 500.00 lakhs in respect of open tender will be approved by Director, RRCAT on the recommendation of the Purchase Committee (PC) of RRCAT.

Where the value of purchase exceeds Rs. 20.00 lakhs and upto Rs. 200.00 lakhs in respect of limited tender will be approved by the Director, RRCAT on the recommendation of the Purchase Committee (PC) of RRCAT.

Where the value of purchase exceeds Rs. 20.00 lakhs and upto Rs. 100.00 lakhs in respect of single/negotiated/proprietary tender will be approved by the Director, RRCAT on the recommendation of the Purchase Committee (PC) of RRCAT.

Where the value of purchase exceeds Rs. 500.00 lakhs and upto Rs. 800.00 lakhs in respect of open tender the same will be approved by Director, RRCAT with the recommendation of RRCAT Council after due consideration of the proposal on the recommendation of the Purchase Committee (PC) of RRCAT.

Where the value of purchase exceeds Rs. 200.00 lakhs and upto Rs. 300.00 lakhs in respect of limited tender the same will be approved by Director, RRCAT with the recommendation of RRCAT Council after due consideration of the proposal on the recommendation of the Purchase Committee (PC) of RRCAT.

Where the value of purchase exceeds Rs. 100.00 lakhs and upto Rs. 200.00 lakhs in respect of single/negotiated/proprietary tender the same will be approved by Director, RRCAT with the recommendation of RRCAT Council after due consideration of the proposal on the recommendation of the Purchase Committee (PC) of RRCAT.

ANNEXURE - 4

VARIABLE ENERGY CYCLOTRON CENTRE (VECC), KOLKATA

Tender & Purchase Committee was constituted by Director, VECC vide Standing Order No.2 2007 dated 21.2.2007.

This Committee shall recommend policy decision to Director, VECC for procurement and stocking of equipments and consumables, the value of which exceeds Rs. 50,000/- but does not exceed Rs. 25.00 lakhs in each case and to the extent possible standardize commonly required items of equipment & stores.

The Committee shall study and recommend on the technical and financial aspects of the indents subject to the above financial limits, as may be received from various indenting officers, wherever necessary in consultation with the budget cell for being approved by Director, VECC. However, indents for procurement upto Rs. 1.00 lakh and Rs. 5.00 lakhs will continue to be approved by the Group Heads or Project Managers respectively to whom powers in this regard have already been delegated. If there is no budget provision, such indents have to be routed through budget cell.

Subject to the financial limit laid down in this order and/or any other subsequent delegation, the Committee shall also study and recommend case files as may be received from DPS and CRPU in accordance with DAE Purchase Procedure, EFP (DAE) Rules, 1978 and delegation orders made thereunder for approval by Director, VECC, subject to concurrence of the internal finance.

In respect of tendered cost above Rs. 500.00 lakhs upto Rs. 800.00 lakhs, in Public Tender, Director, VECC will approve the purchase with the recommendation of VECC Council after due consideration of the proposals on the recommendations of Special Purchase Committee (SPC)/VECC.

In respect of Limited Tender, Director, VECC will approve the purchase proposals beyond Rs. 200.00 lakhs and upto Rs. 300.00 lakhs with the recommendation of VECC Council after due consideration of the proposals on the recommendations of Special Purchase Committee (SPC)/VECC.

In respect of Single/Negotiated/Proprietary Tenders, Director, VECC will approve the purchase proposal beyond Rs. 100.00 lakhs and upto Rs. 200.00 lakhs with the recommendation of VECC Council after due consideration of the proposals on the recommendations of Special Purchase Committee (SPC)/VECC.

In respect of open tender where the value of the purchase exceeds Rs. 25.00 lakhs and

upto Rs. 500.00 lakhs, Director, VECC will approve the proposal with the recommendation of the Special Purchase Committee (SPC)/VECC.

In respect of limited tender where the value of the purchase exceeds Rs. 25.00 lakhs and upto Rs. 200.00 lakhs, Director, VECC will approve the proposal with the recommendation of the Special Purchase Committee (SPC)/VECC.

In respect of single/negotiated/proprietary tender where the value of the purchase exceeds Rs. 25.00 lakhs and upto Rs. 100.00 lakhs, Director, VECC will approve the proposal with the recommendation of the Special Purchase Committee (SPC)/VECC.

ANNEXURE - 5

ATOMIC MINERALS DIRECTORATE FOR EXPLORATION AND RESEARCH (AMD), HYDERABAD

All purchase recommendations whose value exceeds Rs. 50,000/- and upto Rs. 20.00 lakhs will be cleared by the Stores Equipment & Purchase Committee.

Purchase proposals whose value exceeds Rs. 20.00 lakhs and upto Rs. 500.00 lakhs in respect of open tenders will be approved by Director, AMD on the recommendation of the Purchase Committee (for Stores & Equipment) of AMD.

Purchase proposals whose value exceeds Rs. 20.00 lakhs and upto Rs. 200.00 lakhs in respect of limited tenders will be approved by Director, AMD on the recommendation of the Purchase Committee (for Stores & Equipment) of AMD.

Purchase proposals whose value exceeds Rs. 20.00 lakhs and upto Rs. 100.00 lakhs in respect of single/negotiated/proprietary tenders will be approved by Director, AMD on the recommendation of the Purchase Committee (for Stores & Equipment) of AMD.

Purchase proposals whose value exceeds Rs. 500.00 lakhs and upto Rs. 800.00 lakhs in respect of open tenders will be approved by Director, AMD on the recommendation of the AMD Council after due consideration of the proposal on the recommendation of the Purchase Committee (for Stores & Equipment) of AMD.

Purchase proposals whose value exceeds Rs. 200.00 lakhs and upto Rs. 300.00 lakhs in respect of limited tenders will be approved by Director, AMD on the recommendation of the AMD Council after due consideration of the proposal on the recommendation of the Purchase Committee (for Stores & Equipment) of AMD.

Purchase proposals whose value exceeds Rs. 100.00 lakhs and upto Rs. 200.00 lakhs in respect of single/negotiated/proprietary tenders will be approved by Director, AMD on the recommendation of the AMD Council after due consideration of the proposal on the recommendation of the Purchase Committee (for Stores & Equipment) of AMD.

ANNEXURE - 6

NUCLEAR FUEL COMPLEX (NFC), HYDERABAD

INDENT APPROVAL

(Rupees in Lakhs)

<i>Nature of item</i>	CE	ACE/ DCE	<i>GM/ PD</i>	DGM/ CMO/ SM	Mgr/ DCMO
(1)	(2)	(3)	(4)	(5)	(6)
a) Plant & Machinery	Full Powers	50.00	25.00	05.00	-
b) Spares & Tools	-do-	Full Powers	25.00	10.00	03.00
c) Other stores	-do-	-do-	25.00	10.00	03.00
d) Consumables	-do-	-do-	25.00	10.00	03.00
e) Raw materials		-do-	25.00	10.00	03.00

PURCHASE APPROVAL

Nature of item	CE	SEC	ACE/ DCE	GM/PD	DGM/ CMO/ SM	Mgr/ DCMO
Powers to accept tenders in connection with purchases:						
1. Open Tender/Public Tender						
a) Lowest bid/tender(*)	60.00	30.00	15.00	10.00	05.00	03.00
b) Other than the lowest bid/tender	40.00	15.00	08.00	05.00	02.00	-
2. Limited Tender						
a) Lowest bid/tender (*)	60.00	30.00	15.00	10.00	05.00	03.00
b) Other than the lowest bid/tender	25.00	10.00	08.00	05.00	02.00	-

3. Single Tender						
a. Public Undertaking	60.00	20.00	10.00	05.00	02.00	-
b. Other than public undertaking	10.00	08.00	05.00	02.00	01.00	-
4. For stores of proprietary nature	10.00	08.00	05.00	02.00	01.00	-
5. Extension of delivery period	Full powers		15.00	10.00	05.00	-
Local direct purchases	0.50		0.50	0.30	0.20	0.10
			Not more than Rs. 2.00 lakhs in a year	Not more than Rs. 1.00 lakh in a year	Not more than Rs. 1.00 lakh in a year	Not more than 5 cases in a year

Where the value of purchase exceeds Rs. 60.00 lakhs in respect of lowest bid and Rs. 40.00 lakhs in respect of other than lowest bid upto Rs. 500.00 lakhs in respect of open tender will be approved by the Chief Executive NFC on the recommendation of the Stores Purchase Committee (SPC) of NFC.

Where the value of purchase exceeds Rs. 60.00 lakhs in respect of lowest bid and Rs. 25.00 lakhs in respect of other than lowest bid upto Rs. 200.00 lakhs in respect of limited tender will be approved by the Chief Executive, NFC on the recommendation of the Stores Purchase Committee (SPC) of NFC.

Where the value of purchase exceeds Rs. 60.00 lakhs in respect of public sector undertaking and Rs. 10.00 lakhs in respect of other than public sector undertaking upto Rs. 100.00 lakhs in respect of single/negotiated/proprietary tender will be approved by the Chief Executive, NFC on the recommendation of the Stores Purchase Committee (SPC) of NFC.

Where the value of purchase exceeds Rs. 500.00 lakhs and upto Rs. 800.00 lakhs in respect of open tender the same will be approved by Chief Executive, NFC with the

recommendation of NFC Board after due consideration of the proposal on the recommendation of the Stores Purchase Committee (SPC) of NFC.

Where the value of purchase exceeds Rs. 200.00 lakhs and upto Rs. 300.00 lakhs in respect of limited tender the same will be approved by Chief Executive, NFC with the recommendation of NFC Board after due consideration of the proposal on the recommendation of the Stores Purchase Committee (SPC) of NFC.

Where the value of purchase exceeds Rs. 100.00 lakhs and upto Rs. 200.00 lakhs in respect of single/negotiated/proprietary tender the same will be approved by Chief Executive, NFC with the recommendation of NFC Board after due consideration of the proposal on the recommendation of the Stores Purchase Committee (SPC) of NFC.

ANNEXURE - 7

HEAVY WATER BOARD (HWB), MUMBAI

PURCHASE APPROVAL

(Rupees in Lakhs)

Purchase	DY.GM	GENERAL MANAGER	DIRECTOR /SR.G.M.	EXECUTIVE DIRECTOR	CHIEF EXECUTIVE
Acceptance of tenders					
Open Tenders					
a) Lowest	7.00	30.00	40.00	50.00	60.00
b) Other than lowest	Nil	15.00	25.00	30.00	40.00
Limited Tenders					
a) Lowest	2.00	30.00	40.00	50.00	60.00
b) Other than lowest	Nil	10.00	15.00	20.00	25.00
Single Tenders :					
a) Public Sector Undertaking	1.00	25.00	30.00	50.00	60.00
b) Other than PSU & Proprietary items	0.20	3.00	5.00	7.50	10.00

Where the value of purchase exceeds Rs. 60.00 lakhs in respect of lowest bid and Rs. 40.00 lakhs in respect of other than lowest bid upto Rs. 500.00 lakhs in respect of open tender will be approved by the Chief Executive, HWB on the recommendation of the Stores Purchase Committee (SPC) of HWB.

Where the value of purchase exceeds Rs. 60.00 lakhs in respect of lowest bid and Rs. 25.00 lakhs in respect of other than lowest bid upto Rs. 200.00 lakhs in respect of limited tender will be approved by the Chief Executive, HWB on the recommendation of the Stores Purchase Committee (SPC) of HWB.

Here the value of purchase exceeds Rs. 60.00 lakhs in respect of public sector undertaking and Rs. 10.00 lakhs in respect of other than public sector undertaking upto Rs. 100.00 lakhs in respect of single/negotiated/proprietary tender will be approved by the Chief Executive, HWB on the recommendation of the Stores Purchase Committee (SPC) of HWB.

Where the value of purchase exceeds Rs. 500.00 lakhs and upto Rs. 800.00 lakhs in respect of open tender the same will be approved by Chief Executive, HWB with the recommendation of HWB Board after due consideration of the proposal on the recommendation of the Stores Purchase Committee (SPC) of HWB.

Where the value of purchase exceeds Rs. 200.00 lakhs and upto Rs. 300.00 lakhs in respect of limited tender the same will be approved by Chief Executive, HWB with the recommendation of HWB Board after due consideration of the proposal on the recommendation of the Stores Purchase Committee (SPC) of HWB.

Where the value of purchase exceeds Rs. 100.00 lakhs and upto Rs. 200.00 lakhs in respect of single/negotiated/proprietary tender the same will be approved by Chief Executive, HWB with the recommendation of HWB Board after due consideration of the proposal on the recommendation of the Stores Purchase Committee (SPC) of HWB.

ANNEXURE - 8

BOARD OF RADIATION & ISOTOPE TECHNOLOGY (BRIT)

INDENT APPROVAL

Where the estimated cost of capital equipment and consumable stores is upto Rs. 5.00 lakhs, the indent shall be countersigned by General Managers and other officers having delegated powers.

The requirements of capital equipment and consumable stores costing more than Rs. 5.00 lakhs shall have to be approved by the Chief Executive, BRIT or Project Managers having appropriate powers pertaining to the specific project.

In respect of single/proprietary indent, indents upto value of Rs. 2.00 lakhs shall be approved by the General Manager and beyond this value, the indent should be approved by Chief Executive, BRIT.

PURCHASE APPROVAL

Stores & Equipment Committee of BRIT (SEC) has been delegated the following powers vide Delegation Order No. BRIT/2/12/13/482 dated 29.09.2007 for approval for procurement of stores & equipment required for BRIT.

Open Tender/Limited Tender:

Lowest Offer	-	above Rs. 5.00 lakhs upto Rs.15.00 lakhs
Other than lowest	-	above Rs. 2.00 lakhs upto Rs. 10.00 lakhs
Single/Negotiated/ Proprietary Tender	} -	above Rs. 2.00 lakhs upto Rs. 10.00 lakhs

Only offer received against open tender/limited tender will be treated as single tender.

Chief Executive of BRIT on the recommendations of the Stores Purchase Committee (SPC), BRIT shall approve the purchases as follow:-

Open Tender:

Lowest offer	-	above Rs. 15.00 lakhs upto Rs. 50.00 lakhs
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Other than lowest	-	above Rs. 10.00 lakhs upto Rs. 50.00 lakhs
Limited Tender:		
Lowest offer	-	above Rs. 15.00 lakhs upto Rs. 50.00 lakhs
Other than lowest	-	above Rs. 10.00 lakhs upto Rs. 50.00 lakhs
Single/proprietary/ negotiated tender	} -	above Rs. 10.00 lakhs upto Rs. 50.00 lakhs

Tenders exceeding Rs. 50.00 lakhs will require approval of the Board while those exceeding Rs. 100.00 lakhs will require approval of both the Board and the Department of Atomic Energy (Office Order No. BRIT/2/3/03 dated 06.01.2003).

ANNEXURE - 9

DIRECTORATE OF PURCHASE & STORES (DPS), MUMBAI **DIRECTOR, P&S**

Approve & sign purchase orders/contracts and amendments thereto Full Powers (Para 4.1 of Purchase Procedure).

Approval of any deviation from Purchase Procedure including standard terms and conditions (Para 8.1 of Purchase Procedure & DAE O.M.No. 5/1(1)/78-RRC dated 25.7.78).

Advance payments to Indian suppliers upto 50% of the value in relaxation of normal terms against BG (Annexure VI-A (1) of EFPR DAE Rules 1978).

Advance payments to foreign suppliers upto 50% of the value or to the extent of US \$ 15,000/-, whichever is less, against BG and subject to CVC guidelines on mobilization advance and other stipulated conditions. DAE ID No. 10/3(2)/2004-SUS/7077 dated 8.10.2004.

Contacting unregistered firms Full Powers vide para 2.1 of Purchase Procedure.

Dispensation of Public Tender Subject to conditions laid down in para 2.1.1.3 of Purchase Procedure.

Approval of Negotiation Full Powers (Para 17.1 of DAE Purchase Manual).

Operational/Emergency Shut Down Upto Rs. 10.00 lakhs (Para 11.14 of DAE Purchase Manual).

Two Part Tender by Limited Tender : As per conditions laid down in Para 11.18.2 of DAE Purchase Manual.

Fixation of tender fee Full Powers (Para 11.19 of DAE Purchase Manual).

Deviation approval for conclusion of repeat order subject to conditions laid down in Para 11.13.2 of DAE Purchase Manual).

Ab-initio Negotiation Upto Rs. 20.00 lakhs (Para 11.16.2 of DAE Purchase Manual).

Approval of disposal of surplus/obsolete/unserviceable materials Rs. 2.00 lakhs. (DAE O.M.No. 10/3(3)/2001/SUS/9257 dated 15.10.2000).

Booking of goods by railways on railway risks Full Powers (EFPR 12.6.4).

Airlifting of stores Full Powers (Annexure to Schedule I of EFPR).

Approval of freight, demurrage/wharfage charges Full Powers (Schedule I of EFPR).

Approval of disposal of scrap Full Powers.

DAE vide O.M. No. 10/9/8/84-SS-569, 570 & 571 dated 28.07.1994 declared Chief Executive, NFC, Director, IGCAR and Director, CAT as Ex-Officio Director, Purchase & Stores, DAE in respect of NFC, IGCAR & RRCAT respectively and they will exercise the powers of Director, P&S to the extent delegated to them as per the Purchase Procedure in respect to the above Units. The City Purchase Office at Hyderabad will be under administrative control of the General Manager, Heavy Water Plant, Manuguru and will cater exclusively to the purchase requirements of Heavy Water Plant, Manuguru and he will exercise powers of Regional Director, HRPU in respect of all purchase requirements of Heavy Water Plant, Manuguru and the City Office, Hyderabad, will exercise all the powers and functions of HRPU in so far as purchase requirements of HWP (M) are concerned.

With regard to Powers delegated to the Officers in DPS HQ and Regional Units of DPS, refer COMPENDIUM OF DELEGATION ORDERS ISSUED BY DIRECTOR, P&S.

CHAPTER - 36

TIME SCHEDULE FOR COMPLETION OF EACH ACTIVITY OF PROCUREMENT

36.1 Maximum Lead Time for each activity of Procurement

36.1.1 Directorate of Purchase & Stores has to play a very dominant and effective role to ensure that the materials required by the constituent Units are made available to the users within the time required to facilitate completion of the project on schedule.

36.1.2 For achieving the above objective, each activity of the procurement process is to be completed within a minimum time frame and there should be a constant and continuous effort on the part of the officers and staff to cut down the lead time to the extent possible.

36.1.3 To ensure procurement in a time bound manner, the officers/staff concerned must ensure that each stage of procurement activity is completed within the time schedule prescribed by Director, P&S from time to time..

36.1.4 Time allowed as per the schedule is the maximum and depending upon the value and urgency for the requirement action at every stage of procurement should be completed as expeditiously as possible to reduce the overall lead time and to ensure that the funds provided for the procurement are utilized during the particular quarter/financial year as well as plan period.

36.1.5 A close monitoring must be done at all levels to ensure timely action and to avoid slippages in the schedule.

CHAPTER - 37

POST-AUDIT

37.1 Comptroller & Auditor General of India

37.1.1 As per Article 148 of the Constitution of India, the Comptroller & Auditor General of India shall be appointed by the President by warrant under his hand and seal and shall only be removed from Office in like manner and on the like grounds as a Judge of the Supreme Court.

37.1.2 Subject to the provisions of the Constitution and of any law made by Parliament, the conditions and service of persons serving in the Indian Audit & Accounts Department and the Administrative powers of the Comptroller & Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller & Auditor General of India.

37.1.3 Article 149 describes the duties and powers of the Comptroller & Auditor General. He shall perform such duties and exercise such powers in relation to the Accounts of the Union and of the State and of any other authority or body as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the Accounts of the Union and of the State as were conferred on or exercisable by the Auditor General of India immediately before the commencement of the Constitution in relation to the Accounts of the Dominion of India and the Provinces respectively

37.1.4 Article 150 as amended reads the Accounts of the Union and the States shall be kept in such form as the President may on the advice of the Comptroller & Auditor General of India, prescribes.

37.1.5 Article 151 talks about the Audit Reports The reports of the Comptroller & Auditor General of India relating to the Accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of the Parliament.

37.1.6 Prior to 1.4.1976 Comptroller & Auditor General was also looking after all the disbursements and accounting functions of the Union of India and the States. It was felt that the combination of two functions, namely those of Maintenance of Accounts and Audit in the same agency was not a healthy trend as it makes the Auditor, who is responsible for checking the accounts, himself maintains the accounts which is an essentially administrative function. Hence by an amendment to the Constitution C&AG was relieved of the responsibility of the compilation of accounts of the Union with effect from 1.4.1976 and the Secretaries of the Departments/Ministries became the Chief Accounting authority relating to their Departments/Ministries and the Union Accounts is being compiled by Controller General of Accounts in the Ministry of Finance relating to Civil Ministry and the Finance Accounts of the Union Govt.

37.1.7 The Comptroller & Auditor General has to ensure that withdrawal from the consolidated fund is not made without adequate legal sanction. He has functions in relation to audit. He audits all accounts of money administered by or under the authority of the Union of Parliament or the Legislature of his State.

37.2 Audit of DAE

The audit of the Accounts of the Department of Atomic Energy is being carried out by the Principal Director of Audit (Scientific Departments) functioning under the Control of the C&AG. The procurement and stores functions of DAE are audited by the Atomic Energy Audit Party of the Principal Director of Audit (Scientific Departments), Mumbai Branch, stationed at Vikram Bhavan, Mumbai. Regional Purchase Units of DPS are also subjected to audit by the local Audit Parties of the Principal Director of Audit (Scientific Departments).

37.3 Submission of documents to Audit

Audit Officer in charge of the Atomic Energy Audit Party, Vikram Bhavan or any other Officer of the Unit authorized by the Audit Officer issues requisition for providing purchase files and payment details periodically. In DPS, Mumbai audit functions are looked after by one of the Deputy Directors and an Assistant Purchase Officer has been nominated to liaise with the Audit. All the audit requisitions are routed through him to the various Sections for issue of documents to Audit. It is the responsibility of the Purchase Officers concerned and the Accounts Officers to ensure that all the documents called for by Audit are submitted in time.

37.4 Preliminary Memos

The procurement procedure and payments are audited for checking for any non-compliance to the purchase procedure and procurement actions resulting in avoidable payments and delays. Based on the preliminary findings, preliminary memos (PMs) are issued to DPS. These PMs are routed through the Assistant Purchase Officer who is liaising with the Audit to the respective Purchase Officers through their Deputy Directors. Normally 15 days time limit is given to reply to these PMs. It is the responsibility of the concerned Purchase Officers to call for the file, discuss the issue with the officials and in case any details are required from the User/Stores/Accounts etc. collect the same and furnish a satisfactory reply to the preliminary memos to Audit within the prescribed time to avoid the PMs being converted into a para. These replies should be routed through the Assistant Purchase Officer who is liaising with the Audit so that he can keep a record of the PMs and the replies issued.

37.5 Inspection Report

In the event no reply is received or the reply furnished does not cover all the points raised by Audit and further clarifications are needed, these preliminary memos get converted into 'Inspection Report Paragraphs'. These Inspection Reports are issued every quarter and the same is again forwarded to the respective Purchase Officers through Assistant Purchase Officer (Liaison). Normally Purchase Officers should ensure that the preliminary memos are replied

covering all the points called for by Audit in time to avoid the same is converted into para. The PMs are converted into para if either the replies for PMs were not issued or the reply furnished had not taken care all the queries raised by the Audit. Hence Purchase Officer should carefully examine the audit para and draft the replies and furnish the same to the Audit with the concurrence of IFA/DCA and approval of the Joint Director/concerned Deputy Director.

37.6 Factual Statement

Post Audit consider the replies received to the Inspection Report Paras and either close the paras based on the satisfactory reply furnished or make further correspondence with DPS regarding compliance. If Audit is still not satisfied with the stand taken by DPS, convert the para into a 'Factual Statement'. Once a para is converted into a factual statement wherein facts of the case along with the audit objection and conclusions are laid down, DPS is again given three weeks' time to reply to these factual statements. At this stage the matter has to be dealt by the Joint Director and he should carefully go through the factual statements, collect all the relevant documents from the Section, Indentor, Stores, etc., carefully go through the factual statements and furnish all the relevant details called for with the concurrence of IFA and approval of Director, P&S to Audit in time.

37.7 Action Taken Note

In case reply is not sent in time/Audit is not accepting the contention of the Department, the para is being processed further and sent to the Comptroller & Auditor General's Office, New Delhi for inclusion in the Audit Report of the Comptroller & Auditor General of India. Once the para appears in the CAG's report, the concerned Ministry/Department calls for compliance of the report and the same is communicated by way of 'Action Taken Note' (ATN). Selected cases in the Audit Report are also discussed by the Public Accounts Committee (PAC).

CHAPTER - 38

MAINTENANCE/WEEDING OF OLD RECORDS

38.1 Review of Old Records

38.1.1 Constant review of old records/files will help to distinguish between the documents essentially required to be maintained and those to be destroyed.

38.1.2 Weeding out of unwanted old records/files make available valuable space and help efficient upkeep of the current records/files for prompt retrieval of the desired records/files.

38.2 Records/Files not to be destroyed

38.2.1 While undertaking the weeding out of the records/files it should be ensured that the following types of files are not destroyed:-

38.2.2 Files containing Government sanctions, important policy decisions, precedents, audit rulings, till they cease to have any relevance.

38.2.3 Files having historical value of information.

38.2.4 Records pertaining to court cases and audit objections till their finalisation/settlement.

38.2.5 Registers for EMD, Security Deposits, Bank Guarantees, Insurance Policies, Indemnity Bonds, etc.

38.2.6 Files, papers and documents relating to contracts/ agreements are required to be retained for 5 years after the contract/agreement is fulfilled or terminated or till completion of the project whichever is later.

38.2.7 In cases where audit objections have been raised, the relevant files and documents shall not under any circumstances be destroyed till such time the objections have been cleared to the satisfaction of the authorities or have been reviewed by the Public Accounts Committee.

38.2.8 In exceptional cases, a record may be retained for a period longer than specified, if it has certain special features or such a course is warranted by the peculiar needs of the Department. In no case, however, will a record be retained for a period shorter than prescribed above.

38.2.9 If a record is required in connection with the disposal of another record, the former will not be weeded out until after all the issues raised in the latter have been fully decided, even though the retention period marked on the former may have expired in the mean time. In fact the retention period initially marked on such records should be consciously reviewed and where necessary revised suitably.

38.3 Period to be reckoned for weeding out

38.3.1 The retention period specified above is to be reckoned from the year in which the file is closed (i.e. action thereon has been completed) and not necessarily from the year in which it is recorded.

38.3.2 In the case of records other than files e.g. registers, the prescribed retention period will be counted from the year in which it has ceased to be current.

38.4 Clearance from Audit

Before weeding out and destruction of files/records clearance from Post Audit shall be obtained. Based on the recommendation of a Committee appointed for the purpose, prior approval of the Director, P&S/Ex-Officio Director, P&S shall also be obtained for carrying out the weeding out and destruction.

38.5 List of Weeded out Files/Records

A list of all files/records weeded out should be retained by the Officer-in-charge in the Purchase Section/Purchase Unit for record, for a period of 5 years from the date of actual destruction.

38.6 Method of Destroying

All files weeded out will be destroyed by burning or shredding and will not be disposed of as waste paper to any private party.

GLOSSARY OF TERMS USED IN THE MANUAL

Sl No	Abbreviation	Expanded form
1	ACASH	Association of Corporations and Apex Societies of Handloom
2	AD	Authorised Dealer
3	AEES	Atomic Energy Education Society
4	AMC	Annual Maintenance Contract
5	AMD	Atomic Minerals Directorate for Exploration and Research
6	AMPU	Atomic Minerals Purchase Unit
7	APO	Assistant Purchase Officer
8	ATN	Action Taken Note
9	AWB	Airway Bill
10	BARC	Bhabha Atomic Research Centre
11	BE	Bill of Entry
12	BG	Bank Guarantee
13	BHAVINI	Bharatiya Nabhikiya Vidyut Nigam Ltd
14	BL	Bill of Lading
15	BRIT	Board of Radiation and Isotope Technology
16	BT	Bank Transfer
17	BTN	Brussels Tariff Nomenclature
18	C&AG	Comptroller & Auditor General
19	C&F	Cost & Freight
20	CAN	Cargo Arrival Notice
21	CBDT	Central Board of Direct Taxes
22	CBE&C	Central Board of Excise and Customs
23	CBI	Central Bureau of Investigation
24	CBT	Computer Based Terminal
25	CD	Customs Duty
26	CDROM	Compact Disk Read Only Memory
27	CENVAT	Central Value Added Tax
28	CETA	Central Excise Tariff
29	CHA	Customs House Agent
30	CHIPS	Clearing House Inter Bank Payment System
31	CHSS	Contributory Health Service Scheme
32	CIF	Cost, Insurance and Freight
33	CIP	Carriage & Insurance Paid to
34	CMIE	Centre for Monitoring Indian Economy
35	CPC	Civil Procedure Code
36	CPSE	Central Public Sector Enterprise

37	CPT	Carriage Paid To
38	CPU	Central Purchase Unit
39	CRPU	Calcutta Regional Purchase Unit
40	CSRV	Central Stores Receipt Voucher
41	CST	Central Sales Tax
42	CVC	Central Vigilance Commission
43	CVD	Countervailing Duty
44	D/A	Documents against Acceptance
45	D/P	Documents against Payment
46	DAE	Department of Atomic Energy
47	DAF	Delivery At Frontier
48	DEQ	Delivery Ex- Quarry
49	DAVP	Directorate of Audio Visual and Publicity
50	DCA	Deputy Controller of Accounts
51	DCS&EM	Directorate of Construction, Services and Estate Management
52	DD	Demand Draft / Deputy Director
53	DDO	Direct Demanding Officer
54	DDP	Delivery Duty Paid
55	DDU	Delivery Duty Unpaid
56	DES	Delivered Ex-Ship
57	DGFT	Directorate General of Foreign Trade
58	DGS&D	Directorate General of Supplies and Disposal
59	DM	Deutsche Mark
60	DPCO	Drug and Price Control Order
61	DPS	Directorate of Purchase and Stores
62	DRPU	Delhi Regional Purchase Unit
63	ECIL	Electronic Corporation of India Ltd.
64	ECU	European Currency Unit
65	ED	Excise Duty
66	EDI	Electronic Data Interchange
67	EFPR	Exercise of Financial Power Rules (DAE)
68	EMD	Earnest Money Deposit
69	FAS	Free Along Ship
70	FCA	Free Carrier
71	FCL	Full Container Load
72	FDA	Food and Drug Control Administration
73	FE	Foreign Exchange
74	FEDAI	Foreign Exchange Dealers Association of India
75	FIM	Free Issue Material
76	FOB	Free On Board
77	FOR	Free On Rail
78	FPS	Foot, Pound, Second
79	GAR	Government Account Receipt
80	GATT	General Agreement on Trade & Tariff
81	GFR	General Financial Rules 2005

82	GLD	General Landing Date
83	GMP	Good Manufacturing Practices
84	GSO	General Services Organisation
85	HOD	Head of Department
86	HRPU	Hyderabad Regional Purchase Unit
87	HSN	Harmonised Commodity Description and Coding System
88	HWB	Heavy Water Board
89	HWP	Heavy Water Plant
90	IATA	International Air Transport Association
91	ICC	International Chamber of Commerce / Institute Cargo Clause
92	IDBI	Industrial Development Bank of India
93	IGCAR	Indira Gandhi Centre for Atomic Research
94	IGM	Import General Manifest
95	IMF	International Monetary Fund
96	IMSc	Institute of Mathematical Science
97	IO	Indenting Officer
98	IOP	Institute of Physics
99	IPR	Institute of Plasma Research
100	IRE	Indian Rare Earths Ltd.
101	IRPU	Indore Regional Purchase Unit
102	IT	Income Tax / Information technology
103	ITJ	Indian Trade Journal
104	JC F&A	Joint Controller Finance & Accounts
105	KM	Kilo Metre
106	KVIC	Khadi and Village Industries Commission
107	L & T	Larsen & Toubro
108	LC	Letter of Credit
109	LCL	Less Container Load
110	LD	Liquidated damages
111	LFD	Last Free Date
112	LIBOR	London Inter-Bank Offered Rate
113	LME	London Metal Exchange
114	LPS	Local Purchase Section
115	LR	Lorry Receipt
116	LT	Limited Tender
117	MF	Member for Finance
118	MODVAT	Modified Value Added tax
119	MoF	Ministry of Finance
120	MRI	Mehta Research Institute of Mathematics & Mathematical Physics
121	MRPU	Madras Regional Purchase Unit
122	MT	Metric Tonne
123	NFC	Nuclear Fuel Complex
124	NIT	Notice Inviting Tender
125	NPCIL	Nuclear Power Corporation of India Ltd.
126	NPPA	National Pharmaceutical Pricing Authority

127	NRG	Nuclear Recycle Group
128	NSIC	National Small Scale Industries Corporation
129	ODC	Over Dimensional Consignment
130	OEM	Original Equipment Manufacturer
131	P & AO	Pay & Accounts Officer
132	P&F	Packing & Forwarding
133	PAC	Public Accounts Committee
134	PAN	Permanent Account Number
135	PBG	Performance Bond Guarantee
136	PDI	Pre-despatch Inspection
137	PHWR	Pressurised Heavy Water Reactor
138	PO	Purchase Officer
139	POL	Paints, Oils and Lubricants
140	PPO	Pension Payment Order
141	PPP	Purchase Preference Policy
142	PQ	Pre-Qualification
143	PSU	Public Sector Undertaking
144	PT	Public Tender
145	QA	Quality Assurance
146	R & D	Research & Development
147	RBI	Reserve Bank of India
148	RC	Rate Contract
149	RCIV	Receipt-Cum-Issue Voucher
150	RD	Regional Director
151	RMP	Rare Materials Plant
152	RP	Regional Processor
153	RPUM	Regional Purchase Unit Manuguru
154	RR	Railway Receipt
155	RRCAT	Raja Ramanna Centre for Advanced Technology
156	S&R	Surplus & Redundant
157	SBI	State Bank of India
158	SD	Security Deposit
159	SE	Single Enquiry
160	SEC	Stores & Equipment Committee
161	SINP	Saha Institute of Nuclear Physics
162	SO	Stores Officer
163	SO-HQ(L)	Stores officer - Head Quarters (Liaison)
164	SPC	Stores Purchase Committee / Special Purchase Committee
165	SR	Shipping Release
166	SRCC	Strike Riot Civil Commotion
167	SSI	Small Scale Industry
168	ST	Single Tender
169	SWIFT	Society for Worldwide Interbank Financial Telecommunications
170	T&C	Transport and Clearance
171	TC	Trombay Council

172	TDS	Tax Deduction at Source
173	TIFR	Tata Institute of Fundamental Research
174	TIN	Tax payers Identification Number
175	TLM	Technical Liaison Mission
176	TMC	Tata Memorial Centre
177	TPND	Theft, Pilferage and Non Delivery
178	TPT	Two Part Tender
179	TT	Telegraphic Transfer
180	UCIL	Uranium Corporation of India Ltd.
181	UCPDC	Uniform Customs and Practices for Documentary Credits
182	USA	United States of America
183	VAT	Value Added Tax
184	VECC	Variable Energy Cyclotron Centre
185	WIL	Walchandnagar Industries Ltd.