



## **INTRODUCTION**

1. *Purchase guidelines have been framed to ensure uniform procurement procedure in Government.*
2. *These guidelines will further help to ensure:*
  - i. *That stores of specified quantity and specified quality are procured;*
  - ii. *That stores are procured on a competitive basis at lowest reasonable prices;*
  - iii. *That stores are procured with planned and timely delivery;*
  - iv. *That stores are procured only from reliable and genuine sources;*
  - v. *That stores are procured in most efficient, effective and transparent manner;*
2. *All efforts have been made to lay down the guidelines in conformity with the rules and codal provisions. However, in*

*case of any contradiction between these guidelines and rules /codal provisions, the later shall prevail.*

3. *These guidelines are illustrative and not exhaustive. In case of non-availability of any provision in these guidelines, recourse should be taken to relevant Codes, Acts like Financial Code, Contract Act, Sale of Goods Act etc.*

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### **CHAPTER - 1**

#### **GENERAL PRINCIPLES OF ENTERING INTO CONTRACTS**

- 1.1** This Chapter gives information with regard to the meaning and import of various legal terms used in connection with the Contracts. Some of the salient principles relating to contracts generally are set out briefly in this Chapter.
- 1.2** **Contract:** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.
- 1.3** **Proposal or offer:** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and

instructions to tenderers do not constitute a proposal or offer, but is only an Invitation to offer.

**1.4 Acceptance of proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. This should usually be done by the issue of acceptance letter.

**1.5 Agreements which are contracts:** An agreement is a contract enforceable by law, when the following are satisfied. A defect affecting any of the above renders a contract unenforceable.

- i. Competency of the parties.
- ii. Freedom of consent of both parties.
- iii. Lawfulness of consideration.
- iv. Lawfulness of object.

**1.5.1 Competency of parties:-** Under law any person who has attained age of majority and is of sound mind or is not debarred by law to which he is subject, may enter into contracts. In other words, it means that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

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

- (a) Individuals
- (b) Partnership Firms
- (c) Limited Companies
- (d) Corporations other than Limited Companies.

**(a) Contracts with individuals:** Individuals either tender 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 a 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 authorized attorney.

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

(b) **Contracts with Limited Companies:** A company is association of individuals registered under Companies Act in which the liability of the members is limited to the extent of the shares held by them in such company. The Company after its incorporation or registration is an artificial legal person which has an existence distinct and separate from the members or Shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its Memorandum of Association, any such agreement in excess of power entered into by the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification. Normally, any one of the Directors of the company is empowered to represent the company. Where tenders are signed by persons other than Directors, it is necessary that the person signing the tenders is authorized by the company to enter into contracts on its behalf through power of attorney.

(c) **Corporation other than Limited Companies:** Association of individuals incorporated under statutes such as trade Union Act, Cooperative Societies Act and Societies Registration Act, are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their Memorandum of Association. If any Contract has to be entered into with any one of such Corporations or Associations, the capacity of such associations to enter into

Contract should be verified and also the authority of the person representing the said Association.

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

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

**1.5.4 Free consent of both parties:** The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. When consent to an agreement is caused by one or more of the above factors, the agreement is a contract voidable at the option of the party whose consent was caused by coercion, undue influence, fraud, misrepresentation or mistake. However, such a party may, if he thinks fit insist that the contract shall be

performed, and that he shall be put in the position in which he would have been if the representations made had been true.

**1.5.5 Voidable Contract:** An agreement which is enforceable by Law at the option of one or more of the parties thereto, but not at the option of the other or others, is a “Voidable Contract.”

**1.5.6** When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. When the mistake is unilateral on the part of one party only, the agreement is not void.

**1.5.7 Void Contract:** An agreement not enforceable by Law is said to be ‘void’.

**1.5.8 Consideration:** When, at the desire of the Promisor, the Promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or Promise is called a “Consideration” for the promise. Inadequacy of consideration is, however, not a ground for avoiding the contract. But an act, forbearance or promise which in contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

**1.5.9 Lawfulness of object:** The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the person or property of another, or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

**1.6 Communication of an offer or proposal:** The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender which is received beyond that time.

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

**1.7.1** The Communication of an acceptance is complete as against the proposer or offerer, when it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against acceptor, when it comes to the knowledge of the proposer or offerer. The medium of communications in Government departments in such cases is generally through post and the acceptance is therefore, complete as soon as it is posted. In order to avoid any dispute regarding the date of Communication of acceptance, it should be sent to the correct address by Registered Post acknowledgement due.

- 1.8 Acceptance to be identical with proposal:** If the terms of the tender or the tender as revised and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case uncertain terms are used by the tenderers, clarifications should be obtained before such tender is considered for acceptance. If it is considered that counter offer should be made, such counter offer should be carefully drafted as the contract is to take effect on acceptance thereof.
- 1.9 Withdrawal of Offer:** Where a tenderer agrees to keep his offer open for a specified period for a consideration, he cannot withdraw it before the expiry of the specified date. Withdrawal of the offer by the tenderer before the expiry of specified period would entitle the purchaser to forfeit the Earnest money of the tenderer.
- 1.10 Withdrawal of acceptance:** An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance which reaches the tenderer before the letter of acceptance will be a valid revocation.
- 1.11 Changes in terms of a concluded Contract:** No variations in the terms of a concluded contract can be made without the consent of the parties.
- 1.12 Discharge of contracts:** A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of contract.

**A contract may also be discharged:-**

- (a) **By Mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfill the contract, it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- (b) **By breach:** In case a party to a contract breaches some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the other party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- (c) **By refusal of a party to perform:** On a Promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the Promisee may at his option treat the refusal / repudiation as an immediate breach putting an end to the contract for the future. In such cases the Promisee has a right of immediate action for damages.
- (d) **In a contract where there are reciprocal promises:** When a Contract contains reciprocal promises and one party to the contract prevents the other

party from performing his promise, the contract becomes voidable at the option of the party so prevented.

**1.13 Stamping of Contracts:** The Stamp Act provides that no stamp duty shall be chargeable in respect of any instrument executed by or on behalf of the Government in cases where but for such exemption the Government would be liable to pay the duty chargeable in respect of such instrument.

**1.14 Authority for execution of the Contracts:-** All contracts made in the exercise of the executive power of the State shall be expressed to be made by Governor and all such Contracts made in exercise of that power shall be executed on behalf of the Governor by such person and in such manner as he may direct or authorize.

**1.14.1** The Contract on behalf of the Governor should, therefore, state in express terms that it is made for and on behalf of the Governor by such Officers who are authorized to enter into contracts on behalf of Governor. These provisions are mandatory. If these are not complied with, the Contract is not binding on or enforceable against the Government, though a suit may lie against the Officer who made the Contract in his personal capacity. Such Contracts are also not enforceable by the Govt. and the Govt. cannot sue the other party on the basis of the defective Contract.

**1.14.2** The Officials making or executing such Contracts on behalf of the Governor are exempted from personal liability for acts done or purported to be done in the exercise of their official duties.

**1.14.3** There cannot be an oral contract binding the Govt. and all Contracts with Govt. must be in writing and all terms must be specifically provided therein.

**1.14.4** In case of Contracts on behalf of the Public Sector undertakings, Corporations or local bodies, all the documents forming part of the Contract are to be expressed to be made, issued or accepted on behalf of the Public Sector undertakings,

Corporations or local bodies. The Corporations or Local Bodies as the case may be, should be named as the Purchaser in the invitation to the Tender and Acceptance of Tender.

**1.14.5** There should be a General or specific authorization in favour of the Officers to enter into Contracts on their behalf from the undertakings, Corporations or local Bodies.

**1.14.6** All Purchases made and Contracts entered into by the Govt. and Public Sector Undertakings, Corporations and Local Bodies are governed by Sales of Goods Act and the Contract Act.

**1.15 General guidelines for entering into contract:** While the various aspects of contract management are discussed in the respective subject chapters, the following general guidelines while entering into contracts may be followed:

- a. Save in exceptional circumstances, no work of any kind should be commenced without prior execution of contract documents.



- b.** The terms of a contract must be precise and definite and there must be no room for ambiguity or misconstruction thereon.
- c.** No contract involving an uncertain or indefinite liability or any conditions of an unusual character should be entered into.
- d.** As far as possible only standard forms of contracts should be adopted.
- e.** In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the Contracts before they are finally entered into.
- f.** The terms of a contract once entered into should not be materially varied without the previous consent of the authority competent to enter into the contract as so varied.
- g.** 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.
- h.** No relaxation of specifications agreed upon in a contract or relaxation of the terms of an agreement entered into should be made without proper examination of the financial effect involved in such relaxation. The interest of the public exchequer should be taken due care of before agreeing to any relaxation of agreement or contract.
- i.** In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.
- j.** Before entering into a contract or an agreement, validity of contractual documents should be ensured.
- k.** Provision must be made in contracts for safeguarding Government property entrusted to a contractor and the recovery of hire charges, if any, therefor.
- l.** When a contract is likely to endure for a long period, 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 normally be three months.
- m.** All contracts should have a provision for recovery of liquidated damages for defaults on the part of the contractor.
- n.** The question whether any sales tax, purchase tax, octroi and terminal taxes and other local taxes and duties are to be paid and if, so, by which party, should be settled and cleared up before entering into any contract.
- o.** Where Price Variation Clause (PVC) is provided in the contract, the basis for the calculation of the same should be clearly indicated.



**DOCUMENTS TO BE FURNISHED WITH  
TENDERS**

**2.1** With a view to establish reliable and genuine sources of supply for Government, tenderers may be asked to furnish following documents with their offers while inviting tenders:-

- i. True copy of PAN number of each partner in case of partnership firms and limited concerns.
- ii. Proprietor's individual PAN number in case of proprietorship concerns.
- iii. Sales Tax Registration and clearance certificate from the concerned Central and / or State Sales Tax Authorities.
- iv. Copies of the last three years Annual Report indicating the Profit and Loss Account and Balance Sheet.
- v. A copy of Partnership Deed in case of Partnership Firms.
- vi. A copy of the certificate of incorporation alongwith Articles of Association and Memorandum (in case of a Limited Company).
- vii. Copies of ownership documents in respect of Firm's factory and Plant and Machinery installed therein (in respect of Manufacturers) together with copies of legal agreements in case of utilization of factory of others.
- viii. A general Power of Attorney together with a copy of the Resolution of Board of Directors (in case of Companies) when the tender is signed by a person other than the Proprietor, Partner, Managing Director / Director as the case may be.
- ix. Registration with DG S&D, NSIC and / or with Director of Industries of the State if the Firm is an SSI Unit.
- x. The manufacturing Units are to furnish full information of the technical know-how, manufacturing facilities, Quality Assurance facilities, technical and skilled manpower available, the items with standard specifications which are being manufactured.
- xi. Copies of licenses of Statutory authorities and Type Test Certificates as applicable for the tendered items.

**2.2** **Authorized Agent/ Distributor / Sole Selling Agent tendering on behalf of the manufacturer, shall furnish undertaking from the manufacturers as well as from their own side as follows:-**

**2.2.1** **The Manufacturers:-**

- i. That he does not have sufficient marketing arrangements in respect of J&K State or a specified area of the State where the goods are required for the tendered items to participate directly in tenders.

- ii. That he will accept the responsibility for the satisfactory execution of orders placed on the authorized agents / distributors.
- iii. That he will provide requisite inspection and testing facilities at his works in respect of orders placed on authorized agents / distributors.
- iv. The authorized agent's/ distributor's price will not exceed that which the manufacturers would have quoted, had they participated directly.
- v. Inspection challan authorized by the agents would be accompanied by a certificate from the manufacturer that the stores covered under the challan

have been manufactured by them and the stores offered and supplied bear the trade mark of manufacturer along with month and year of manufacture.

#### **2.2.2 Sole Selling Agent/Authorized Agents /Distributors:-**

- a. That he will be responsible for all the Contractual obligations including quality aspects, replacement of parts / items and warranty / guarantee obligations.
- b. That he will be responsible for providing after sale service where necessary.
- c. In respect of Indian Agent / Distributor of a foreign manufacturer, registration with DGS&D of that agent /distributor is compulsory as per Compulsory Enlistment Scheme of Department of Expenditure, Ministry of Finance Government of India.

#### **2.3 Banning and Suspension of Business dealings with the Contractors.**

Business dealings with a firm/company etc. shall be ordered to be suspended or banned in public interest by the competent authority.

##### **A. Grounds for suspension**

Suspension of business dealings may be ordered where pending full enquiry into the allegations, it is considered not desirable that business with the Firm/Company /Contractor etc. should continue. Such an order may be passed:-

- (i) If the firm etc. is suspected to be of doubtful loyalty to the country or the State.
- (ii) If the State Vigilance Organization or any other investigating agency of State or Central Government recommends such course in respect of a case under investigation, and
- (iii) If a *Prima facie* case is made out that the firm is guilty of an offence involving moral turpitude in relation to business dealings which, if established, would result in business dealings with it being banned.

##### **B. Grounds for Banning of Business Dealings.**

The grounds on which banning may be ordered are:-

- (i) If security considerations including question of loyalty to the State so warrant.
- (ii) If proprietor of the Firm, its employee, Partner or representative is convicted by a Court of Law for an offence involving moral turpitude in connection with the business dealings.

- (iii) If there is strong justification for believing that the Proprietor / its employee /Partner 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.
- (iv) If the Firm continuously refuses to return Govt. dues without showing adequate cause and Govt. is satisfied that this is not due to reasonable dispute.
- (v) If the Firm employs a Government Servant, dismissed or removed on account of corruption by the Central or State Government or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt Government servants.



**EARNEST MONEY AND SECURITY DEPOSIT**

- 3.1** As per General Financial Rules, Earnest money deposit should be called for from tenderers, who are participating against tender invitation.
- 3.1.1** **Quantum of EMD:** A tenderer should be required to furnish a nominal amount to be fixed with reference to the value of order to be given and status of the tenderers who are likely to tender as Earnest Money. The E M D should ordinarily be charged at the rate of 2% of the estimated value of stores subject to a reasonable ceiling to be fixed by the competent purchase officer. The Head of the Department may by general or special orders dispense with earnest money deposits in the case of firms of established repute.
- 3.1.2** Small Scale Industrial units registered with Directorate of Industries and Commerce Department of J&K Government shall be liable to deposit EMD @2% of the estimated value of the work/stores subject to a maximum ceiling of Rs. 5000/-.
- 3.1.3** The Jammu and Kashmir Agro Industries Development Corporation is exempted from furnishing of Earnest Money with tenders which they may give to Government Departments for supply of stores or services.
- 3.1.4** Earnest Money Deposit may be accepted in the form of CDR / Demand Draft/ Fixed Deposit Receipts, or Bank Guarantee from any of the scheduled Commercial Banks. However, Bank Guarantee furnished as EMD has to be valid for at least 60 days beyond the validity period of offer.
- 3.1.5** Offers of the tenderers received without EMD are summarily to be rejected.
- 3.2** **Refund / Adjustment of EMD towards Performance Security :** The Contractor may adjust EMD furnished towards the performance security wherever possible.
- 3.2.1** The E M D of successful tenderers shall be refunded after the performance security as called for in the contract is furnished.
- 3.2.2** EMD of all unsuccessful tenderers will be returned as early as possible after the expiry of the period of tender validity but not later than 30 days of the award of the contract.
- 3.3** **Forfeiture of EMD:** EMD will be forfeited if the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of his tender.
- 3.3.1** If the successful tenderer fails to furnish the required performance security, then the EMD will be forfeited.
- 3.4** **Security Deposit:** The successful tenderer shall be required to furnish security deposit for the due fulfillment of the contract.
- 3.4.1** The actual amount of security deposit to be obtained may, subject to a minimum of 5% and a maximum of 10% of the amount of contract in each case

be decided by the Contracting authority according to the circumstances of the case.

**3.4.2** The contracting authority may allow the amount of earnest money to be treated as part of the security deposit, and demand only so much of security as together with earnest money equals to the total of the required amount.

**3.4.3** The Head of the department may, when he thinks it desirable, exempt, a firm of established repute from the obligation of furnishing security in respect of all

contracts, or a particular contract or class of contracts made with the department.

**3.4.4** Security deposit may be accepted in the shape of a CDR/ Demand Draft / FDR / BG from any Scheduled Commercial Bank. However, Bank Guarantee furnished as security deposit has to be valid for at least 60days beyond the Completion /Delivery period.

**3.4.5** The successful tenderer shall have to furnish security deposit within (7) days of issue of contract.

**3.5** **Refund of Security Deposit:** Security Deposit is taken for the due performance of an individual contract and becomes due to be refunded when the contractor duly performs and completes the contract in all respects.

**3.6** **Performance Security:** All the successful tenderers have to furnish the performance security within 30 days of issue of contract for the due performance of the Stores during the warranty period.

**3.6.1** The actual amount of performance security to be obtained may, subject to a minimum of 5% and a maximum of 10% of the amount of Contract in each case be decided by the contracting authority according to the circumstances of the case.

**3.6.2** Performance security is acceptable in the shape of CDR, FDR, Demand Draft, BG. However, in case of BG the same shall have to be valid up to 60 days after the date of completion of warranty period.

**3.7** The genuineness of the above Bank documents /instruments should be verified from the concerned Bank within a period of ten days before their acceptance.

**3.8** All the securities be entered in a Register indicating therein the date of issue, the date of expiry, Name of the Bank etc. Where execution of the contract is going to be delayed beyond the period for which the security deposit furnished is valid, the

concerned department will take action well ahead of the date of expiry of the validity of the security deposit for its renewal.

**3.9** 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.

**3.10** Provision be included in the NIT / Tender documents to the effect that whenever a contractor fails to execute the contract or supply the stores within

the completion / delivery period of the contract, wherein Bank Guarantee has been furnished as security, then request for extension of completion/delivery period will automatically be taken as an agreement for getting validity of the Bank Guarantee extended. Bank shall also be instructed to make similar provisions in the BG for automatic extension in the guarantee period.

- 3.11      Refund of Performance Security:** Performance security is taken for the due performance of the stores and becomes liable to be refunded after the expiry of warranty period which shall be specified by the contract allotting authority depending upon the nature of the contract. However, in case of supply of Plant and Machinery and Mechanical / Electrical nature of equipments, the warranty period generally should be 18 months from the date of receipt of material by the department or one year from the date of installation whichever is earlier.
- 3.11.1**      Before release of performance security, the authority competent to release the performance security will verify that no claim is pending against the contractor and no complaint has been received against the contractor regarding non-receipt, shortage or defects in the stores supplied.
- 3.12      Forfeiture of Performance Security /Security Deposit:-** Performance Security and security deposit is obtained from the Contractor for the due performance of the stores during the warranty period and the due performance of contract respectively and therefore, can be forfeited and credited to the Government in the event of breach of contract or non-performance of stores.
- 3.13**      Bank Guarantee obtained towards performance security should be invoked only when there is a specific breach on the part of the contractor and strictly in terms of the relevant agreement.
- 3.14      Lapsing of Security Deposit:** - Security Deposits which are not claimed within three years are treated as “Lapsed Deposits” and are credited to the Government account.



**METHODS OF PURCHASE & PREPARATION  
OF TENDER DOCUMENTS**

- 4.1 Purchase Objective:-** The main objectives of Public buying are :
- To procure stores of specified quantity and specified quality.
  - To procure stores on a competitive basis at lowest reasonable price.
  - To procure stores with a planned and timely delivery.
- 4.2 Purchase Policy:-** Purchase Policy to be adopted by the departments should be as per the financial rules and guidelines of the Government. The salient features of these guidelines are:-
- To make purchase of stores for Public Service in such a way as to encourage development of indigenous production of stores to the utmost possible extent.
  - To provide price and / or purchase preference upto specified limit as may be prescribed by the government from time to time to the Stores manufactured by Small Scale Industries and Public Sector Undertakings over those manufactured by Private large scale industries.
- 4.3 Methods of Purchase:-** The recognized method of Purchase generally is by "Invitation of Tenders". There are three types of Tenders:
- 4.3.1 Open Tenders:** As a general rule, tenders should be invited by Advertisement to invite a healthy competition in such type of tenders.
- 4.3.2 Limited Tenders:** This method should ordinarily be adopted in case of all purchases the estimated value of which is within the ceiling to be fixed by the Government from time to time.
- This may be adopted even when the estimated value of purchases is more than the prescribed ceiling in the following circumstances:
- When sufficient reasons exist which indicate that it is not in the Public interest to call for tenders by advertisement for the reasons to be recorded.
  - When the Indenting officer certifies that the demand is urgent and any additional expenditure involved by the elimination of open competition must be incurred. In all such cases the indenting Officer must place on record the nature of urgency and why the demand could not be anticipated.
  - When the source of supply are definitely known and the possibility of fresh source beyond those being tapped is remote.
- In all such cases approval of Competent Authority to dispense with advertisement should be taken.
- 4.3.3 Single Tender:** It is to be adopted in case of stores where it is to the knowledge of Purchaser that only a particular firm is the manufacturer of the stores required or as per policy of Government; purchase is to be made from selected firm.
- 4.4** Purchase Officer may, however, when he considers it advantageous, purchase articles from any firm in whose favour Rate Contract has been allotted by Director General Supplies and Disposals for the Supply of such articles without calling for



tenders on the rates, terms and conditions laid down in the said Rate Contract. The Purchase Officer shall, however, explore the possibility of procuring the articles at a lowest rate amongst the rate contract holders by accounting for freight and taxes and duties and also avail of slab discount wherever, available.

**4.4.1** Important plant, machinery and iron and steel items shall be obtained only from firms approved by the Director General of Supplies and Disposals.

**4.5** **Advertisement:** where it has been decided by the department to invite open tenders, "Notice Inviting Tenders", should be given wide publicity through print and electronic media.

**4.5.1** The NIT should be got published in not less than two leading local dailies.

**4.5.2** Where the value of Contract is more than Rs. 10.00 Lacs, the NIT should be published in at least one National Daily besides two local dailies.

**4.5.3** NIT should also be uploaded on State Website besides the website of the department concerned.

**4.5.4** Irrespective of the value of the contract, where the prospective tenderers are located outside State, the NIT should be got published necessarily in two leading national dailies besides two local dailies.

**4.5.5** In case of contracts / supplies involving more than Rs. 50.00 Lacs, NIT should also be got published in "Indian Trade Journal" which is published by Director General of Commercial Intelligence and Statistics Kolkotta and is considered standard medium of advertising tender notices in India.

**4.5.6** Simultaneously with the dispatch of tender notice for publication, copy should be sent to the following:-

- i). Next higher officer/controlling officer.
- ii). Registered /known/likely suppliers/contractors.
- iii) All known Trade Associations /Chamber of Commerce.
- iv) SICOP
- v) Director of Industries & Commerce

**4.6** NIT should briefly contain the requirement of department with a view to enabling intending tenderers to have a clear idea of the stores to be purchased. Particular attention should be paid to the points mentioned below:-

- i. A brief but clear description of Stores required should be given with the raw material involved.
- ii. The destination of stores and the name of the consignee should be mentioned.
- iii. The quantity to be purchased should normally be indicated, but where the Purchase Officer considers that the disclosure of the full quantity may have adverse effect on the Price at which purchase is likely to be made, or he is not sure about the exact requirement, he should exercise his discretion not to disclose full quantitative details.

iv. Estimated cost of Stores wherever, possible / practicable.

**4.7 Time to be allowed for submission of Tenders:** At least one month's time from the date of advertisement should be allowed for the submission of tenders.

**4.8 Tender Document:** This is an important document as the offer of the tenderers would be based on the information given and called for therein. The tender document should therefore, be prepared with utmost care setting out in unambiguous terms the requirements of the department as to the quantity, quality, specifications, delivery, destination etc. and any information which may be helpful to the tenderer in the submission of offers, complete in all respects.

**4.9 Preparation of tender documents:** The following points shall be kept in view while preparing the tender documents so as to avoid any omission or complication at a later stage.

- i. Time and date for receipt and opening of tenders are indicated as per guidelines.
- ii. The period for which the tenders are to be kept open for acceptance to be indicated.
- iii. The amount of earnest money to be submitted by the tenderers.
- iv. Description of stores including specifications/ drawing is correctly indicated.
- v. The sources from where the specifications / drawings can be obtained are indicated.
- vi. If stores are required as per B I S specifications, a clause, for accepting only ISI Marked stores is included.
- vi. Where tender sample is required to be furnished, authority to whom it should be sent for testing and the time within which the sample should be submitted are indicated correctly.
- vii. The appropriate price variation clause where such a provision is necessary along with base price on which Firms should offer their prices should be indicated.
- ix. In case of third Party Inspection, Inspecting Authority is correctly indicated.
- x. Period of validity of performance guarantee to be given specifically.
- xi. Delivery schedule to be indicated specifically.
- xii. Period of validity of rates to be indicated.
- xiii. Insertion of standard Pre-estimated liquidated damages clause for claim against delay in supplies.
- xiv. Insertion of clause for cancellation of Contract and effecting repurchase.
- xv. Validity period upto which tenderers have to keep their offer valid is to be indicated in the tender document. No specific date for validity of offer will be

indicated in the tender document. The tenderers will be asked to keep their offers valid for a period of not less than 6 months from the date of opening of tenders.

**4.10 Specifications:** The Purchasing Departments shall adopt specifications for the stores to be procured in line with the latest trends in technological development. It also needs to be ensured that the upgraded specifications are environment friendly to the extent possible. Thus, the specifications to which procurement will be made could be as per:-

- a) IS Specifications when the relevant product specifications are comprehensive and complete.
- b) IS Specifications with improved Parameters or additional parameters like performance criteria, alternatives of raw materials etc.
- c) Departmental specifications / drawings which are developed in line with requirements of the user department.

**4.10.1** The IS Specifications shall be the barest minimum to which the stores are to be procured. Where the stores are to conform to only IS specifications, then the same shall be procured only from the manufacturers who have valid BIS license to use ISI Mark on their products.

**4.10.2** Where there is a need or requirement to bring out standard specifications / drawing for a product for use of the department, the said department is responsible for the preparation of the same.

**4.10.3** When a departmental specification is drafted for a particular type of store / equipment, care shall be taken to ensure that it does not incorporate any clause which is in contravention of the General Conditions of contract, unless, specifically permitted by Government.

**4.11 Sale of tender documents:** It shall be the responsibility of the department to ensure that tender documents are made available for sale at the central office or any of the subordinate offices.

Tender documents will be sold till the last date and time fixed for receipt of tenders.

**4.12 Cost of Tender documents:**

Estimated Value of contract	Price of Tender Document
i. Upto Rs. 5.00 Lacs	Rs. 200/-
ii. From Rs. 5.00 Lacs to Rs. 10.00 lacs	Rs. 500/-
iii. From Rs. 10.00 Lacs to Rs. 50.00 Lacs	Rs. 1000/-
iv. From Rs. 50.00 Lacs to Rs. 1.00 Crore	Rs. 2000/-
v. From Rs. 1.00 Crore to Rs. 2.50 Crores	Rs. 3000/-
vi. From Rs. 2.50 Crore to Rs. 5.00 Crores	Rs. 4000/-
vii. From Rs. 5.00 Crores to Rs. 10.00 Crores	Rs. 5000/-
viii. From Rs. 10.00 Crores to Rs. 20.00 Crores	Rs. 10000/-
ix. From Rs. 20.00 Crores & above	Rs. 20,000/-

- 4.12.1** In case of rate contract, the estimated value of the contract for the period of currency of Rate Contract shall be taken into account for fixing price of tender document.
- 4.12.2** Each office selling the tender documents will maintain a register indicating the No. of tender documents sold, list of firms to whom sold.
- 4.12.3** Payment on account of sale of tender documents as a value be received in the form of DD, postal order, pay order issued by the bank. Tender documents can also be sold on cash payment by the offices where cashier is available.
- 4.12.4** Sale proceeds on account of sale of tender documents should be deposited in the treasury by credit to the revenue head of the department under “Miscellaneous Revenue-Sale of Tender Documents”.
- 4.13** **Receipt and custody of tenders:** Tenders are received either through the tender box or by post /courier. Tenders sent by hand delivery shall be dropped in the tender box.
- 4.13.1** The latest hour for receipt and opening of tenders shall be as indicated in the tender document.
- 4.13.2** Bulky tenders which cannot be dropped in the tender box can be accepted by Head of Office or by an official authorized by him. 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).
- 4.13.3** All tenders sent by Post including those by Courier shall be received by Receipt Despatch Section of the Office. The Receipt Section after entering it into the Receipt Register shall pass it on to the Purchase Officer who will put it in the tender Box under his signatures.
- 4.13.4** Head of the Office or any official authorised by him shall be responsible for safe custody of tenders.
- 4.13.5** Tenders received after the fixed time shall not be entertained ordinarily, unless, there are sufficient reasons (to be recorded in writing) to entertain the same. However, tenders received after the due date shall not be entertained in any case.
- 4.14** **Opening of Tenders:** The tenders shall be opened by the authorised Purchase Officer / designated tender opening committee.
- 4.14.1** Unless for good and sufficient reasons to be recorded in writing, as a rule, all tenders shall be opened on the date of receipt in the presence of representatives of the firms, who have quoted.

- 4.14.2** The Purchase Officer / Tender Opening Committee opening the tenders should verify that only authorized representatives of the Firms, which have actually submitted the tenders are present at the tender opening.
- 4.14.3** The purchase officer/designated tender opening committee, opening the tenders, will prepare a list of representatives on tender opening register present at the opening of tenders with full name and address and obtain their signature on the register. The purchase officer or the members of the designated tender opening committee will also put his / their signatures on the register.
- 4.14.4** Tenders of only such tenderers should be opened, who have purchased tender documents.
- 4.14.5** The Officer opening the tenders /Tender opening committee will read out following particulars only from each tender opened for the information of the representatives attending the opening.
- i. Tender No. and the name of tenderer.
  - ii. Articles / Nomenclature of the Stores.
  - iii. Quantity offered in the tender.
  - iv. Unit Price – whether Excise Duty, Sales Tax, other statutory duties extra or not.
  - v. Whether any rebate /discount offered, if so, quantum and condition, if any.
  - vi. Delivery period offered.
  - vii. Terms of delivery.
  - viii. Any other special conditions like deviations from specifications / terms and conditions of NIT/Tender Document.
- 4.14.6** While opening the tenders, the particulars of the covering letter should only be read in case there is any indication which calls the attention of the Purchaser to these particulars 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.
- 4.14.7** Where opening of tenders is not completed in one sitting and it is carried forward to a second sitting on the same day or after a break to the next day, the tender opening authority should get the signatures of the representatives present on the covers of all unopened tenders. Thereafter the tenders will be kept in the safe custody of some responsible officer.
- 4.14.8** Each tender shall be numbered serially, initialed and dated on the first page. Each page of the tender including the forwarding letter shall be initialed with date, particularly, the prices, delivery period etc. shall be encircled and initialed.

- 4.14.9** Full particulars of Earnest Money instruments should be recorded on the first Page of Tender under the initials of Tender Opening Authority.
- 4.14.10** Alterations in tenders, if any, made by the Firms, should be initialed legibly by the tender opening authority to make it perfectly clear that such alterations were present on the tenders at the time of opening. Wherever any erasing or cutting is observed, the substituted words should be encircled and initialed and the fact that erasing /cutting of the original entry was present on the tender at the time of opening be also recorded.
- 4.14.11** Any ambiguities in rates quoted by tenderers, in words or figures must be clearly indicated on each page of the tender.
- 4.14.12** In case where the Contractor has quoted rate in rupees and no paisa is mentioned, the word "only" should invariably be added after the words Rupees and the correction should initialed and dated.
- 4.14.13** Where the Contractors have omitted to quote the rate in figures or in words, the omission should be recorded by the tender opening authority under dated initials.
- 4.14.14** No amendments to the tenders on any account be permitted.
- 4.14.15** The tenders must be opened in the presence of all the tenderers or their authorized representatives.
- 4.15** **Postponement of tender opening date:** Whenever it is considered necessary to postpone the tender opening date, quick decision must be taken and communicated to the tenderers immediately.
- 4.16** **Two Bid System:** As a general rule, tenders should be invited in two bids, unless, the Purchase Officer feels that the magnitude of supplies is not so much as to warrant invitation of tenders in two bids or no major technical specifications are involved in the stores.
- 4.16.1** In the two bid system, the tenders are invited simultaneously in two parts,  
a) Containing the techno commercial offer  
b) Containing the price.  
With the stipulation that price bids will be opened after techno commercial evaluation of the offer is done:
- 4.16.2** The technical bid should be opened first on the prescribed tender opening date and price bid should be opened later on a specified date which should be made known to the tenderers after technical evaluation has been completed so as to ensure that all offers are evaluated technically.
- 4.16.3** Both the bids viz technical and price will be submitted in one main cover. The price bids (sealed cover), after the opening of the technical bids, should all be packed in a sealed envelope and kept in the safe custody of designated Officer /

official. The envelope containing Price bids shall be sealed under the signatures of tender opening authority as also the representatives of tenderers, if possible.

- 4.16.4** Technical evaluation should be done with sense of urgency and if on the basis of technical evaluation, it is observed that the technical bids are incomplete or indicate major deviations, such bids may be ignored by the competent authority without giving further opportunity to the tendering firm to complete the offer.
- 4.16.5** Such of the offers as based on technical evaluation show minor deficiencies can be further processed and clarification sought to determine finally the technical suitability of offer(s) before opening price bids.
- 4.16.6** The price bids submitted by such tenderers, whose offers have been considered technically un-acceptable on the basis of technical evaluation, need not be opened. Such unopened bids may be destroyed by the concerned Purchase Officer.
- 4.16.7** No revision of price bids after the due date of receipt of tenders shall be considered.



**EVALUATION OF TENDERS & PREPARATION OF COMPARATIVE STATEMENT**

- 5.1**      **Comparative / Ranking Statement:** After the tenders have been opened, a comparative statement shall be prepared on the same day or latest within 7 days from the date of opening of tenders. All the necessary details concerning the offers, such as rates, make, delivery, quantity offered, together with any other information relevant to the decision of the tender should be neatly entered in the comparative statement. The status of the firms whether registered or un-registered, SSI Units/Public sector undertaking shall also be indicated in the comparative statement.
- 5.2**      In addition to the Comparative statement a comprehensive ranking statement will be prepared after compiling prices on equitable basis taking the incidence of all elements of Price such as Excise Duty, Sales Tax, Freight, Transit Insurance etc. upto destination. The ranking statement should generally contain following information:
- a. Name of the Firm
  - b. Details of Registration
  - c. Basic Price
  - d. Excise Duty
  - e. Sales Tax
  - f. Freight
  - g. Transit Insurance
  - h. Other Taxes / Duties/Incidentals, if any.
  - i. Total Price
- 
- j. Price Firm or variable
  - k. Terms of delivery
  - l. Whether the stores offered conform to the required specification / drawings
  - m. Offer validity
  - n. Capacity of the Firm
  - o. Past Performance of the Firm
- 5.3**      Taxes, duties, other statutory levies as also the freight or any other incidental charges shall distinctly be indicated in the comparative statement.
- 5.4**      If a tenderer is exempted from payment of E.D upto any value of supplies, or is entitled to concessional rate / quantum of E.D. and has not stated that, no E.D. will be charged by him upto the limit of exemption and has not indicated the concessional rate/ quantum of E.D. leviable in respect of the tendered supplies but has made stipulations like, excise duty is presently not applicable but the same will be charged if it becomes leviable later on, the quoted price shall be loaded with the quantum of E.D which is normally applicable on the item in question for the purpose of comparing its prices with other tenderers.



- 5.5** The officer(s) framing the Comparative Statement will be responsible for the correctness of the facts recorded therein and initial them in token of having verified them.
- 5.6** The officer responsible to frame the Comparative statement will scrutinize the tenders received to find out whether these are complete in all respects. There may be some offers which are not complete. Such incomplete offers can be broadly classified into two groups:
- A. Where the offer is complete with regard to the essentials of the tender, though, some other details may be missing.
- B. Where the offer is not complete with regard to essentials.
- 5.6.1** As regards incomplete tenders falling under Group “A” these may be considered provided the offer is specific with regard to the following basic requirements.
- i. Description / specifications
- ii. Rates.
- iii. Delivery terms.
- 5.6.2** In other words, there should be no ambiguity regarding the items being offered, the prices quoted and the period of delivery. Where with regard to these basic requirements, the offers contain vague and ambiguous stipulations or avoid specific replies to the queries in the tender document, like whether the store conform to technical particulars / specifications, such offers will not be considered complete with regard to essentials. If some other details are missing from such an offer, for example, list of plant and machinery, details of registration etc. the Purchase Officer may make a reference to the firm seeking further information provided soliciting of such information will not amount to revision of the offer.
- 5.6.3** Such references and clarifications must be made quickly with a target date for reply so that settlement of the tender is not delayed.
- 5.6.4** It shall however, be ensured that no clarification shall be obtained from the Firm or accepted, if submitted by the tenderer unilaterally, which have an effect of changing the essentials of the tender or its interse position or would give unintended benefit to the tenderer.
- 5.6.5** As regards tenders falling under Group “B” such offers should be ignored and rejected straightway and no reference should be made to the firm or clarifications accepted, if submitted by the tenderer unilaterally.
- 5.7** For the guidance of Purchase Officers, an illustrative and not exhaustive list of the instances in which the tenders may be ignored or rejected is given below:-
- a. Tenders received after due date and time of tender opening.
- b. Offer of a tenderer who has not purchased tender document.

- c. Offer of a Tenderer who has not been asked to quote.
- d. Tender from a Stockist or an Agent without indicating details of the manufacturers whose products are offered.
- e. Tender received in the form of a letter /Fax/Telex/Telegram.
- f. It is from agents without proper authorization of manufacturers.
- g. It is from agents quoted for imported stores but they are not enlisted with DGS&D under Compulsory Enlistment Scheme of Ministry of Finance Government of India.
- h. It is not accompanied with Earnest Money.
- i. It does not indicate delivery period by which supplies can be made or delivery offered is vague.
- j. It does not indicate terms of delivery.
- k. It is ambiguous with regard to any of the essentials i.e. the items being offered, prices quoted and the period of delivery.
- l. Tender samples as required as per NIT have not been submitted by the due date.

**5.8** Tender indicating the shorter validity period than asked for in the NIT should ordinarily be ignored but should be considered under

exceptional circumstances particularly when the purchase officer feels that the rates offered are favourable.

**5.9** Any post tender revision which has the effect to influence the purchase decision should make the firm's tender unacceptable and be rejected. However, if the firm would have got the order without the revision and at the same time the revision gives some benefit to the purchaser, it may be accepted.

**5.10 Tenders from Authorized agents / Distributors:** While considering tenders submitted by authorized agents / Distributors of manufacturers, the following guidelines should be followed:-

- i. The tenderer should be asked to furnish copy of the letter from the manufacturer wherein he has been appointed as authorized agent / Distributor and permitted to quote against a particular NIT.
- ii. An undertaking from both the manufacturer and the tendering firm as specified

**at Para 2.2 of Chapter 2.**

**5.11** In case where the manufacturing firm happens to have been banned/ suspended the offer of the authorized agent/ distributor shall not be considered.

**5.12 Evaluation of Tenders:** With the above initial analysis, the officer responsible to frame the Comparative Statement will formulate a comprehensive proposal by evaluating the tenders, keeping in view the following parameters:-

- a. The technical acceptability of offers.
- b. The technical and financial capability of firms.
- c. Past performance of the firms.
- d. The delivery period offered vis-à-vis the delivery requirements of the department.

e. Reasonability of the prices quoted.

The proposal will also discuss non-consideration of offers, if any, indicating the reasons thereof.

- 5.12.1 Technical Acceptability:** The offers which are not technically acceptable should be ignored. The proposal should bring out clearly the deficiency in the offer with respect to specifications/ drawings or other particulars governing the requirements.
- 5.12.2** In the procurement of Plant & machinery the responding tenderers have to furnish deviation statements as required in the Tender document if the Stores offered deviate from the specifications stipulated in NIT. Where offers received deviate from the required specifications but the firm has not furnished the deviation statement, it should be brought out clearly in the proposal for consideration of the Competent Authority.
- 5.12.3** The contracts shall be placed on firms who have the technical and the financial capabilities to execute them. In order to ensure it, the contracts shall be placed as far as possible only on such firms which are registered with DGS&D, NSIC and Industries Department of the State or any other Government Department or Organisation authorized in this behalf by the Central Government or any State Government.
- 5.12.4** The firm shall be treated to have registered status, if it is registered prior to the date of opening of tenders. The tendering firms securing registration subsequent to the date of tender opening will be treated as unregistered.
- 5.12.5** A firm is considered registered for such items of stores for which the registration has been specifically granted.
- 5.12.6** For procurement of stores with ISI marking, the firm should have valid BIS license to supply stores with ISI mark.
- 5.12.7** The firm should be registered with Central Sales Tax Department / State Sales Tax Department and produce sales Tax Clearance Certificate from the competent authority before the due date of tender opening.
- 5.12.8** In order to verify the financial standing of a firm, Bankers Report should be called for and PAN Number, if not already furnished with the tender.
- 5.12.9** The firms are required to submit a true copy of their PAN Number with the quotation.
- 5.12.10** The Banker's Report could be dispensed with in respect of firms, which are covered by Statutory Auditing Process.
- 5.12.10.1** The Purchase Officers will ensure that the contracts are placed on firms whose performance has been good and who are offering delivery period as per the requirements of the department.

**5.13**        **Reasonability of Rates:-** Evaluation of tenders is made on the basis of the ultimate cost to the user and is the major factor in the decision for placement of contract. The price quoted comprises of various elements of cost some of which are variable in course of time.

**5.13.1**      A tenderer can quote on firm price basis as well as on variable price basis and each tender will be considered on its merit. As far as practicable, contract should be entered on “firm price basis”. While contract on variable prices can be considered on merit of each case, as a general principle, no offer involving any uncertain or indefinite liability or any other condition of unusual character should be considered.

**5.13.2**      Where a firm’s offer on variable price is considered, the price variation formula should be clearly spelt out indicating the base price on which the variation is to be allowed. There are certain standard price variation clauses for allowing variation on account of change in the prices of raw-materials, wages etc. This clause should distinctly be indicated in the tender document.

**5.13.3**      Where the standard Price variation clauses are not available, and if the Purchase decision is to place order on variable Price basis, a suitable Price variation clause has to be drafted in consultation with Finance Department allowing Price variation  
in the raw material with a suitable Price Variation factor on net weight of raw material and a suitable time lag. No Price Variation should be allowed on wastage element. The Price variation would be allowed on finished weight only.

**5.13.4**      The reasonability of the price proposed to be accepted has to be established by taking into account the competition observed from the response to the NIT, last purchase price, estimated value of the quantity to be purchased and market price wherever, available.

**5.14**        **Lack of Competition:** Lack of competition exists under following circumstances: when;

- a. Number of acceptable offers are less than three;
- b. Ring prices have been quoted by all the tenderers (Cartel Formation);
- c. The product of only one manufacturer has been offered by all the tenderers irrespective of No. of quotations.

**5.15**        **Last Purchase Price:-** To ascertain the reasonability of the prices received against the tender enquiry they should be

compared with the prices paid in the last contract, if any, for the same item.

**5.15.1**      The last purchase price will be the price paid in the latest contract of the similar magnitude which is not more than three years old.

- 5.15.2** Indication of the Percentage of increase over last purchase Price should invariably be given in the Purchase proposals.
- 5.16** **Estimated Value:** The estimated value of stores to be procured will also guide to assess the reasonability of the Prices quoted. Where it is seen that the prices received are substantially higher than the estimated value indicated by the indenter a reference should be made to the indenter asking him to explain the basis of his estimation with supporting documents of purchase, if any to verify the correctness of Estimates.
- 5.17** **Market Price:** The trend in market prices of the item or its main raw material may also be kept in view for establishing reasonableness of the rates received.
- 5.18** With the above analysis and evaluation of offers, the Purchase Officer will submit a comprehensive proposal to the Competent Authority (Purchase Committee) for conclusion of Contract.
- 5.19** Before recommending or taking decision on a purchase proposal, the purchase officers are advised to check the comparative/ ranking statements of the offers prepared vis-à-vis the tenders received so as to avoid possibility of any mistake and examine carefully the following aspects:-
- a. Reliability of firms for the supply of stores as per the required specifications.
  - b. Avoid to place orders on firms offering low prices but with poor or no prospect of supply as per the delivery requirements.
  - c. Due consideration be given to the price aspect whether firm or subject to any variation, and, in the later case, the elements effecting the price have been reasonably worked out.
  - d. All the purchase proposals should clearly mention whether or not prices quoted in tenders are inclusive or exclusive of taxes and duties.
  - e. Analyse the reasonability of prices being considered for acceptance comparing with latest purchase prices, (upto previous years) market price etc.
  - f. Analyse the past performance of the firms, if they have executed any orders.
  - g. That the prospective supplier(s) has / have agreed to all the terms and conditions laid down in NIT.
- 5.20** **Post tender negotiations:-** Negotiations, after tenders have been opened should be discouraged. Negotiations vitiate the sanctity of the tender system, unless some definite evidence is forthcoming to show that the prices received are high or there is tendency to obtain higher prices by ring formation, negotiations should not be resorted to at all.
- 5.20.1** Negotiations wherever necessary should always be conducted with the lowest tenderer.
- 5.20.2** In case of fixation of rate contracts and depending upon the requirements of the department, more than one firm may be required to cater to the demands, in such cases negotiations become unavoidable. Negotiations / counter offers in such cases may be decided by the competent authority.

**5.21**      **Extension of validity of offers:** The purchase officers should make all efforts to see that the purchase decision is taken as early as possible and in any case within the original validity period of the tenders.

**5.21.1**      The tendency to request the tenderers to extend the validity of offers should be curbed. This is of considerable importance, for, apart from the delay, there is also risk of the firm refusing to accede to the request for extension or extending the offer with revised rates which might lead to avoidable expenditure.

**5.21.2**      In case where seeking extension becomes unavoidable, action should be taken 8 -10 days in advance of the expiry of offers.

**5.21.3**      While submitting the purchase proposals, it is essential that the date upto which the offers are open/have been extended should be indicated clearly in the purchase proposals so that the final decision is taken at the appropriate level within the validity period.

**5.21.4**      When Purchase proposals are submitted after extension of offers, it should be mentioned therein that such and such firms who have not agreed to extend the offers and have not been taken into consideration, such and such firms have agreed to extension and confirmation from such and such firms are yet to be received.

**5.21.5**      Tenderers whose offers cannot be considered otherwise should not be requested for extension of their offers.

**5.21**      **Cancellation of tender and issue of fresh NIT:** This contingency should be exception rather than a rule. Re-invitation to tender can be justified only where there has been:

- a.      A material change in the basic specifications after receipt of tenders,
- b.      Where the offers received do not conform to specifications in important respects,
- c.      Where prices quoted are unreasonably high,
- d.      Where there is sudden slump in prices after receipt of tender,
- e.      Where the Purchase Officer(s) feel that the response to NIT is poor or no tender has been received at all.

**5.22.1**      The tenders received against NIT which is subsequently cancelled may be returned to the tenderers on request.

**5.22**      **Intimation of acceptance of tender:** The contract is brought into existence upon communication of the acceptance which must be communicated within prescribed time.

**5.22.1**      After a purchase decision has been taken, formal acceptance must be issued as quickly as possible but in no case later than 10 days of the decision.

**5.22.2**      The formal allotment of contract should be issued immediately after formal acceptance.



**ELEMENTS OF PRICE AND THEIR VARIATIONS**

**6.1 Elements of Price:-** The evaluation of tenders is made on the basis of ultimate cost to the user and is the major factor in the decision for placement of contract. The price quoted comprises of various elements of cost some of which are variable in course of time.

The ultimate cost in respect of stores is arrived at by considering the following items:-

- |       |   |               |
|-------|---|---------------|
| i.    | Basic Price ( The F.O.R. station of dispatch / Ex-Works Price which in turn includes raw material Price, Wages, Processing charges, over head, Packing and forwarding and margin of profit) |               |
| ii.   | Excise Duty   | If applicable |
| iii.  | Sales Tax   | If applicable |
| iv.   | Freight   |               |
| v.    | Transit Insurance   | If applicable |
| vi.   | Toll Tax  |               |
| vii.  | Entry Tax   | If applicable |
| viii. | Other Taxes /Duties   | If applicable |

**6.2 Variable Price:** One of the general principles of entering into contracts is that no contract involving any uncertain or indefinite liability or any condition of an unusual character should be entered into with the contractor. Therefore, it is the general policy that, as a rule contracts should be entered into on FIRM Price basis and the provisional prices subject to variation are to be accepted under exceptional circumstances. Nevertheless, in the present day fluctuating market

conditions, the difficulties in obtaining raw material, uncertain labour conditions and continuous changes in national and international fiscal practices, variable prices are often quoted by supplier firms and these are admitted. The intention is that both the seller and buyer are compensated for rise or fall in the costs of elements for which price variation has been accepted.

**6.2.1** The standard price variation clauses should therefore be explicitly mentioned both in the tender documents as well as the supply order.

**6.2.2** Where standard Price Variation formula is not available, the Price Variation clause may be suitably drafted and incorporated in the Tender Documents and supply orders. The Price variation clause should be drafted carefully in order to ensure that no undue advantage accrues to the Supplier.

**6.2.3** In case of variable offers, it is required of the purchase officers to indicate in the tender document, the base price on which firms should offer their prices. Otherwise there will be difficulty in comparison of the offers on equitable basis if different tenderers base their prices differently.

- 6.2.4** The duties and taxes levied by the Government vary from item to item. Hence in the procurement of stores the purchase officer has to carefully analyse the impact of such duties and taxes on the ultimate cost of procurement which is the major factor in decision making process for placement of order.
- 6.2.5** Tenderers should be asked to specifically state in their offer whether they intend to ask for the duties/ taxes as extra over and above the quoted prices. IN the absence of any such stipulation it is to be assumed that the prices quoted include these elements and no claim for the same will be entertained after opening of tenders.
- 6.3** **Excise Duty:** Excise Duty is leviable on manufacture and is to be paid by the manufacturer on clearance of goods. Excise Duty is leviable either on a percentage basis or on a fixed rate. Where excise duty is payable on percentage basis, this percentage is reckoned on the assessable value of the Stores to be determined in accordance with excise rules. Change in excise duty or fresh impositions are notified by Excise Department from time to time.
- 6.3.1** To levy excise duty, it is necessary that goods in question have come into existence as a result of manufacturing activity. The manufacture or production means bringing out a new commodity which must be usable, movable, saleable and marketable.
- 6.3.2** 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 re-making, the defective equipment gets upgraded or it becomes a different model.
- 6.3.3.** Since excise duty is on manufacture / production, the liability to pay the duty is on the manufacturer or producer.
- 6.3.4** Excise Duty is payable as per the scheduled rates, if there is no exemption pertaining to the goods in question. Where there are exemption notifications, the actual rate of duty is to be worked out after taking into consideration these exemptions.
- 6.3.5** The Central Government has got the power to grant in Public interest, exemption full or partial from payment of duty. Exemptions are granted to achieve various Socio-Economic objects, such as encouragements of Small Scale Sectors, Village Industries and Handicrafts, promoting the use of non-conventional raw – materials, promotion of industrial growth in backward areas etc. such rules and notifications take effect from the date of their publication in the official gazette.
- 6.3.6** In general, in case of goods cleared from factories and warehouses, the rate of duty in force on the date of actual removal of goods is applicable. Goods manufactured during the period when they were exempt from duty, but removed from the factory when exemption stood withdrawn are liable to duty.
- 6.4** **For regulation and payment of excise duty, following guidelines may be followed:**



- 6.4.1** If it is desired to ask for excise duty or any other charges as extra, the same must be specifically stated in the tender by the supplier. In the absence of any such statement no claim for the same shall be entertained.
- 6.4.2** If reimbursement of excise duty is intended as extra over the quoted prices, the supplier must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on excise duty shall be entertained after the opening of tenders.
- 6.4.3** Where the tenderer mentions that prices are exclusive of Excise Duty which will be payable extra, it should be definitely stated in the supply order that the duty is payable at a specified rate, in addition to the cost of stores, instead of mentioning its payment in an indirect manner.
- 6.4.4** If a tenderer chooses to quote a price inclusive of excise duty, he should clearly indicate the rate of excise duty and quantum of excise duty included in the price.
- 6.4.5** If a 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 excise duty, it should be brought out clearly. Stipulations like, excise duty was 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 a tenderer that excise duty will not be charged by him, even if the same becomes applicable later on.

- 6.4.6** In respect of the tenderers who fail to comply with this requirement, their quoted price 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.
- 6.4.7** Any change in excise duty upward/downward as a result of statutory variation in excise duty taking place during the execution of any contract and provided in the terms of contract shall be allowed to the extent of actual quantum of excise duty paid by the supplier. Similarly in case of downward revision, 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.
- 6.4.8** Tenderers should note that in case of any refund of excise duty is granted to them by the Excise Department in respect of stores supplied under the contract they will pass on the credit to the purchaser immediately with a certificate that the credit so passed on, related to the excise duty originally paid for the stores supplied under the contract. In case of failure to do so within 10 days of the issue of the refund orders, the purchaser would be empowered to deduct a sum equivalent to the amount refunded by the Excise Department. However, such refunds which are given to manufacturers in lieu of exemption as incentive shall not be subject to adjustment.

**6.4.9** Where excise duty is payable as extra, it will be paid along with the bills against documentary proof.

The following certificates shall be obtained from the supplier with each bill at the time of payment:

- i. Certified that Excise Duty charged on this bill is not more than what is payable under the provisions of the relevant Act or the rules made thereunder.
- ii. 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 covered by the bills.

**6.4.10** In such cases where prices are firm and inclusive of Excise Duty, the certificate prescribed for claiming Excise Duty need not to be called for.

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

**6.5** **Sales Tax:** The liability for payment of sales tax is on the dealer /supplier and he cannot pass it on to the Government / Purchaser unless, the latter has agreed as per terms of contract to reimburse that element.

**6.5.1** If any tenderer desires to ask for sales tax to be paid extra, the same must be specifically stated in the offer. In the absence of any such stipulation in the tender, it will be presumed that the prices quoted by the tenderer are inclusive of sales tax and no liability for payment of sales tax will devolve upon the Purchaser.

**6.5.2** On tenderer's quoting sales tax extra, it will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the Contract.

**6.5.3** Where quotations are invited exclusive of sales tax, the Purchase Officers should keep in view the amount of sales tax wherever the same is stipulated as an extra item in the tender and is leviable under law. In working out ultimate cost, the element of sales tax should also be taken into consideration.

**6.5.4** All purchase proposals should clearly mention whether or not prices quoted in tenders are inclusive or exclusive of sales tax.

**6.5.5** In all cases where it is finally decided to admit sales tax, the rates of sales tax and the amount payable as sales tax should be shown as a separate item in the supply order enabling the paying authority to pay it to the firm.

**6.6** **Central Sales Tax:** Inter- State Sales which occasion the movement of goods from one State to another or which are effected by transfer of documents of title

to the goods during their movement from one state to another are liable to tax under Central Sales Tax Act, 1956.

**6.6.1** The process of regulation and payment of Central Sales Tax shall be same as applicable to State Sales Tax.

**6.7** If there is variation between the terms and conditions stipulated in NIT/Tender Document and the Supply Order, the Contractor would be bound by the terms and conditions laid down in the supply order if he has accepted the same unequivocally.

**6.8** In cases where supply order does not make a mention in regard to the sales tax, the terms and conditions given in the NIT/tender document to this effect would prevail.

**6.9** Where Sales Tax is to be paid extra, the following certificates shall be obtained from the supplier on each bill:-

- a. Certified that the bill of goods on which the sales tax has been charged have not been exempted under the Central Sales Tax Act or State Sales Tax Act or the rules made thereunder. The charges on account of sales tax on these goods are correct under the provisions of that Act or the rules made thereunder. Certified further that we (our branch or agent) \_\_\_\_\_ Address are registered as dealers in the State of \_\_\_\_\_ under Registration No. \_\_\_\_\_ for the purposes of Sales Tax.

**6.9.1** In such cases where Prices are firm and inclusive of Sales Tax, the above certificate may not be called for.

**6.10 Other Taxes and Duties:** If the tenderer has asked for other taxes and duties like Toll tax, Entry Tax etc. as extra, the same shall be paid to him against documentary evidence.



**DRAFTING OF CONTRACT**

- 7.1** The drafting of contract is the most important stage in the procurement process and the purchase officer should ensure that document is prepared very carefully. Care should be taken to eliminate the possibility of omission and commission. It has to be ensured that contract is issued complete in all respects without leaving any room for avoidable controversy or correspondence at a subsequent stage.
- 7.2** Where a contract is concluded with the issue of advance acceptance of tender(Letter of Intent), it has to be ensured that the formal acceptance of tender for all purposes should conform to advance acceptance of tender(Letter of Intent), since, legally the contract stands concluded with the issue of advance acceptance of tender.
- 7.3** The terms and conditions being incorporated in the contract are to be in conformity with the offer of the firm and any variations being incorporated have been mutually agreed to. Unilateral insertion of terms and conditions which are different from those of the tender will not bind the contractor and must be avoided.
- 7.4** The contract should contain no more & no less than what is contained in the tender of the contractor. Any change desired to be made from the conditions of the Firm's tender should be incorporated only with the prior concurrence of the tenderer.
- 7.5** All the Contracts concluded on behalf of the Government, are governed by General Conditions of the Contract as laid down in

Financial Code. However following points should be kept in view while drafting a Contract :-

- 7.5.1** The complete name and address of contractor should be indicated correctly as mentioned in their tender.
- 7.5.2** The total value of the contract should be clearly indicated both in words and figures.
- 7.5.3** The contract should specifically mention whether the rates are inclusive or exclusive of taxes and duties. Incase rates are exclusive, the details of taxes alongwith the rates have been mentioned in contract.
- 7.5.4** The time and date of delivery of the stores stipulated in the Contract shall be deemed to be the essence of the Contract. It is therefore, necessary that a definite date for supply of stores must be stipulated in the Contract.
- 7.5.5** The delivery date in the Contracts should be stipulated in accordance with the provisions thereof in the accepted tender. Incorporation of the delivery period in the Contract in variance with that of the tender and which is not agreed to by the tenderer will not constitute a legally binding Contract.

- 7.5.6** The contract should indicate correctly the quantum of performance security and the security deposit and the time for furnishing the same.
- 7.5.7** Specifications / technical particulars along with maker's name, brand etc. if any, should be clearly indicated in the contract.
- 7.5.8** The payment clause in the Contract should clearly spell out the terms of Payment which should generally be as under:-  
Payment for the Stores shall generally be made by the paying authority on submission of bills as under:
- i. 95% of the Price of Stores of each consignment depending upon the terms of the contract shall be made on proof of dispatch and on production of a valid inspection note issued by the Inspector. A copy of Railway Receipt be furnished by the Contractor if the goods are dispatched by Rail.
  - ii. The balance 5% shall be paid within one month of receipt of the Stores or each consignment as the case may be, in accordance with the terms of the Contract in good condition, by the Consignee, with a certificate to that effect from the Consignee on the bill (s) of the Contractor.
  - iii. Sufficient Security in the shape of Bank Guarantee, indemnity bond etc. should be obtained from Contractor while releasing 95% payment against proof of dispatch in order to safeguard the interests of Govt.
  - iv. In case of dispatch of goods by road, 95% Price of stores shall be made on receipt of material and on production of valid Inspection Note issued by the Inspector and on the certificate issued by Consignee that the material has been received as per terms of the Contract in good condition.
  - v. The balance 5% shall be paid within one month of receipt of Stores after due verification by the Consignee.
- 7.5.9** In case of variable Prices, the base price of the raw material on which rates have been allotted as also the Price Variation clause as agreed upon in the Purchase decision should be incorporated.
- 7.5.10** The Contract should invariably contain "Fall Clause".
- 7.5.11** If stores are got to be inspected by a third party, the name of the inspection agency along with the charges payable should be clearly indicated in the contract.
- 7.5.12** In case of departmental inspection, the designation of the inspecting authority / Officer and place of inspection where the stores are to be tendered for inspection should be indicated correctly.
- 7.5.13** The paying authority and the financial year against which the funds have been earmarked for making the payments need to be correctly stipulated.
- 7.5.14** The jurisdiction for settling of disputes should also be specified in the Contract.
- 7.5.15** Guarantee / Warranty clause of the agreement should distinctly specify the period for which the stores shall remain under warranty / guarantee.

**7.5.16** Penalty clause should mention the quantum / percentage of penalty to be imposed in case of non-performance of contract.

**7.5.17** Force Majeure clause should clearly state the eventualities which will come within the purview of this clause.

**7.6 Some of the important clauses mentioned above are discussed below:-**

**(A) Fall Clause:**

- i. The Price charged for the store supplied under the contract by the contractor shall in no event exceed the lowest price at which the contractor sells the stores or offers to sell the stores of identical description to any person(s) organization(s) including the purchaser or any department of the Central Govt. or State Govt. or any statutory undertaking of the Central or a State Government, as the case may be, during the period till performance of the Contract.
- ii. If at any time during the said period, the contractor reduces the sale price, sells or offers to sell such stores to any person(s) / Organisation(s) including the purchaser or any statutory undertaking of the central or a State Govt., as the case may be ,at a price lower than the price chargeable under this contract, he shall forthwith notify such reduction or sale or offer of sale to the Purchaser and the Price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer of sale shall stand correspondingly reduced.
- iii. If at any time it comes to the notice of purchaser that the contractor has sold the stores or offered to sell the stores of identical nature to any person(s) /Organisation(s) or any state or central Govt. department at a reduced price and has not notified the Purchaser, the Purchaser shall be at liberty to make the recoveries from the due payments of the contractor in case he fails to indemnify the purchaser on demand.
- iv. The contractor shall furnish following certificate to the paying authority alongwith the bills for payment.

“I /We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered /sold by me/us to any person(s) /Organisation(s) including the Purchaser or any department of Central or state Government or any statutory undertaking of the Central or state Govt. as the case may be upto the date of the bill / the date of completion of supplies at a price lower than the Price charged to the Govt. under the contract”.

- (B) **Force Majeure Clause:** As a general rule this clause should not be incorporated in the Invitation to tender. It should be included in such contracts only where the supplier insists for it, prior to acceptance of an offer.

“If at any time during the continuance of this contract, the performance in whole or in part by either party of any obligation under this contract shall be prevented or delayed by reason of any war, hostility, acts of Public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts or act of God, **PROVIDED**, notice of the happening of any of such event is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such event, be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such non-performance or delay in performance and deliveries under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, **PROVIDED FURTHER** that if the performance in whole or part or any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 60days, either party may at its option terminate the contract provided also that if the contract is terminated under this clause, the purchaser shall be at liberty to take over from the contractor at a price to be fixed by the department, all unused , undamaged and acceptable materials, bought out components and stores in course of manufacture in the possession of the contractor at the time of such termination or such portion thereof as the purchaser may deem fit excepting such materials , bought out component and stores as the contractor may with the concurrence of the Purchaser elect to retain.”

- (C) **Warranty / Guarantee:** A warranty is a stipulation collateral to the main purpose of Contract, the breach of which gives rise to a claim for damages

but not to a right to reject the goods and treat the Contract as repudiated.

Unless otherwise some special warranty / Guarantee clause has been stipulated elsewhere in the invitation to tender or any of its annexures, the following warranty shall form part of the contract placed on successful tenderer:

- i. Except as otherwise provided in the invitation to tender, the contractor/seller hereby declares that the goods, stores, articles sold /supplied to the Purchaser under this Contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained in the contract. The contractor/seller hereby guarantees that the said goods /stores/articles would continue to conform to the description and quality aforesaid for a period of 18 months from the date of delivery of said goods in the stores of the consignee or 12 months from the date of installation /use of the said stores whichever, is earlier. If during the aforesaid period the said goods / stores / articles be discovered not to conform to the description and quality aforesaid or not giving satisfactory performance or have deteriorated and the decision of the Purchaser in that behalf shall be final and binding on the contractor / seller

and the Purchaser shall be entitled to call upon the contractor / seller to rectify the goods / stores / articles or such portion thereof as is found to be defective by the Purchaser within a reasonable period, or such specified period as may be allowed by the Purchaser in his discretion or on an application made thereof by the contractor/ seller, and in such an event, the above mentioned warranty period shall apply to the goods / stores / articles rectified from the date of rectification thereof, otherwise the contractor/seller shall pay to the Purchaser such compensation as may arise by reason of the breach of the warranty herein contained.

- ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price.
- iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Purchaser of the equipment so that the latter may undertake the balance of the lifetime requirements.
- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**(D) Inspection:**

It is mandatory that all articles, whether manufactured in India or abroad, shall be subject to inspection before acceptance, and articles for which specifications and /or tests have been prescribed by a competent authority shall be required to conform to such specifications and / or to satisfy the prescribed test or tests, which may be carried out during manufacture or before or after dispatch from the Supplier's premises.

- i. The name of the Inspection agency and place of inspection where the stores are to be tendered for inspection should be indicated correctly in the Contract.
- ii. In cases where Consignee has to carry out his own inspection of stores after receipt of the same at destination, the Purchase Officer should intimate both the Contractor and the Consignee the desirability of inspection of stores immediately on receipt of goods and issue of necessary inspection certificate without delay.
- iii. The Contractor shall, at his own expenses, afford to the inspector all reasonable facilities and such accommodation as may be necessary for satisfying himself that the stores are being or have been manufactured in

accordance with the particulars. The Inspector shall have free access at any time during the execution of the Contract to the Contractor's works for the purpose aforesaid, and he may require the Contractor to make arrangements for inspection of the Stores or any part thereof or any material at his premises or at any other place specified by the Inspector. The decision of the Purchaser / Inspection Authority in this regard shall be final and binding on the Contractor.

- v. The Inspector shall also be authorized to remove for test and examination all or any of the Stores manufactured by the Contractor to any premises



other than Contractor's where Contractor has failed to provide the facilities and the means for test and examination. In all such cases the Contractor shall bear the cost of transport and / or carrying out such tests elsewhere.

- vi. The Inspector shall have the right to put all the Stores or materials forming part of the same or any part thereof to such tests as he may think fit and proper. The Contractor shall not be entitled to object on any ground whatsoever to the method of testing adopted by the Inspector.
- vii. The authority of Inspector to accept or reject the material shall be binding on the Contractor.
- viii. Where under the Contract the Price payable is fixed F.O.R dispatching Station, the Contractor shall, if the Stores are rejected at destination by the Consignee, be liable in addition to his other liabilities, including refund of Price recoverable in respect of the Stores so rejected, to reimburse to the Purchaser the freight and all other expenses incurred by the purchaser in this regard.
- ix. The examination of the stores shall be made as soon as practicable after the same have been submitted for inspection and the result of the examination will be notified to the Contractor.
- x. The Inspector will mark all the approved Stores with a recognized Government, or Purchaser's mark. Similarly in respect of rejected Stores he will put the "Rejection Mark".
- xi. It shall be the responsibility of the Contractor to remove the rejected Stores within 14 days of the date of intimation of such rejection when the inspection has been conducted at a place other than the premises of the Contractor.
- xii. On the Stores being found acceptable by the Inspector, he shall give to the Contractor necessary copies of inspection notes duly completed.

**7.7 Consignee is generally required to follow the following guidelines:-**

- 7.7.1** The consignee should be watchful regarding arrival of consignment immediately on receipt of Railway Receipt and despatch details from the Contractor.
- 7.7.2** In case entire consignment is not received within the Delivery Period, he should immediately take up the matter with the firm and the order placing authority.
- 7.7.3** The consignee is responsible for taking up prompt delivery of the goods immediately on arrival at destination.
- 7.7.4** The consignee is responsible for verifying the consignment at the time of taking delivery.
- 7.7.5** It shall be the responsibility of the Contractor that the entire Stores contracted for arrive in good condition at destination. The transit risk on this respect may be covered by the Contractor by getting the Stores duly insured if he so desires.
- 7.7.6** In case the consignee observes some shortage /damage he should immediately lodge the claim with the carriers under intimation to the firm, order placing authority and the paying authority. Failure to act immediately may result in losing claim of shortage / damage, if any observed at a later date.

- 7.7.7** Receipt certificate to firm before checking and verifying the stores shall not be issued by the consignee.
- 7.7.8** If there is evidence of loss or damage, the consignee should arrange to secure necessary certificates from the appropriate transport agency or Railways, as the case may be, before taking delivery. The loss or damage should in any case be promptly reported to the firm, supply order placing authority and the paying authority or otherwise the consignee shall be deemed to have accepted the stores.
- 7.7.9** Where stores are rejected on arrival at destination, these shall be rebooked to the Contractor /Supplier, unless otherwise provided in the Supply order, and the freight shall be borne by the Contractor.
- 7.7.10** Where the rejected stores are returned as above and goods are not required to be replaced, the freight paid by the consignee, if any, on the original consignment will be recovered from the contractor either in cash or from their bills.
- 7.7.11** Consignee has right to reject the stores notwithstanding any approval which the inspector may have given in respect of the stores or any part or portion thereof.
- 7.7.12** If the contractor on receipt of notice/ intimation refuses to remove the stores and instead institutes a suit / initiates a reference to arbitration challenging the rejection of stores, the department may move an application before the Court under the relevant provisions of Civil Procedure Code or the Arbitration Act as the case may be for disposal of stores.

**7.8 Guidelines which are required to be followed by a tenderer before submitting his tender.**

**CONDITIONS OF TENDER & CONTRACT**

*(These conditions should be read carefully by the tenderers while filling their quotations.)*

- i. Tenders must be enclosed in a properly sealed envelope according to the terms of NIT.
- ii. The rates must be entered neatly in words as well as in figures.
- iii. Tenders should be submitted by those manufacturers and firms/dealers who are Registered /Approved Suppliers for those articles /goods /equipment/machinery etc.
- iv. The tenderers shall be deemed to have carefully examined the conditions, specifications, size make and drawing etc. of the goods to be supplied. In case of any doubt as to the meaning of any conditions(s) or of the specifications, drawing etc., they shall before signing the Contract, refer to the Purchase Officer and seek clarifications.
- v. The contractor shall not assign or sublet his contract or any substantial part thereof to any other agency.

- vi. All the stores supplied shall be of the best quality, to the specifications, trade mark laid down for them and in strict accordance with the approved standard samples and in case of any materials, of which there are no standard or approved supplies, the supplies shall be of the very best quality and description obtainable in India. The decision of the accepting authority shall be final as to the quality of the stores and shall be binding upon the tenderers and in case any of the articles supplied not being approved and thus shall be liable to be rejected or replaced and any expenses or loss caused to suppliers as a result of rejection or replacement of supplies, shall be entirely at the account of the tenderer.
- vii. The Purchasing Officer or his duly authorized representative shall have at all reasonable time access to the supplier's premises, and shall have the power at all reasonable time to inspect and examine the materials and workmanship of the goods.
- viii. In case the goods other than of the approved quality, make or size are supplied they shall be rejected and will have to be replaced within a reasonable time by the supplier, without extra cost. If due to exigencies of Public Works /interest such replacement is not possible, the prices of such article will be reduced suitably. The prices fixed by the Purchasing Officer shall be final.
- ix. The rejected articles must be removed by the tenderer from the destination within prescribed date of information of rejection. The officials concerned will take reasonable care of such material but in no case shall be responsible for any loss, shortage, damage that may occur to it while it is on their premises.
- x. The tenderer shall be responsible for the proper packing so as to avoid damage under normal conditions of transport by sea, rail and road or air and delivery of the material in good condition to the consignee at destination. In the event of any loss, damage, breakage or leakage or any shortage the tenderer shall be liable to make good such loss and shortage found at the checking / inspection of materials by the consignee. No extra cost on such account shall be admissible.
- xi. The tenderer whose tender is accepted shall arrange supplies within a stipulated period from the date of placing the order. The quantities shown in  
  
the tender are approximate. The supplies will have to be arranged according to the requirement of the Department.
- xii. The contract of supply can be repudiated at any time if the supplies are not made to the satisfaction of the Government.
- xiii. Tender should be filled in with ink. No tender filled in by pencil or otherwise shall be considered. No additions and alterations should be made in the Tender. No over-writing should be done. Corrections, if any, should be done clearly and initialed.

- xiv. The tenderer should sign the tender form at each page at the end in token of the acceptance of all the terms and conditions of the tender and the agreement.
- xv. Tender must be accompanied by an earnest money prescribed by the Purchase Officer without which tenders will not be considered.
- xvi. Successful tenderers will have to execute an Agreement in the prescribed form and deposit security for due performance of the contract.
- xvii. Remittance charges on payment made to the firms will be borne by the Contractors.
- xviii. If the approved suppliers fail either to supply goods of the prescribed specification or to deliver the goods within the specified period, the Purchasing Officer shall be at liberty to arrange supply either through re-tender or otherwise.

The Purchasing Officer may give seven days notice in writing to the approved supplier to make good the failure, neglect or contravention complained of and should the contractor fail to comply with the notice within seven days of the date of service thereof and in such cases if the Purchasing Officer thinks fit it shall be lawful for him to retain and apply the

balance which may be due to the contractor or to apply the amount of earnest money deposited by the supplier to make good the loss sustained or excess cost incurred by the State in arranging the supplies through any other agency.

- xix. The goods will be delivered at the destination godown in perfect condition. The supplier, if he so desires, may insure the valuable goods against loss by theft, destruction or damage by fire, flood, undue exposure to weather or otherwise viz. war, rebellion, riot etc. The insurance charges will have to be borne by the supplier and State shall not be required to pay such charges, if incurred.
- xx. No advance payment will be made except in very rare and special cases for which reasons will have to be recorded.  
Payment shall be due and payable by the Purchasing Officer on behalf of the Governor only when the whole quantity has been delivered and inspected and accepted by the Purchasing Officer and a certificate of having done so is recorded by Purchasing Officer. In case of disputed items 10 to 25 per cent of the amount shall be withheld and will be paid on settlement of the dispute in terms of the award granted. Progressive payments, if agreed to will be made according to the terms entered in the agreement.
- xxi. The validity period and the delivery period can be extended, if mutually agreed to.
- xxii. Direct or indirect canvassing on the part of tenderers or their representatives will disqualify their tenders.
- xxiii. The Government reserves the right to accept any tender not necessarily the lowest tender and reject any tender without assigning any reasons therefor.

Orders can be placed for the whole or part of the quantity and articles tendered for at the discretion of the Government.

- xxiv.** No Railway Receipt will be accepted by V.P.P.
- xxv.** All legal proceedings if necessity arises to institute any, by any of the parties (Government or contractor), shall have to be lodged in courts situated in Jammu and Kashmir State and not elsewhere.
- xxvi.** No conditional tender shall be accepted.
- xxvii.** Any sum of money due and payable to the contractor (including security deposit returnable to him) under this contract may be appropriated by the purchaser or Government or any other person or persons contracting through the Secretary and set off against any claim of the purchaser or Government or such other person or persons for the payment of a sum of money arising out of or under any other contract made by the contractor with the purchaser or Government or such other person or persons.



**REVIEW OF PERFORMANCE OF CONTRACTS**

- 8.1           **Acknowledgement of Contracts:** The Purchase Officer has to ensure that the contract placed with the Contractor is duly acknowledged by him. If no acknowledgement is received from the Contractor within 14 days from the date of issue of the contract /supply order then the contractor should be reminded and matter pursued till acknowledgement is received.
- 8.2           **Performance Security:** The Purchase Officer should also watch whether the contractor has complied with the requirement of furnishing the performance security as per the terms and conditions of the contract. If not, timely action should be taken in pursuing the matter with the contractor till he submits performance security.
- 8.3           **Delivery:** The time for and the date of delivery of stores stipulated in the contract shall be deemed to be essence of the contract. It is therefore, necessary that a definite date for supply of stores must be stipulated. In the contract, expressions, such as “Immediate”, “Ex-stock”, “As early as possible”, should be avoided.
- 8.3.1       The delivery date in the contract should be stipulated in accordance with the provisions thereof in the accepted tender. Incorporation of the delivery period in variance with that of the tender and which is not agreed to by the tenderer will not constitute a legally binding contract.
- 8.3.2       It is required that delivery must be completed by the agreed date. The contract comes to an end, by way of a breach, on the failure of the seller to deliver the goods by the agreed date, and the Purchaser may refuse to take delivery of goods, if offered after the agreed delivery date.
- 8.4           **Review of Performance:** Placement of contract on a particular supplier does not essentially ensure the completion of supplies to the consignee's satisfaction. A constant watch is therefore, essential after the placement of supply order.
- 8.4.1       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.
- 8.5           **Options available in case of non-materialization of supplies within delivery period:** When the supplies do not materialize by the stipulated delivery period, the purchaser has the following options depending upon conditions / circumstances of the case:-
- i.       To extend the delivery date,
  - ii.      To refix the delivery date,
  - iii.     To cancel the contract and to re-purchase the unsupplied quantity.
- 8.6           **Points to be considered for extending the delivery or to cancel the contract:** Whether the extension of delivery date is to be granted as asked for by the supplier or the contract may be cancelled, would be decided on the merits of each case. The purchase officer has to balance the time factor

required for making re-purchase and the needs of the department i.e. whether supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative source and in the later case whether the department can reasonably wait to take advantage of lower trend in prices.

- 8.6.1** Extension should be granted only where the competent purchase officer is convinced that supplies would come forward during the extended period. Where Purchase Officer is convinced that there are no prospects of

supplies forthcoming, particularly after granting of extension, it would be advisable to cancel the contract with a view to making re-purchase as per the provisions of contract.

- 8.7** **Re-fixation of delivery Period:** Delivery period should normally be re-fixed in the following cases:-

- a. Cases where the manufacturer of stores is dependant on the approval of advance sample / drawings and delay occurs in approving the sample/ drawings by the department.
- b. Where extension in delivery period is granted on account of omission on the part of a Purchase Officer effecting his right to enforce delivery date within the stipulated time.
- c. Cases where the entire production is controlled by the Government.

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

- 8.8.1** An extension is binding on the Supplier firm if it is granted on the same terms as asked for by the Firm. The extended delivery time schedule be fixed in such a way as to give the supplier effective time required by him for the performance of the Contract.

- 8.8.2** The Purchase Officer within whose powers the value of the acceptance of the tender falls will be competent to consider requests for extension and

to decide whether extension of time should be given. Such extension in delivery period will be given by the competent authority by reserving the right of the department to levy liquidated damages for delay and with denial of increase in prices, taxes, duties etc.

- 8.8.3** As soon as it becomes apparent to the Contractor that the delivery dates stipulated in the supply order cannot be adhered to, Contractor should apply for extension to the Purchase Officer giving reasons for the delay and also date upto which extension is required. The Purchase Officer will consider such request and if he has no objection, extend the delivery period

suitably. The extension in the delivery period shall however, be subject to following conditions:-

- a. That an amount equal to the liquidated damage for delay in the supply of the Stores after the expiry of original delivery period shall be recovered from the Contractor for the extended delivery period, notwithstanding the grant of this extension.
- b. That no increase in price on account of any statutory increase in or fresh imposition of taxes and duties in respect of Stores specified in the said supply order which takes place after the original delivery period shall be admissible on such of the stores as are delivered after the said date.
- c. That notwithstanding any stipulation in the Contract for increase in price on any other ground, no such increase which takes place after the original delivery period shall be admissible on such of the stores as are delivered after the said date.
- d. But nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction or remission of taxes and duties or any other ground including market rate stipulated in the price variation clause which takes place after the expiry of original delivery period.

**8.8.4** Notwithstanding the extension in delivery period the time extended for supply of Stores shall be deemed to be essence of Contract and failure on part of the Contractor to supply the stores by the extended time shall entitle the Purchaser to cancel the Contract at the risk and cost of Contractor without further notice or opportunity.

**8.8.5** A copy of the letter granting extension should invariably be endorsed to inspection agency.

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

**8.9.1** In case it is considered expedient to give further extension in delivery period in a bonafide effort to procure the stores, the Purchase Officer may do so by issuing NOTICE-CUM-EXTENSION LETTER. If there is no response within 15 days, a notice may be issued to the contractor asking him to explain the reasons as to why the contract should not be cancelled. If the contractor does not acknowledge / communicate acceptance, the purchase officer would then be in a position to cancel the contract after the aforesaid 15 days notice period or as per the terms of the Contract.

**8.9.2** Normally, the supplier shall not dispatch the stores after the expiry of delivery period till such time an extension in delivery period is granted by the purchaser. If the stores are dispatched by the supplier before obtaining an extension, he would be doing so at his risk and no claim for payment shall lie against purchaser either in respect of the cost of the stores dispatched or any other expenses which the supplier may have incurred.



**8.9.3** If the consignee does not require the stores, he can reject the supplies made by the firm after the expiry of delivery period. The purchaser shall have a right to cancel the contract under these circumstances.

**8.10** **Cancellation of the Contract:** The purchaser may without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part:

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

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

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



**CHAPTER – 9**  
**RATE CONTRACT**

- 9.1** A rate contract is an agreement between the purchaser and supplier to supply stores at specified prices during the period covered by the contract. No quantities are mentioned in the contract, nor any minimum drawal is guaranteed. The rate contract is in the nature of a standing offer from the supplier. A legal contract would come into existence with the placement of individual supply order and each such supply order will constitute a separate contract.
- 9.1.1** The contractor is bound to execute any supply order which may be placed upon him during the currency of the contract at the rates specified therein.
- 9.1.2** A supply order may be placed upto the last date of 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 purposes of delivery for all the stores ordered during the currency of the rate contract until deliveries have been completed.
- 9.1.3** Being a standing offer, a rate contract can be revoked at any time during its currency by the rate contract holder. The rate contract holder shall have to give 30 days notice to the purchaser of his intention to revoke the offer with reasons therefor. The purchaser after examining the notice of the rate contract holder on its merits can short close the rate contract.
- 9.1.4** Similarly the purchaser can cancel the rate contract at any time during its currency giving a reasonable opportunity to the rate contract holder.
- 9.2** **Stores for which rate contracts to be fixed:-**  
The items which fulfill the following criteria are generally considered for rate contract;
- a) Items of standard types preferably having BIS specifications.
  - b) Items which are needed on recurring basis.
  - c) Items for which prices are likely to be stable and not subject to considerable market fluctuations.
  - d) There may be certain Items which are needed on recurring basis but are subject to market price fluctuations. Rate contract for such items could be considered with provision of price variation to account for fluctuation of market rates of raw material etc.
  - e) Items for which Rate Contract is convenient to operate e.g. Items which are required in small quantities and of lower value, rate contracts may not be convenient to operate.
  - f) Items with an estimated annual drawals of Rs. 25.00 Lacs or more.
  - g) Rate contract may not be fixed for the scarce / critical / short supply items.

**9.3            Rate Contract Period:**

- i). Normally the period of rate contract should be limited to one year, but in special cases a shorter or longer period may be considered.
- ii). Where the period of validity of Rate Contract may not have been mentioned by the Competent Authority, the same will be valid for one year from the date of issue of order.
- iii). As far as possible, termination period of rate contract should be fixed in such a way as to ensure that budgetary levies would not effect the price and thereby frustrate the contract.

**9.4            Fixation of parallel Rate Contract:** Parallel rate contracts may be fixed in case it is felt by the purchasing officer that it won't be advisable to rely on only one Firm based upon the estimated annual requirement of the department.

**9.4.1**        The competent Purchasing Officer on the merits of each case can decide the number of firms to be awarded rate contracts for an item, so that the department has wider choice available.

**9.5            Negotiation / Counter Offer:** Post tender negotiations should be avoided and the rate contracts may be fixed without negotiations by following the guidelines given above with adequate number of firms at prices within reasonable range to meet the estimated requirement of the department.

**9.5.1.1**     In cases where the price of Lowest 1<sup>st</sup> is considered acceptable, but there are not enough firms within the reasonable price range, rate contract may be fixed with Lowest 1<sup>st</sup> and its price, counter offered to other firms depending upon requirements of the department. Those who accept the counter offered prices or below may be awarded parallel rate contracts to meet the estimated requirements of the department.

**9.5.2**        Where, however, the price of Lowest 1<sup>st</sup> is not acceptable, the competent purchase authority may in the first instance negotiate with Lowest 1<sup>st</sup> only for arriving at a reasonable / acceptable price. On successful negotiations with Lowest 1<sup>st</sup>, rate contract may be awarded to him at the agreed negotiated price and the same may be counter offered to Lowest 2<sup>nd</sup> and Lowest 3<sup>rd</sup> etc. depending upon the requirements of the department and the parallel rate contract concluded in the same manner as above.

**9.5.3**        If the negotiations with Lowest 1<sup>st</sup> are not successful, the price considered as reasonable may be counter offered to other tenderers including Lowest 1<sup>st</sup>.

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

**9.6            Reduction in Prices:-**

- (a) Parallel rate contract holders may reduce prices under the "FALL CLAUSE" to undercut each other with a view to bring their prices to a level where they are lower than the lowest originally quoted rates. While the

“FALL CLAUSE” should not be allowed to serve as tool for price war, at the same time, the Purchaser cannot ignore such reductions.

- (b) If, therefore, at any time, during the currency of the rate contract period, the firm offers to reduce the prices, the same should be acknowledged and simultaneously, the reduced prices shall be notified to all other parallel rate contract holders giving them 15 days time to submit their revised prices in sealed covers.
- (c) Formal amendment letters to the rate contract shall be issued immediately after the expiry of the above time limit based on the response received from the firms, covering also the firm who originally reduced the prices. The lower prices in respect of the latter firm will be made applicable retrospectively from the date of their letter offering the price reduction in line with the provision of the “FALL CLAUSE”.
- (d) Severest possible action should be taken against those firms who had reduced their prices after fixation of the rate contract but failed to make supplies against supply orders placed on them on those rates.

**9.7                    Finalization of Prices:** Finalization of the prices in the case of rate contract having price variation clause will have to be made till the last delivery date of supply order, even if such date goes beyond the validity period of the rate contract. The paying authority will make a reference to Purchase Officer in individual cases and the Purchase Officer will advise him of the prices that will prevail during such period in terms of the Contract. The same procedure will apply where the Contract has no Price variation clause but in view of the denial clause incorporated in the extension of delivery period, the Purchase Officer will have to advise the paying authority whether or not the department has any claim on the firm as a result of downward trend of rates of taxes/duties etc.



**FINALISATION OF PURCHASE CASES AND SETTLEMENT OF CLAIMS**

- 10.1** A contract, unless, otherwise cancelled or discharged, is completed when supplies against the contract have been received in full and accepted by the consignee and full payment therefor 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 consignee pending settlement of variable prices etc. These cases require what is termed “Finalisation.”
- 10.2** The finalisation of the purchase cases, thus requires:-
- (i) Regularisation of delivery period, where the supplies have been made beyond the stipulated delivery period,
  - (ii) Determination of final prices in contracts having price variation clause,
  - (iii) Settlement of claims on account of excise duty, sales tax, freight etc. and
  - (iv) Settlement of claims on account of delay and other claims, if any.
- 10.2.1** The final price to be paid will be determined in terms of the price variation clause and the claim made by the contractor supported by the documents.
- 10.2.2** In cases where the contracts have been allotted on variable prices, the contract price is treated as provisional so long as the cost of raw material etc. on which price variation has been agreed is not examined and the contract price finalized.
- 10.2.3** The Contractor shall make the claim, if any, for adjustment of prices under the
- contract and submit complete relevant documents in support thereof, not later than six months after the completion of the supplies.
- 10.2.4** The Contractor has also to furnish other required documents if any, within the period aforesaid. If he fails to do so, he will be deemed to have no further documents and the Purchase Officer would proceed to finalise the Price on the basis of the documents / information if any furnished by the Contractor within the aforesaid period.
- 10.2.5** Usually the firms readily put forward their claim for an increase in price wherever there is a rise in cost of raw material or other elements on which variation has been agreed to but fail to notify the department when there is decrease in such prices. In order to avoid any loss to Government it is necessary, therefore, that all contracts in which “Price variation clause” has been embodied should be carefully watched.
- 10.2.6** Steps should be taken to examine regularly all contracts with a view to ascertain whether there has been any reduction in prices of raw material or in other elements on which price variation has been agreed, before final payment is made to the firm.

- 10.3            Taxes and Duties:** The claims for Sales Tax, Excise Duty, Custom Duty, Freight etc. if payable extra at actuals, will be admitted against documentary proof without a formal amendment from the Purchase Officer.
- 10.3.1**        In case of “FIRM Price Contracts”, claims for sales tax, Excise Duty, Custom Duty, Freight etc. will be admitted by the paying authority provided no variation has taken place in these elements of extra charges between the Contract delivery date and the provisionally extended delivery date.
- 10.3.2**        Extension in delivery period is normally to be granted with the denial clause i.e. no claim for increase on account of 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 clause.
- 10.4            Claims for compensation where Contracts are cancelled by the Purchaser before completion.**
- 10.4.1**        Cancellation of Contracts become necessary sometimes on account of reduction /cancellation of demand by the indentors on the ground that demand for the Stores in question no longer exists or has since been reduced. In dealing with such cases, the Purchase Officer must observe the following procedure:-
- i.            The terms of a Contract are binding on both the parties and a contract during its currency can be cancelled or modified only by mutual consent. The Purchase Officer should not, therefore, proceed to cancel a contract in whole or in part straightaway on receipt of the indentors request.  
On receipt of cancellation /reduction of demands, each case should be examined immediately with reference to the terms and conditions of contract by the Purchase Officer and if 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, as for example, where the delivery period has expired, action should be taken to give effect to cancellation /reduction straightaway.
  - ii.          Where, however, it is clear that the terms and conditions of the Contract do not permit cancellation / reduction without the Contractor's consent, the Firm should be approached and persuaded to agree to cancellation /  
  
reduction without any financial implications. If the Firm agrees, the formal amendment or cancellation will be issued by the Purchase Officer making it clear that the reduction /cancellation is with mutual consent and no compensation, whatsoever, shall be paid to the Supplier.
  - iii.        Where the Firm does not agree to cancellation /reduction without financial implications, 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 contract clause and what the quantum of compensation payable, if any, should be.

Simultaneously, arrangements should be made for independent inspection of stores in an unfinished state of supply with a view to ascertaining the correct position of supply of stores contracted for and the reasonableness or otherwise of the compensation claimed by the Contractor. The compensation shall be paid only after approval of Competent Authority.

- iv. Cases involving financial implications should be disposed of expeditiously as any delay is prone to lead to disputes, arbitration claims and payment of higher amount of compensation in the long run.

**10.5                    Claims for Losses occurring in Transit.**

**10.5.1**                The Consignee is responsible for verifying at the time of taking delivery from the Railway / Transport Authorities that the Stores have been received intact without loss or damages. If there is evidence of damage or loss, the Consignee should arrange to secure necessary certificates from the appropriate railway /transport agency before taking delivery.

**10.5.2**                The loss or damage should in every case, be promptly reported to the Contractor, Purchase Officer who placed order as well as the paying authority. In any event, the Consignee should not, before checking and verifying the stores give Receipt certificates to the Contractor.

**10.6                    Responsibility for loss and procedure regarding settlement of claims.**

**10.6.1                Contracts stipulating delivery F.O.R. station of destination :**

In such cases, the contractor is responsible to supply the material complete in good condition to the Consignee at station of destination. Delivery here is construed to be complete only when the goods reach the destination Station in full and good condition. The contractor is, therefore, liable in such cases for any loss or damage 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 in this case will merely lodge the claims with the carriers and report the fact to the supplier as soon as possible but not later than 30 days of the date of arrival of stores at destination. Thereafter it will be for the supplier to pursue the claim with the concerned agencies and settle the matter.

**10.6.2                Contracts stipulating delivery F.O.R. Station of dispatch/ex-works.**

In such cases where the contracts are fixed for delivery F.O.R. station of dispatch / Ex-works, the contractor shall not ordinarily be responsible for the loss or damage in transit, unless, the contract provides otherwise.

**10.6.3**                In cases where tenderers have agreed to the condition that they will be responsible until the stores contracted for are received in good condition at the destination, the responsibility for the loss or damage occurring during transit will be of the Contractor as above.

**10.6.4**                In cases where the Suppliers do not agree to take the responsibility for loss or damage in transit, the property in the goods passes to the consignee as soon as the same is accepted by the Railway authorities / Transport agency for carriage.

- 10.6.5** The Purchase Officer shall in these cases ask the supplier to cover the material for transit insurance on behalf of the department and the insurance charges shall be reimbursed by the paying authority as per actuals against documentary proof.
- 10.7** **Procedure for effecting Recovery of Govt. claims.**
- 10.7.1.1** While the Pre-estimated damages for delay in supply is automatically recovered by the paying authority, in respect of other claims they have to be preferred separately on the firm by issue of notice.
- 10.7.2** The Govt. 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 the arbitrator or the court in terms of the Contract. Accordingly, the amount of claim cannot be recovered unilaterally from the payments due from the bills of the Firm against the same contract or other contracts. But the payments due may be withheld pending settlement of the Government's claim.
- 10.7.3** When a decision is taken to claim damages from a Contractor a demand notice may be issued to the Firm by which the Contractor is called upon to deposit the amount of damages within stipulated time.
- 10.7.4** A copy of the demand notice be endorsed to the paying authority with the request to withhold amount mentioned in the notice from any of the pending bills of the Firm till further instructions.
- 10.7.5** If the amount claimed is not deposited by the Contractor by the target date, steps should be taken to have the claim finally determined through arbitration or the court, as the case may be, in terms of the Contract.





**CHAPTER – 11**

**SETTLEMENT OF DISPUTES / CLAIMS THROUGH ARBITRATION /**

**COURTS**

- 11.1** One of the General conditions of Contract provides that in the event of any question, dispute or difference arising under the conditions of or in connection with the Contract, the same shall be referred to the sole arbitration of an Officer to be appointed as Arbitrator by the Government 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 Act** and the rules made thereunder.
- 11.2** The Contractor is required to specifically accept or reject the arbitration clause while submitting his tender. In case of omission to answer specifically in this regard, it will be deemed acceptance of the clause.
- 11.3** Where a Contractor has not agreed to the sole Arbitration clause, the dispute / claims arising out of the Contract entered into with him will be subject to the Jurisdiction of the Competent Court of Law as per the conditions of the Contract.
- 11.4** In cases where the parties have agreed to settlement of disputes / claims arising out of contracts through arbitration and to the appointment of Arbitrator in a particular manner, the consent of other party would not be necessary for appointment of arbitrator and for reference of the dispute to him, when the aggrieved party asks concerned authority to do so.
- 11.5** **Procedure for appointment of Arbitrator when the Contractor seeks to refer dispute to Arbitration.**
- 11.5.1** On receipt of a request from the Contractor to refer the dispute to arbitration, the purchase officer will verify that the arbitration clause is included in the Contract. On such verification, the Purchase Officer will prepare a self contained note giving the points put forward by the Contractor and the points of the Purchaser in reply thereto and refer this note to Competent Authority. The Competent Authority after examination, if he feels that the case is fit to be referred to Arbitrator, he shall accord approval for its reference to arbitration accordingly.
- 11.6** **Procedure for appointment of arbitrator when it is proposed to refer the dispute on behalf of the Purchaser.**
- 11.6.1** In the case of Government claims where the Purchasing Department contemplates taking recourse to arbitration, the Purchase Officer should first verify the financial standing of the party and the prospect of recovery of the amount claimed.
- 11.6.2** After the verification of the financial standing of the party has been done, a complete summary of the case will be prepared and referred to the

competent authority. If the competent authority feels that the case is fit for reference to the Arbitration, it shall accord approval for the same.

**11.7 Reference of Dispute to Arbitration on the Direction of Court**

**11.7.1** The Govt. 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. However, if the Firm chooses to approach the Court for reference of dispute to arbitration and

the Court Orders reference of dispute to arbitration in terms of the arbitration clause, the Purchase Officer shall take immediate necessary steps for appointment of Arbitrator with the approval of Competent Authority.

**11.8 Information to Indentors / Consignees etc. for reference of dispute to Arbitration:**

**11.8.1** As soon as it is decided that the disputes be referred to Arbitration, the Purchase Officer concerned shall immediately inform the indenter / Consignee / Inspecting Authority / paying Authority etc. about reference of cases to the 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 dispute in arbitration.

**11.9 Preparation, examination and Finalization of pleading to be filed before the Arbitrators**

**11.9.1** In cases where Govt. is the claimant, before the Arbitrator is formally appointed, the Purchase Officer shall prepare statement of claims to be filed on behalf of Govt. /Department. It will be the responsibility of the Purchase Officer to prepare the self contained history of the case duly referencing the relevant documents and also quantifying the exact amount of claim to be preferred on behalf of the Govt. / Department.

**11.9.2** In the cases in which Govt. is the respondent, a copy of the claim statement, as and when received from the claimant Contractor shall be forwarded to Purchase Officer. The Purchase Officer shall furnish detailed Para wise comments on all the Paras of the claim filed by the Contractor.

The Purchase Officer has to admit or deny categorically all the allegations made in the claimants statement. The Purchase Officer will also examine the copies of the documents filed on behalf of the claimant and will also give explanatory notes, whether documents, the copies whereof have been filed by the claimant Firm, are available in the Purchase files and whether they are true and correct copies of the original.

**Procedure of Follow-up Action**

**11.10 Award in favour of the Govt./ Deptt.:** Immediately on receipt of the award or the decree, as the case may be, the Purchase Officer concerned shall serve

a demand notice for recovery of the awarded amount from the Contractor. The Purchase Officer shall at the same time explore the possibility of effecting recovery in full or part of the awarded amount from the pending claims of the Firm.

- 11.11**      **Award in favour of Contractor:** Immediately on receipt of award or decree as the case may be, the Purchase Officer after obtaining legal advice shall decide whether to accept the award or to challenge it. In case it is decided to accept the award, the Purchase Officer shall arrange to pay the awarded amount as soon as possible in order to avoid payment of interest.

