

DGS&D MANUAL

(Effective from 1st October 1999)

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NOTE:

The Appendix part is presently under construction and will be added soon.

**DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
NEW DELHI**

CHAPTER-1

ORGANISATION, AND STRUCTURE

1.1 ORGANISATION AND STRUCTURE: Directorate General of Supplies & Disposals is the Central Purchase Organisation of the Government of India headed by the Director General. It is an attached office under department of Supply (Ministry of Commerce). It comprises of following main wings:

1. Purchase
2. Quality Assurance
3. Shipping- clearance and forwarding
4. Registration
5. Training and consultancy

The functions of Wings are carried out through Purchase and Quality Assurance Directorates in the Headquarters Office in New Delhi and Regional Offices. The Location of these offices are given in [Annexure-1](#).

1.2 SCOPE AND FUNCTIONS: Directorate General of Supplies and Disposals is entrusted with the responsibility of;

- (i) Purchase and or/inspection of stores for Central Government Ministries/Departments including their attached and subordinate offices and Union Territories other than the items of purchase and inspection of stores which are delegated to other authorities by general or special order. With implementation of decentralization policy, procurement against adhoc indents was transferred from the DGS&D to the indenting Ministries/Departments and procurement of common user items on Rate Contract basis continues to be done by the DGS&D.
- (ii) Purchase and/or inspection of stores on behalf of those state Governments, Public Undertakings, Autonomous Bodies, and Quasi-Public Bodies etc. who desire to avail of its services.
- (iii) To arrange clearance of stores imported against orders placed by the DGS&D and also orders placed by the other Central Government Departments State Governments, Autonomous Bodies etc. if called upon to do so. To arrange shipment of stores against contracts placed by the DGS&D wherever necessary or where such work is entrusted to the DGS&D by other authorities.
- (iv) Registration of manufacturers, suppliers, stockists, Indian Agents of foreign manufacturers. Registration Indian Agents of foreign suppliers as a nodal agency under the compulsory registration scheme as per the directive of Ministry of Finance.
- (v) To utilize the expertise available in the filed of Purchase and Quality Management, the Training Directorate will act as National Institute to impart/arrange training for government departments and Industries.

1.3 PURCHASE WING; The purchase wing is the main functionary of the organization and it carries out procurement action for conclusion of rate contracts and ad hoc purchases.

1.3.1 Whereas the major procurement work is handled at Headquarters, New Delhi, the three Regional Supply Offices at Mumbai, Chennai and Calcutta have been assigned certain items of R/Cs. These regional offices also entertain the ad hoc indents from the indenting departments. The indents for ad hoc items shall be raised by the indenting departments as per the territorial jurisdiction of each office with following exceptions:

- a) Jute and jute products- Centralised at Kolkata.
- b) Coir and coir products- Centralised at Chennai.

1.3.2 The allocation of ad hoc indents received at Headquarters, New Delhi shall be as per the item/commodity dealt by each Directorate as is decided by Director General from time to time. The list of R/C items dealt in Purchase Directorates at Headquarters, New Delhi and in the regional offices is available in the NIC WEBSITE on the INTERNET. The ADDRESS of DGS&D Home Page on INTERNET is <http://dgsnd.gov.in>.

1.3.3 The territorial jurisdiction of the Headquarters office of DGS&D and the Regional offices are given below.

S.No.	Office	States/UTs
1.	Directorate General of Supplies & Disposals, New Delhi.	J&K, Himachal Pradesh, Haryana, Punjab, Uttar Pradesh, Rajasthan, Union Territories of Delhi and Chandigarh
2.	Office of the Deputy Director General of Supplies Calcutta.	Orissa, Bihar, West Bengal Assam Nagaland, Meghalaya, Manipur, Tripura Arunachal Pradesh, Sikkim, Mizoram, Andaman & Nicobar Island.
3.	Office of the Deputy Director General of Supplies, Chennai.	Andhra Pradesh, Karnataka, Tamil Nadu Kerala, Pondicherry and Lakshdweep.
4.	Office of the Deputy Director General of Supplies, Mumbai.	Gujarat, Maharashtra, Goa Dadra & Nagar Haveli, Madhya-Pradesh and Daman & Diu.

1.3.4 Regional Offices at Calcutta, Chennai and Mumbai also arrange clearance of imported cargo at all major ports against orders placed by DGS&D and also by other Departments, Quasi-Public Bodies, Government Undertakings, State Governments etc; if called upon to do so.

1.4 QUALITY ASSURANCE WING; The Quality Assurance Wing of DGS&D provide technical support to the purchase functions by laying down the procurement specifications assessing the vendors, registration of suppliers, and assuring the quality of stores.

1.4.1 They perform the following functions:

- (a) Formulation of inspection policies and quality Assurance plans.
- (b) Providing advice on all technical issues in the purchase activities.
- (c) Formulating the procurement specifications for contracting.
- (d) Assessment of vendors against their application for registration with DGS&D or against tender enquiries before placement of contracts.
- (e) Registration of firms and maintenance of directories of suppliers registered as manufacturers, Indian agents to foreign manufacturers etc.
- (f) Evaluation and certification of the quality of supplies.
- (g) Quality Audit of Supplies at consignees end.
- (h) Providing similar services to other Departments of Central Government, State Government, Public Sector Undertakings and private parties against their direct procurement.
- (i) Inter-action with indentors and industry in the preparation and upgradation of procurement specifications to meet diversified and increasing quality needs of the users and guidance to industry for improvement in manufacturing process, test methods etc. to produce quality products.
- (j) Inter-action with BIS, participation in their standardisation activity and certification of products on their behalf.
- (k) Testing of samples and investigation of failure of Metallurgical products.
- (l) Compulsory enlistment of Indian Agents of Foreign Principals under Ministry of Finance Scheme.
- (m) As information centres in the respective states for closer interaction with industry and the state governments. They also provide all information about DGS&D functions to the indentors and the industry apart from their Quality Assurance functions in the area. Some designated Centres undertake sale of tender sets.
- (n) Furnishing and vetting of performance report against Rate contracts by the Inspecting Officers to Purchase Directorate(s).
- (o) Export Inspection on behalf of friendly countries.

1.5 SUPPORTING UNITS

1.5.1 PLANNING AND CO-ORDINATION UNIT; Planning and Co-ordination Unit (P&C Unit) with strategic planning for business development, initiation, implementation and interpretation of policy and procedures relating purchase, quality assurance, disposal and shipping.

1.5.2 INTERNAL WORK STUDY; This unit performs the functions of undertaking methods study with a view to streamlining the procedures and cutting down delays. It also conducts staff measurement studies and keeps watch on speedy disposal of work through various returns and control measures.

1.5.3 TRAINING AND CONSULTANCY:

- (a) In line with the National Training Policy, training of DGS&D personnel is arranged both at the time of recruitment and in-service. Training Directorate co-ordinate with the Department of Personnel and Training in arranging the training programmes.
- (b) National Institute of Supply and Quality Management has been set up in DGS&D who will impart in-service training to the DGS&D Officers as well as from other Government Departments and private sectors.

1.5.4 MANAGEMENT INFORMATION SERVICES: The Management Information Services Directorate is responsible for maintenance and dissemination of data. It acts as operational-cum-intelligence unit to provide requisite data for monitoring of pre and post contract operations and data for decision-making. Besides, the Directorate brings out periodically, brochures on salient features of the DGDS&D purchases, bulletin on market prices. MIS Directorate also prepares and issues the annual administration report of the Directorate General of Supplies & Disposals

They receive the indents, register and allocate to the purchase directorates for procurement and maintain the database.

1.5.5 COMPUTERISATION; The purchase and Quality Assurance Activities in DGS&D as well regional offices have been computerised with the assistance of National Informatic Centre (NIC). The items have been codified store wise to facilitate integrated functioning of the system of all the three wings involved, namely, Supply, Quality Assurance and Chief Controller of Accounts (CCA).

1.5.6 PUBLIC GRIEVANCES AND PUBLIC RELATIONS CELL; As a procurement agency, the DGS&D has to deal with the business community and the indenting departments and such dealings call for prompt and satisfactory action. The efficiency of the service organisation is reflected by the manner of relations with the indenting departments and the business community.

1.5.7 The Directorate of Public Grievances and Public Relations is assigned with the task of rendering assistance and guidance to both industry and also to the indenting departments dealing with DGS&D and its regional offices in the matter of tender information, office procedure and complaints regarding delays and irregularities. The information wherever

possible is disseminated against oral queries without waiting for written requisitions. The Director of Public Grievances and Public Relations also functions as a Public Grievances Officer under the scheme laid down by the Department of Personnel and Training for redressing the grievances of trade and industry in their dealing with the DGS&D.

1.5.8 MARKET INTELLIGENCE CELL AND COST CELL; With a view to gather, compile and maintain an upto date data bank in a systematic manner and to arrive at reasonable prices of the products to be brought on the Rate Contracts, two Cells viz. Market Intelligence Cell (MIC) and Costs Cell are functioning in the DGS&D. The tasks assigned to them are:

- a) To gather and compile information on the prices of end products and input raw materials.
- b) In relation to the existing items on R/C and for new products proposed to be brought on R/C, MIC will collect the names of possible sources with a view to improve participation by the industry in DGS&D purchases;
- c) Data on price trends for various items on R/C will also be compiled to the extent feasible;
- d) To consider suggesting new items for conclusion of the rate contracts;
- e) To assist the Purchase Directorates in collecting/compiling information required to assess prices of particular products.
- f) Any other data/information on the aspect of gathering market/raw material prices will be attended on specific suggestions/requests of Purchase Directorates and
- g) Any other related functions.

COSTS CELL; The Costs Cell functions under the officer in-charge of IF Wing of DGS&D and it draws expertise from the Purchase and Quality Assurance Wing of DGS&D for performing its duties. The main functions of Costs Cell are:

- a) To analyse and work out the reasonable cost;
- b) To compare the R/C prices with the market prices (data to be obtained from the Market Intelligence Cell and Purchase Directorates) vis-à-vis the reasonable cost worked out. This will be on the request of DDGs for item selection;
- c) To make available the above data/information to Purchase Directorates on the basis of their needs and
- d) Any other related functions.

1.5.9. INTEGRATED FINANCE WING: A complement of the officers of the Integrated Finance Wing of the Department of Supply is posted in the DGS&D to advise concurrently on purchase cases, wherever required and also to tender advice on other financial matters concerning the organization. This complement includes one Dy.Director (Cost) drafted from the office of the Chief Advisor (Cost), Ministry of Finance, to advise the DGS&D on matters of cost fixation of price and formulation/ implementation of price variation clauses etc.

1.5.10 LEGAL WING: This Wing is headed by the Senior Officer of the Ministry of Law designated as Additional Legal Adviser. The wing assists Purchase Dtes. In handling litigation cases pertaining to dispute arising out of contracts placed by DGS&D, New Delhi. These cases are those going in for arbitration and /or in courts i.e. Lower Courts/High Courts/Supreme Courts. The litigation cases pertaining to Regional Offices at Calcutta, Chennai, and Mumbai are conducted by the Regional Offices concerned in consultation with Branch Secretariats of the Ministry of Law in those places. This wing also advises on the applicability of sales Tax on the stores purchased by DGS&D and sales tax related matters.

1.5.11 ADMINISTRATION WING; The Administration Wing attends to the house keeping functions and the personnel management of the staff including welfare, security etc.

1.5.12 VIGILANCE WING: Vigilance Wing is entrusted with the overall responsibility for anti-corruption measures. It is headed by the Director (Vigilance) who acts as special Assistant to the DG (S&D) on vigilance matters and also provides a link between the DGS&D and Chief Vigilance Officer in the Department of Supply. It is also responsible for reviewing and streamlining of procedures, which appeared to give scope for corruption.

1.5.13 LIAISON CELLS; The National Small Scale Industries Corporation Ltd. Maintains a Liaison Cell in order to have a close liaison with the Purchase Directorates with a view to implement the policy of the Government of India for increasing the quantum of Government purchases from the cottage and small scale industries sectors.

A Railway Liaison Cell is also working in DGS&D to facilitate proper interaction with DGS&D in respect of their procurement of items through DGS&D Contracts.

CHAPTER-2

GENERAL PRINCIPAL OF ENTERING INTO CONTRACTS

2.1 INTRODUCTION

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

2.2 ELEMENTARY LEGAL PRACTICES:

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

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

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

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

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

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

2.3.1. Categories of persons and bodies who are parties to the contact may be broadly subdivided under the following heads:-

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

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

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

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

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

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

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

2.5 FREE CONSENT OF BOTH PARTIES:

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

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

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

2.6. CONSIDERATION: Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an Act forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

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

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

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

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

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

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

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

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

2.12 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.

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

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

A contract may also be discharged:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) In case of contracts on behalf of the public sector undertakings, corporations or local bodies, all the documents forming part of the contract are to be expressed to be made, issued or acceptance on behalf of the public sector undertakings, corporations or local bodies. The corporation or local bodies as

the case may be, should be named as the purchaser in the Invitation to the Tender and Acceptance of Tender.

- (b) There should be an authorization specific or general in favour of the officers of the Directorate General of Supplies & Disposals from the concerned undertakings or corporations or local bodies to enter into contracts on their behalf.

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

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

- (a) Save in exceptional circumstances, no work of any kind should be commenced without prior execution of contract documents. Even in cases where a formal written contract is not made, no order for supplies etc. should be placed without at least written agreement as to the price.
- (b) The terms of a contract must be precise and definite and there must be no room for ambiguity or mis-construction thereon.
- (c) No contract involving an uncertain or indefinite liability or any conditions of an unusual character should be entered into without the previous consent of the Ministry of Finance.
- (d) Subject to adequate prior scrutiny of terms, general or special, if any, standard forms of contracts should be adopted, wherever possible. The alternatives used in the standard forms, which are not applicable, should be invariably scored out in consultation with the Ministry of Finance and Ministry of Law.
- (e) In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the contracts and before they are finally entered into.
- (f) The terms of a contract once entered into should not be materially varied without the previous consent of the authority competent to enter into the contract as so varied. No payments to contractor by way of compensation or otherwise, outside the strict terms of the contract or in excess of the contract rates may be authorised without the previous approval of the competent authority.
- (g) No relaxation of specifications agreed upon in a contract or relaxation of the terms of an agreement entered into by Government should be made without proper examination of the financial effect involved in such relaxation. The

interest of the public exchequer should be taken due care of before agreeing to any relaxation of agreement or contract.

- (h) In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.
- (i) Before entering into a contract or an agreement, all pros and cons should be considered and validity of contractual documents should be ensured. Effective administrative machinery should also be set up to keep a vigil on the performance of parties concerned.
- (j) Provision must be made in contracts for safeguarding Government property entrusted to a contractor and the recovery of hire charges, if any, therefore.
- (k) When a contract is likely to endure for a long period or where the contract provides for a clear schedule for the fulfilment of the various stages of the contract, it should include a provision for unconditional power of revocation or cancellation at the discretion of the government at any time on the expiry of reasonable notice to that effect. The period of notice should not normally be longer than 6 months.
- (l) All contracts should have a provision for recovery of liquidated damages for defaults on the part of the contractor, unless there are any special instructions issued by the competent authority. The terms of contract for the purchase of perishable stores should invariably include a (separate) Warranty G.F.R.I This form may, however, be modified to suit local conditions.
- (m) It should be ensured that in all contracts where a warranty clause is included, the position regarding delivery of goods in replacement of rejected ones is made clear beyond doubt by adding the words "Free of cost at the ultimate destination" after the words "by the purchaser" in the penultimate sentence of the said clause, where the incorporation of such a clause is not inconsistent with the other conditions of the contract.
- (n) A schedule of qualities with their issue rates of such materials which are supplied departmentally, and are used in the contract work, should form an essential part of the contract. It should also contain an escalation clause pertaining to rates of such materials the prices of which are controlled by Government and which the contractor arranges himself, so that Government may get the benefit of any saving in the quantities of the material actually used in execution.
- (o) The question whether any sales tax, purchase tax, octroi and terminal taxes and other local taxes and duties are to be paid and if so, by which party, should be settled and cleared up before entering into any contract, involving transfer of movable property whatever its nature.
- (p) All contracts for purchase involving import of materials from abroad should as a rule provide for purchases on F.O.B basis and similarly all sales contracts

involving transport of materials from India to other countries should be entered into on C.I.F. basis.

- (q) Provided that a departure from the procedure prescribed above may be with the prior concurrence of the Ministry of Surface Transport.
- (r) No work should be done under an agreement/contract beyond the date of expiry of its tenure. Wherever it is considered that the work has to be continued beyond the date of expiry of the tender timely action should be taken for renewing the contract/agreement for the further period required, after a suitable review of the provisions of the old agreement/contract to see whether any modifications therein are required.
- (s) Where escalation in respect of labour overheads, customs duties, freight etc. is provided for in a contract, the basis for the calculation of the same should be clearly indicated.
- (t) "Cost Plus " Contracts should be avoided except where they are inevitable.
- (u) Lump sum, contract should not be entered into except in cases of absolute necessity. Whenever such contracts are entered into, all possible safeguards to protect the interest of Government should invariably be provided for in the conditions of the contract.
- (v) The Comptroller and Auditor General and under his direction other audit authorities have power to examine contracts and to bring before the Public Accounts committee any cases where competitive tenders have not been accepted or where other irregularities in procedure have come to light.

CHAPTER - 3

PROCUREMENT OBJECTIVE AND PURCHASE POLICY

3.1 PROCUREMENT OBJECTIVE : The main objectives of public buying are :-

- (i) To procure stores of specified quantity and specified quality.
- (ii) To procure stores on a competitive basis at the lowest reasonable price.
- (iii) To procure stores with a planned timely delivery.

3.2 PURCHASE POLICY : The purchase policy adopted in DGS&D procurement process is as per the guidelines of General Financial Rules (GFR) and the salient features of which are :

- (a) 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.
- (b) To provide price and or purchases preference upto specified limit as may be prescribed by the Government from time to time to the stores manufactured by Cottage and Small Scale Industries and Public Sector Undertakings over those manufactured by private large scale industries.
- (c) To ensure quality of products and timely supplies.

3.3 TYPES OF PREFERENCES

3.3.1 The Government have issued administrative instructions in furtherance of the policy on purchase and price preference and the procedure of procurement as applicable to each of the preferred sector. The preferences considered to above sectors of industry are as under:

- (a) Product Reservation
- (b) Purchase Preference
- (c) Price Preference,

3.4 PRODUCT RESERVATION

3.4.1 PURCHASE OF KHADI ITEMS – PROCUREMENT FROM KVIC : All items of handspun and handwoven textiles (Khadi Items) are reserved for exclusive purchase from KVIC. List of all such khadi items is given in [Annexure-3](#).

3.4.2 The purchases of Khadi items from the KVIC is made by the DGS&D on single tender basis at the rates quoted by them without a separate verification regarding their reasonableness. The Commission quotes rates which are fixed by a Committee known as the Certification Committee and the rates so fixed are reviewed by the Costs Accounts Branch of the Ministry of Finance.

3.4.3 Indian Standards Specifications are laid down for Khadi and the items to be purchased from the KVIC are required to conform to these specifications.

3.4.4 There is no provision for verification of capacity before covering the demand on KVIC who will distribute the items/quantity ordered on them among the affiliated units according to their capacity.

3.5 PURCHASE OF HANDLOOM TEXTILES ITEMS INCLUDING BARRACK BLANKETS :

3.5.1 PROCUREMENT FROM KVIC/ACASH : All items of handloom textiles required by the Central Government Department are reserved for exclusive purchase from KVIC and/or the notified Handloom Units through the and Association of Corporations and Apex Societies of Handloom (ACASH).

3.5.2 The Handloom Textile items will be purchased from KVIC to the extent they can supply before covering the demand on Handloom Units through ACASH. To the extent these units can make supplies, orders will be placed on them. For balance quantity, if any, DGS&D can make purchase from other sources.

3.5.3 Purchases of handloom textile items is to be made by the DGS&D from both KVIC and ACASH on single tender basis at the prices quoted by them without independent verification as to their reasonableness. In the case of KVIC, as mentioned above, the rates quoted are fixed by Certification Committee and the rates so fixed are reviewed by the Costs Accounts Branch of the Ministry of Finance. In the case of ACASH, the final prices will be calculated by ACASH and fixed by the Ministry of Textiles by associating a representative of the Chief Costs Accounts Officer of the Department of Expenditure, Ministry of Finance.

3.5.4 The DGS&D will enter into a one time long term contract with ACASH laying down the terms and conditions applicable to the purchases from ACASH notified units.

3.5.5 The existing DGS&D Inspection procedure shall apply to handloom items supplied by ACASH notified units. As for civil demands, DDG(QA) would not require verification of the capacity of these units. In respect of Defence demands, with inspection by Defence Authorities, capacity verification of the units will be carried out, and orders placed only on receipt of satisfactory and capacity verification Reports.

3.5.6 Testing arrangement will generally be provided by the ACASH notified units and where the same are not available, testing charges for testing at outside laboratories by the Inspector will be borne by ACASH/its units.

3.5.7 Payment terms for ACASH notified units will be the normal DGS&D payment terms, i.e. 95% payment on inspection and proof of dispatch and balance 5% after receipt of stores by consignee, within delivery period and on price finalization, if any. ACASH will inform DGS&D about the distribution of quantities to be supplied by different handloom units and the DGS&D will issue instructions to the concerned Pay

and Accounts Officer for release of payments to such units against the supplies made by them.

3.5.8 KVIC/ACASH are treated on par with SSI units registered with DGS&D/NSIC. Both are exempted from payment of Performance Security Deposit. They will, however, have to bear the normal responsibility stipulated under the terms and conditions of the DGS&D contracts and fulfil the contractual obligations on behalf of the units for which they quote. However, these facilities are, however, not applicable to State KVI Boards, if they quote directly claiming to be a KVIC units.

3.5.9 The list of items reserved for purchase from the handloom sector in accordance with the procedure outlined above and the IS specifications which they should conform to is given in [Annexure-4](#).

3.5.10 Purchase of both the above categories of items will be made by inviting sealed tenders through ATI or LTI as the case may be.

3.6 ITEMS RESERVED FOR PROCUREMENT FROM SSI

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

3.6.2 Presently, 358 items are reserved for exclusive purchase from Small Scale Sector, as per list given in [Annexure-5](#). There is, however, a provision for review of the list at periodical intervals by Standing Review Committee set up under the Chairmanship of Secretary(Supply) with Development Commissioner (SSI) as the Member-Secretary. These items will be identified by definite specifications.

3.6.3 Procurement of items will be made by inviting sealed tenders through ATI or LTI as the cases may be. In the process of procurement other things being equal, the purchases preference would be in favour of KVIC/ACASH/SSI in that order.

3.7 PROCUREMENT OF OTHER ITEMS NOT SO RESERVED

3.7.1 For the items falling under this category PSUs and Large Scale Private Industries will also be invited to participate.

3.8 PRICE PREFERENCE :

3.8.1 As a general rule, if offers are received from both large scale and SSI but some of the lowest offers are from the large scale units, the offers of the SSI should merit acceptance by according price preference upto 15% over the lowest acceptable offer from the large scale private sector units provided, of course, the stores are technically acceptable and satisfy the basic considerations of delivery and capacity.

3.8.2 Price preference admissible to Small Scale Industrial Units, will be accorded on a tender to tender basis, on merits of each case in consultation with Finance terms of para 4-5 of the Annexure to the Chapter 8 “ Stores “ of General Financial rules, as reproduced below :

“ 4. Price preference upto a specified limit as may be prescribed by Government from time to time can also be allowed to goods manufactured by Cottage and Small Scale Industries which are approved either by Ministry of Commerce and Industry or the Central Purchase Organisation over those manufactured by Large Scale Industries. Each case of price preference should be considered strictly on merits in consultation with the Internal Financial Adviser or the Finance Ministry, as the cases may be, and in such a manner as to discourage inflation and to prevent profiteering and creation of a sense of complacency in regard to the need for improvement of efficiency and economy in production.

5. In case where the Cottage and Small Scale Industry has established itself as a supplier of certain specified items on competitive terms and enjoys an advantage over the Large Scale Industries, no price preference need be given and order for such items will be placed on them to the fullest possible extent before orders are placed on Large Scale Industry.”

3.8.3 The basic principle behind the policy of price preference to small scale industrial units is that such a preference is considered necessary in those cases where the SSI units need protection and cannot stand on their own in competition with large scale sector. The price preference to be accorded to SSI units, therefore, should be on a tender to tender basis keeping in view the basic considerations of conformity to specifications, quality, delivery, capacity etc. The Purchase Officers are to exercise their discretion to grant price preference judiciously. They may, where considered necessary, call for the detailed break-up of cost of production where prices quoted are substantially higher than the last purchase price and have reasons to believe that higher price is being quoted merely to avail of the price preferences.

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

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

- (i) Where competition exists amongst the Small Scale units alone or where the items are exclusively reserved for purchases from SSI Units; and

- (ii) Where the tenders are received from both the SSI Units and large scale units and the lowest offers are from SSI units and their capacity is more than adequate to meet the demand in hand.

3.9 SMALL SCALE UNITS WHEN THEY QUOTE IN CONSORTIUM UNDER THE NSIC / SSIDC / STATE LEATHER DEVELOPMENT CORPORATION / STATE GOVERNMENT HANDICRAFT DEVELOPMENT CORPORATION: Where the NSIC / State Development Corporation themselves quote on behalf of some SSI Units, their offer will be considered as an offer from SSI Unit registered with the DGS&D/NSIC. The NSIC/ State Development Corporation will shoulder the normal responsibilities applicable under terms and conditions of the DGS&D contracts and fulfil all the contractual obligations on behalf of the units for which they quote.

3.9.1 These facilities will not apply to the procurement of the under mentioned items :-

- (i) Paint items for the Railways
- (ii) Drug
- (iii) Medical and Electro-medical equipment
- (iv) Requirements of Defence where inspection is to be carried out by the Defence Inspection Organisation.
- (v) Items for which QA Wing specifically ask for Capacity Report and indicate in the tender enquiry.

3.10 INDUSTRIAL CO-OPERATIVE APEX UNITS :

3.10.1 The Co-operative Societies and Industrial Cooperatives marking the products of cottage and small scale industrial units and the associations of such cooperatives at the District, Regional and State level as also the central Marketing Associations of Industrial Cooperatives i.e. Apex Units, if they satisfy the definition of small scale industrial units, will be considered as such for the purpose of registration. And will be entitled to price preference. Other things being equal, Co-operative Societies should be given preference over other small scale units.

3.10.2 In the case of industrial co-operatives, capital assets are fixed assets of the Apex unit (The Central Marketing Association of the Industrial Co-operative) and do not cover investment of its constituent units.

3.11 PURCHASES PREFERENCE FOR PUBLIC SECTOR UNDERTAKINGS:

3.11.1 As per the current policies of the Government DGS&D may grant purchase preference to Public Sector Undertakings when they compete with Private Large Scale Units.

3.11.2 In Ad-hoc purchases the purchase preference in favour of PSUs would be applicable as per following guidelines :

- a) Where the quoted prices of Public Sector Undertakings is not within the 10% of lowest acceptable price, such offers may be rejected without any further consideration.
- b) Where the quoted price is within 10% of the lowest acceptable price, other things being equal, purchase preference may be granted at the lowest acceptable price.

3.11.3 In cases of Rate Contract the above procedure will be followed except that the purchase preference would be applicable if a Public Sector quotes a price 10% higher than the top price at which rate contract is decided under the system of parallel rate contracts.

3.11.4 The above policy is applicable up to 31.3.2000. All the Central Government Public Sector Undertaking or joint ventures with Public Sector Units with a minimum value added content of over 20% by the latter are entitled for consideration of purchase preference, subject to purchase being in excess of Rs.5 Crore.

3.11.5 In case of R/Cs, the Scheme of Purchase Preference would not be applicable where the estimated drawals are less than Rs.5 crores. The R/Cs so concluded with the PSU should incorporate a suitable clause to the effect that since the R/C has been awarded in terms of the Purchases Preference scheme, the R/Cs with them would be valid only for individual supply order exceeding Rs.5 crores. Further the supply orders should have been placed prior to 31.3.2000.

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

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

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

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

3.11.10 Excepting for purchase preference to be considered as above, in all other matters such as capacity, specification, deliveries, payments etc. the Public Sector Undertakings would be treated at par with the Private Sector Undertakings and will be bound by all commercial obligations as per the standard terms and conditions of the DGS&D contracts.

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

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

CHAPTER – 4

SUPPLY OF SPECIFICATIONS AND DRAWINGS

4.1 SPECIFICATIONS

4.1.1 DGS&D adopt specifications for the stores purchased in line with the latest trends in technological development. This shall be achieved by reviewing and upgrading purchase specifications through constant interaction with the industry, Indentors and R & D Establishments, while ensuring that the upgraded specifications are environment friendly to the extent possible. Thus, the specifications to which procurement will be made by DGS&D could be as per,

- (a) IS specifications when the relevant product specifications are comprehensive and complete to enter into contracts.
- (b) IS specifications with improved parameters or additional parameters like performance criteria, alternatives of raw materials etc.
- (c) Indentor's specifications
- (d) DGS&D specifications/Drawings which are developed in line with requirements of the user departments.
- (e) Standard specifications formulated by major departments like Defence, Railways, P & T, DOE etc.

4.1.2 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 by giving preference to BIS marked goods. The requirement of BIS mark for the stores would be incorporated only when advance notification has been made to the trade about the intention and the prospective date from which it would be implemented. Such notification would be issued by the concerned purchase Directorate in consultation with the Quality Assurance Wing. Such Supplies would however be subject to pre-despatch inspection and acceptance to facilitate initial payment on proof of despatch.

4.2 UNITS IN SPECIFICATIONS AND DRAWINGS TO BE EXPRESSED IN METRIC SYSTEM :

4.2.1 Under the Standards of Weight and Measures Act, 1956, the metric system of weights and measures was introduced. Accordingly, no contract should be concluded in FPS system in respect of the description of stores, drawings, specifications, or rate per unit since such an action would contravene the provisions of law and the resultant contract would be liable to be held as void.

4.2.2 Where indents are received in double units, instead of summarily returning them, the concerned purchase Directorate would accept these indents, and issue enquiries indicating metric units only and send a copy of the tender enquiry to the indentor.

4.3 PREPARATION OF DGS&D SPECIFICATIONS AND DRAWINGS :

4.3.1 While DGS&D procures stores to specifications as indicated above where there is a need or requirement to bring out a DGS&D standard specification/Drawing for a product for common use of the indenting Departments, the Quality Assurance Wing at Headquarters is responsible for the preparation of the same. While doing so, reference to available national or international standards would be made on aspects like methods of testing, sampling plans, criteria of conformity etc or established industry standards to the extent feasible. The Scheduled of Requirements/Specifications/ Drawings will be prepared by the quality Assurance Wing in preference to calling for samples. Where reference to a sample is unavoidable clear details of type of sample required, the scope of the sample like feel, finish, shade, workmanship etc. which cannot be quantified shall be explicitly brought out in the specifications/drawings.

4.3.2 When a DGS&D specification is drafted for a particular type of stores, care shall be taken to ensure that it does not incorporate any clause which is in contravention of the General Conditions of Contract of DGS&D, save where specifically permitted by the Government. The variations ultimately decided upon will be specifically brought to the notice of Supply Sections and Regional, Offices by the Coordination Directorate for incorporation in the Conditions of Contract by a special note. All DGS&D specifications will be issued only after approval by Addl.DG(QA).

4.3.3 All Drawings prepared by the Quality Assurance Wing shall be numbered and approved by an officer not below the rank of Director(QA) before being issued/sent out.

4.3.4 The Quality Assurance Wing may arrange to print standard DGS&D specifications if the anticipated Demand for the same so warrant and economically viable.

4.4 PRICING OF DGS&D SPECIFICATIONS AND DRAWINGS : The pricing of DGS&D Specifications and Drawings shall be as under :

DGS&D Specifications :

Upto 5 Pages (A4 Size)	:	Rs.20/-
6 Pages to 10 Pages (A4 Size)	:	RS.30/-
More than 11 pages	:	Rs.30/- plus Rs.5/- for every 5 pages or part thereof beyond 10 pages.

DGS&D Drawings : Per Drawing

A4 Size (297 mm X 210 mm)	:	Rs.10/-
A2 Size (594 mm X 420 mm)	:	Rs.20/-
A1 Size (841 mm X 594 mm)	:	Rs.30/-

(**NOTE :** The above pricing is the minimum and subject to revision from time to time.)

4.5 SALE OF DGS&D SPECIFICATIONS AND DRAWINGS : All DGS&D specifications and Drawings issued from time to time shall be made available for sale at DGS&D Head Quarters at New Delhi, and all Regional Supply and Quality Assurance Directorate Head Quarters stations through the respective tender sale sections.

4.6 REGISTER OF DGS&D SPECIFICATIONS AND DRAWINGS : The Quality Assurance Wing will maintain a Register of Specifications and Drawings which have been prepared and issued as DGS&D Specifications/Drawings. The list such specifications and drawings shall be published and informed to the Trade and Purchase Directorates. Every endeavour should be made to induce indentors in general to accept these standards, where IS specifications are not available, with a view to securing uniformity and economy in the expenditure on stores.

4.7 DGS&D SPECIFICATIONS AND DRAWINGS REQUIRED FOR DEPARTMENTAL USE AND/ OR FREE DISTRIBUTION : All DGS&D specifications and Drawings required for Departmental use or for circulation to user departments may be supplied free of cost. Where the DGS&D specifications are got printed, such number of copies of each specification as may be required for departmental use and/or free distribution by the Headquarters office and the Regional offices will be supplied by the Manager of Publications in accordance with a standing free distribution list, to be issued by the DGS&D/Quality Assurance Wing. These copies will be distinguished by the mark 'Free Issue' on the outer cover page and will be stored and issued by the Quality Assurance Wing. Annual stock return in form No.C.P.B. 32 is not required to be submitted for this supply which will be charged to the monetary allotment of the Directorate General of Supplies and Disposals for free supply of publications of Central Departments.

4.8 FORM OF REQUISITION FOR SPECIFICATIONS OR DRAWING : When a Purchase Section on receipt of an indent finds it necessary to ask Quality Assurance Wing to prepare specifications, schedules, drawings etc. in consultation with the stores indented for a requisition should be sent to the latter in form DGS&D-89 which should be pinned on the file dealing with the indent. After removing the requisition and any other relevant papers, the Inspection Wing will return the file to the supplies section concerned.

4.9 FOCAL OFFICERS : The officers incharge of the Tender Sales of DGS&D New Delhi/Calcutta/Mumbai/Chennai and the field QA Directorate Head Quarter stations shall be responsible for:-

- (i) For Maintenance of an up-to-date list of DGS&D specifications and drawings for the stores which are purchased through the agency of DGS&D.
- (ii) To maintain and render account of specifications and drawings received, sold and returned.
- (iii) To remit the sale proceeds of specifications and drawings sold through the agency of DGS&D into the appropriate head.

CHAPTER-5

REGISTRATION OF FIRMS

5.1 PREAMBLE: With a view to establish reliable sources of supply for government purchases, firms are registered by DGS&D as approved contractors for supply of stores. This function is performed by the Registration Branch at New Delhi and the 20 Quality Assurance Wing offices identified as Registration Centres as given in the [Annexure- I](#) to Chapter 1.

5.1.2 Firms are registered for a fixed period as explained below, depending on the category of registration. At the end of this period, the firms should apply afresh for registration.

5.1.3 In addition, it is compulsory for the Indian agents who desire to quote directly on behalf of their foreign manufacturers/principals to get themselves enlisted with DGS&D under the Compulsory Enlistment Scheme of Department of Expenditure, Ministry of Finance, operated by DGS&D.

5.2 ELIGIBILITY FOR REGISTRATION:

5.2.1 Any firm, no matter where they are situated in India or abroad, who are in the business of manufacturing, stocking or marketing of stores shall be eligible for DGS&D registration.

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

5.3 CATEGORIES FOR REGISTRATION

5.3.1 REGISTRATION OF FIRMS WHO SUPPLY INDIGENOUS ITEMS:

Registration of firms for supply of indigenous items shall be made in following categories.

(a) MANUFACTURERS:

- (i) Indigenous firms having factory(s) of their own and being in the opinion of the DGS&D capable of producing material of the required standard.
- (ii) In case the firms do not own the factory but utilizes the factory of some other firms on lease or other arrangements for manufacture/fabrication of the stores for which registration is sought, it should have entered into a valid agreement to formalize such arrangement with the firm owning the factory. The agreement should be valid at least for three years at the time of application. While granting registration to such units the registration certificate should clearly indicate the name of the lessor, the type of arrangement the firm has with lessor and that in case lease or other arrangement in respect of factory/works is terminated, the firms registration shall stand terminated with effect from the date when the arrangement is terminated.
- (iii) The manufacturers shall be registered for a maximum period of five years.

(b) ASSEMBLERS:

This category is restricted to stores using major bought out items such as Generating sets, water treatment plants, Air Conditioning plants in addition to Community Health Workers Kits/DAI Kits required by Ministry of Health and Family Welfare. Registration in this category shall also be for maximum period of five years.

(c) CONVERTERS:

This category is restricted to firms who by their own technical facility make value addition to the products like Computer stationery, X-ray film, Teleprinter rolls, Cine raw film, Photocopier paper etc. Registration in this category shall be for a maximum period of five years.

(d) SOLE SELLING AGENTS/AUTHORISED AGENTS/DISTRIBUTORS OF INDIAN MANUFACTURERS:

The sole selling agents/authorized agents/distributors of Indian manufacturers themselves are registered with DGS&D. Such registration shall be granted for a maximum period of five years or until their manufacturer is registered with DGS&D, whichever is earlier.

(e) STOCKISTS FOR INDIGENOUS STORES:

The registration of stockists for indigenous stores is restricted to natural products like timber (provided the firms concerned furnish a certificate from the State Forest Department to the effect that they are forest lessee or that they purchase timber directly through Government auctions), the Babool bark, hides and skins. Such registration shall be granted for a maximum period of two years.

(Note:- Firms in categories (b) & (c) may also avail of the facilities provided under (a) (ii).)

5.3.2 REGISTRATION OF FIRMS WHO SUPPLY IMPORTED STORES:

Registration of firms who supply imported stores shall be made in following categories.

(a) FOREIGN MANUFACTURERS AND THEIR ACCREDITED AGENTS IN INDIA:

Foreign manufacturing firms and their accredited agents in India are registered for a maximum period of five years or for the period for which their Indian agent's agreement is valid. The foreign manufacturing firms can also be registered without Indian agents if they have necessary arrangements for after sales service where required in India.

(b) STOCKISTS OF IMPORTED STORES:

Stockists of imported stores are registered for such items for which there is need for imported capacity on regular basis. Firms in this category are required to be accredited by the foreign manufacturers and should be holding stocks of the items regularly. Such registration shall be granted for a maximum period of two years.

(c) SUPPLIERS OF IMPORTED STORES:

Firms having regular arrangement with a particular foreign manufacturer for supply equipment and who adapt/tropicalise the equipment to suit Indian conditions and can prove the performance of the same at their premises in India shall be registered as suppliers. They are required to produce documentary proof of import and certificate of origin at the time of supply. They are also required to have established facilities for after sales services for the equipment in India. The registration in this category shall be granted for a maximum period of two years.

(Note: Firms in categories (b) & (c) above are required to have valid agreements entered into between them and their foreign principals.)

5.3.3 COMPULSORY ENLISTMENT OF INDIAN AGENTS OF FOREIGN PRINCIPALS:

It is compulsory for all Indian agents of foreign principals desirous of directly taking part in government purchases to get themselves enlisted with DGS&D as per directive of Department of Expenditure, Ministry of Finance. The Enlistment will be granted on furnishing of details indicated in application for eg. details of agency commission, acceptance of payment of commission in rupees in India and availability of after-sales service & spares etc. in India duly certified by foreign principals. Such Enlistment shall be granted for a period of three years provided the agency agreement is valid during these period.

5.4 AUTHORITIES COMPETENT TO DEAL WITH THE APPLICATIONS FOR REGISTRATION AND GRANT REGISTRATION:

5.4.1 The authorities competent to deal with the applications and grant registration shall be as per the delegation of authority given in Chapter-19, "Delegation of Powers".

5.4.2 The Appellate Authority for any representation or grievance redressal would be the DDG(QA) concerned.

5.5 PROVISIONS RELATING TO APPLICATION FORMS:

5.5.1 The cost of application forms and processing fees payable for different categories of registration shall as prescribed from time to time by the competent authority.

5.5.2 The application for firms who supply indigenous stores can be obtained from any of the 20 designated Registration centres of QA Wing. For firms supplying stores of foreign origins, the application forms could be obtained from the Registration Branch at DGS&D, New Delhi. The firms located in the following countries can purchase the application forms direct from the Indian Embassy/High Commission/Missions located in their country against payment of an amount equivalent to the cost of the application form in local currency.

1. USA,
2. Sweden,
3. West Germany,
4. Switzerland,
5. Italy,
6. Austria,
7. France,
8. U.K.,
9. Australia,
10. Belgium,
11. Holland,
12. Denmark and
13. Japan.

5.5.3 The Indian manufacturers and their Authorised agents/Distributors can submit their applications of the appropriate category to any of the 20 Registration centres of QA Wing in whose jurisdiction the Registered Office of the Indian Manufacturer is located. In case of registration of all other categories the applications for registration shall be submitted to the Registration Branch at DGS&D, New Delhi. The applications shall be submitted along with the prescribed processing fee in the form of D.D drawn in favour of DGS&D., New Delhi or the DQA of the Registration Centre as the case may be. Alternatively the processing fee can be deposited in the Reserve Bank of India by Treasury Challan indicating the Revenue Head of Account "057 Supplies and Disposals". Accounting head "Other Receipts" sub detailed Head "Other Items" adjustable by the Chief Controller of Accounts, Department of Supply, New Delhi. The original treasury Challan/Bank Draft may be attached with the application for registration.

5.5.4 When an applicant is not granted registration for some deficiencies and they are made good within six months of the advice of the deficiencies, no further processing fee need be charged. However, this concession will be for first review only.

5.6 DOCUMENTS TO BE FURNISHED BY INDIAN FIRMS WITH APPLICATIONS FOR REGISTRATION:

- (i) Firm's current Income-tax Clearance Certificate in case of Partnership and limited concerns.
- (ii) Proprietor's current Income-tax Clearance Certificate in case of proprietorship concerns.

(NOTE: ITCC shall however not be required at the time of Registration in the category of Manufacturers as the same is required to be verified by the Purchase Officers before the award of contracts. A note to this effect should be given in the registration certificate.)

- (iii) Copies of the last three years' Annual Report indicating the profit and loss account and Balance sheet.
- (iv) A copy of the Partnership Deed and extracts from Registrar of firms in Form-A (Incase of partnership concern).
- (v) A copy of the certificate of incorporation along with articles of association and memorandum (in the case of a Limited Company).
- (vi) 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.
- (vii) A general power of attorney together with a copy of the Resolution of Board of Directors (in case of companies) when the application is signed by a person other than the Proprietor, Partners, Managing Director/Director as the case may be.

(NOTE: The general power of attorney should authorize the constituted attorney to sign for and on behalf of the firm concerned and bind the firm in all contractual obligations

with an authority to refer the disputes, arising out of contracts, if any, placed by DGS&D or its regional offices to arbitration under the provisions of Indian Arbitration Act 1996, copy of the Power of Attorney, duly attested by Notary Public/1st Class Magistrate should be furnished along with the applications.)

- (viii) Affidavit regarding banning in Form DGS&D 219A.
- (ix) Performance Statement in Form No. DGS&D-43.
- (x) Permanent Registration with Director of Industries of the State if the firm is an SSI unit or Acknowledgement of the Memorandum submitted to S.I.A of Ministry of Industry in case of Non-SSI Units.
- (xi) **Technical papers:** 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 and the standard specifications to which the registration sought, copies of licenses of statutory authorities and type test certificates as applicable for the items in the prescribed format.
- (xii) Agency agreement giving details of agency commission and confirmation of acceptance of payment in rupees (in respect of Indian Agents of foreign manufacturers).
- (xiii) For the registration of an Indian firm as authorised agent/distributor/sole selling agent, the firm shall furnish agency agreement and the undertaking from the manufacturers as well as from their own side as per the following details.

5.6.2 THE MANUFACTURERS:

- (a) that he does not have sufficient marketing arrangements in respect of the specified territory or set of items to participate in Central Government/DGS&D purchases.
- (b) that he will accept the responsibility for the satisfactory execution of orders placed on the authorized agents/distributors.
- (c) that he will provide requisite inspection and testing facilities at his works in respect of orders placed on authorized agents/distributors.
- (d) the authorized agents/distributors price will not exceed that which the manufacturer would have quoted.
- (e) the manufacturer will declare the quantum of commission or the margin of profit to which authorized agent/distributor is entitled.
- (f) 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 would bear the trade mark of manufacturer.

5.6.3 SOLE SELLING AGENT/AUTHORISED 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) he will indicate besides the quoted prices, the manufacturer's price to him.

(Note: Registering authorities will accept only notarized copies of the various agreements/undertakings to be furnished by the Manufacturers and authorized Agents/Distributors.)

5.7 DOCUMENTS TO BE FURNISHED BY FOREIGN FIRMS WITH APPLICATIONS FOR REGISTRATION:

- (i) One set of catalogue, price list etc. of the products manufactured.
- (ii) A capacity report from any of the inspection agencies recognized by the government of the country of the Manufacturer. In case of any doubt regarding the status of the inspection agency that has submitted the capacity report a reference will be made to the Embassy or the representative of the country concerned in India.

However, if the information about the firm is available from Dun-Bradstreet Reference Book or similar such Book, the same may be accepted in lieu of capacity report as above. Special reports may, however, be called from the Indian Missions in important cases.

- (iii) For registration of Indian agents of foreign manufacturers, the firm shall furnish agency agreement with the foreign manufacturer giving details of agency commission and confirmation of acceptance of payment in Indian Rupees. In such cases manufacturer shall also be required to furnish undertakings as specified in para 6(xiii) (a) and the agents as specified in para 6 (xiii)(b).

5.8 SIGNING OF APPLICATION FORMS

- (a) **PROPRIETORSHIP FIRMS:** The application should be signed by the proprietor.
- (b) **PARTNERSHIP FIRMS:** The application should be signed by all partners.
- (c) **LIMITED COMPANIES:** The application should be signed by the Managing Director or any of the Directors of the firm duly authorized.

In case the application has been signed by a person holding power of attorney on behalf of an authorized signatory (Proprietor/Partners/Directors), a copy of the power of attorney duly attested by the Notary Public/1st Class Magistrate should be furnished along with the application.

5.9 PROCESSING OF APPLICATIONS OF INDIAN FIRMS FOR REGISTRATION: The registration Branch of DGS&D or the Registration centre of QA Wing as the case may be would scrutinize the application received pertains to their jurisdiction and that is complete in all respects and is accompanied with the processing fee and the required documents. The answers and data given in the application are complete and not ambiguous or evasive. In case of any deficiencies observed, the application shall be returned to the applicant giving full reasons in one go.

5.10 DATA TO BE COLLECTED

5.10.1 In cases which survive preliminary scrutiny, arrangement will be made to obtain the following.

- (i) **Banker's Report:** A report will be obtained from the Bank concerned regarding financial standing of the firm. The Bank's Report could be dispensed in respect of firms, which are covered by statutory auditing process. In all other cases the report shall be called confidentially from the Bank on receipt of the application in respect of firms, which are not covered by statutory auditing requirements. However, if a report from the Bank does not come up to a period of 10 weeks after reference to the Bank the financial aspects on the basis of balance sheet shall be considered and decision taken.
- (ii) **Annual Turnover:** To give a better picture of performance capability of the firm it would be beneficial to show turnovers based on annual balance sheet showing profit and loss account of the firm during the proceeding three years of the registration. In those cases where auditing of the annual balance sheets is not compulsory according to Income-tax Rules, a certificate to this effect duly signed by the applicant shall be accepted along with the unaudited balance sheets. Where it is a new firm or started only one year or two years ago then it should be mentioned against the turnover column "Not available, since new firm". In such cases where no turnover can be indicated, then in the subsequent years it will be responsibility of the firm to come with the relevant details and have them incorporated in the certificate from time to time, failing which registration can be withdrawn by DGS&D. Turnovers shall be shown in the Registration certificate based on Annual balance sheet for the last three years instead of monetary limit.
- (iii) **Inspection:** An inspection report shall be called for from the concerned Q.A Wing field office on the manufacture's works on their capability and capacity as manufacturers and performance. Similar action shall be taken in respect of the Assemblers and converters for supply of indigenous items and in respect of suppliers of imported stores. Inspection reports shall also be obtained in respect of stockists of indigenous as well as imported stores.
- (iv) **Tests:** In the case of applications for registration for stores where test report from a laboratory is required (e.g.), oils, paints, varnishes, cement, fans etc), the applicant will be advised by the registering authority to have their product tested

at their own expense and a report furnished to them in original or complete copies thereof duly attested by the testing authorities.

5.10.2 On receipt of inspection reports recommending registration, such cases would be processed by the Registration Branch or the Registration centre as the case may be and issue Registration Certificate with the approval of the competent authority as per the Delegation of Authority.

5.11 PROCESSING OF APPLICATIONS OF FOREIGN FIRMS AND THEIR INDIAN AGENTS:

5.11.1 The registration of foreign firms and their Indian agents if any should be processed together. However, foreign manufacturers can be considered for registration without their Indian Agents in the case of such items where no after-sales service is required.

5.11.2 All foreign firms, applying for registration for the first time or for additional items of stores, which are not allied to items for which the applicant firms already stand registered, are required to submit with their application an inspection report from an inspection agency recognized by the government of the country or by the respective Merchant Chamber of Commerce and Industry. The report should provide for confirmatory details regarding workshops (total area of the shop and site, number of workers and staff employed. It should also deal with such questions as workmanship, plant & machinery available, the product range facilities for testing etc together with the inspection agencies/chambers recommendation on the items which the firms actually make or for which they wish to be registered. Where necessary, reports may be obtained from the Indian Missions concerned on the standing of the firms.

5.11.3 The availability or otherwise of after-sales service facilities in India and details thereof shall be incorporated in the Registration letters issued to the foreign manufacturers/their agents. All Registration letters shall be issued with the approval of competent authority as per delegation of powers.

5.11.4 The appellate authority in these cases shall be the DDG(QA) at HQ.

5.12 PROCESSING OF APPLICATIONS FOR COMPULSORY ENLISTMENT UNDER THE SCHEME OF MINISTRY OF FINANCE.

5.12.1 The compulsory enlistment of Indian Agents under the scheme of Ministry of Finance is simpler and differs from the registration of Indian Agents as DGS&D registered suppliers as under:-

- (a) The registration of the foreign manufacturers is not a must for enlisting the Indian Agent under this scheme.
- (b) No Inspection Report in respect of the foreign manufacturer/principals is necessary.

5.12.2 The enlistment under the scheme is not equivalent to the Registration with DGS&D. Such firms do not enjoy the same status as that of DGS&D Registered suppliers. A note to this effect is given in the Enlistment letter. Enlistment of Indian Agents shall be issued with the approval of Director(Regn.) at HQ. and the appellate authority shall be the DDG(QA) at HQ.

5.13 COMMUNICATION OF DEFICIENCIES TO FIRMS: In cases where the firm is not considered capable and registration cannot be granted, Director(QA) would communicate the deficiencies or shortcomings direct to the firms under intimation to the DDG(QA) of the concerned zone. This intimation would be dispatched by registered post to the applicant firm. In case such firms apply for re-verification of their capability within six months of the intimation, claiming to have made good the deficiencies pointed out to them , the request will be entertained without any processing fee by the registration office. Such requests shall be entertained only once. Requests for re-verification after expiry of the said six months period would be treated as fresh application and processing fee charged accordingly.

5.14 RENEWAL AND ADDITIONAL REGISTRATION APPLICATIONS: All applications for Renewal or Additional Registration as the case may be shall be dealt with as in the case of initial registration on receipt with the prescribed processing fee as given in Para 5. The procedures and level of authority shall be same as that of initial registration.

5.15 PROCEDURE FOR NOTING DOWN CHANGE IN NAME AND CONSTITUTION OF FIRMS: Requests for incorporating changes in name, address and constitution of firms in their registration with DGS&D shall be handled as Under:

- a) **CHANGE IN THE NAME OF A FIRM AND/OR THEIR OFFICE ADDRESS:** Requests for change in the name of a firm and/or their office address should be addressed to the Registration Office/Centre who granted the original registration enclosing the original registration certificate and duly supported by documentary evidence. In normal course such changes shall be allowed simply on verification of documentary evidence.
- (b) **CHANGE IN CONSTITUTION OR LOCATION OF THE FIRM'S MANUFACTURING WORKS:** In the event of any change in the constitution of the firm or in the location of their manufacturing works, the registration with DGS&D shall lapse. The firm should surrender the original registration certificate in such cases and apply for registration afresh.

5.16 INVITING THE CAPABLE UNREGISTEED FIRMS TO GET THEMSELVES REGISTERED: When on capacity verification of an unregistered manufacturer it was observed that the firm have necessary performance and are suitable for registration with DGS&D, they shall be invited to get themselves registered with DGS&D. Their application in the prescribed forms with necessary documentation and processing fee shall be processed and registration granted as in the case of initial Registration.

5.17 REMOVAL OF FIRMS FROM THE LIST OF APPROVED CONTRACTORS;

5.17.1 The registration granted for a term period may be cancelled, if necessary, with the approval of the Dy. Director General(QA) concerned.

5.17.2 The registered firms are liable to be removed from the list of approved contractors, when,

- (a) they fail to abide by the terms and conditions under which the registration has been given.
- (b) makes any false declaration to DGS&D or any other Government Department/agency
- (c) supplied stores of inferior quality or uninspected stores
- (d) Failed to execute a contract or failed to execute it satisfactorily.
- (e) When the required technical staff or equipment are no longer available or there is change in the production line.
- (f) Is declared bankrupt or insolvent?
- (g) failed to submit the required documents/information for review of registration where required,
- (h) or any ground which, in the opinion of DGS&D, the retention of the firm's name in the list of registered suppliers is not in Public Interest.

5.17.3 When any of such instances are brought to the notice of the Registering Authority a show cause notice will be issued to the firm, with the approval of the Dy. Director General(QA) concerned about the action proposed and the grounds therefore. On consideration of the reply thereto or after expiry of the notice period, the Dy. Director general (QA) will pass appropriate orders for deregistration or cancellation of the registration of the firm and removal from the list of approved contractors.

5.18 BANNING AND SUSPENSION OF BUSINESS DEALINGS WITH THE CONTRACTORS:

5.18.1 Business dealings with a firm, whether it is registered or not registered, may be ordered to be suspended or banned, in public interest by the competent authority. Presently, the authority in this regard is vested with the Chief Vigilance Officer of the Department of Supply.

5.18.2 GROUND FOR SUSPENSION OF BUSINESS DEALINGS WITH FIRMS: Suspension of business dealings may be ordered where pending full enquiry into the allegation, it is considered not desirable that business with the firm should continue. Such an order may be passed:-

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

5.18.3 GROUNDS FOR BANNING OF BUSINESS DEALINGS: The grounds on which banning may be ordered are:-

- (i) If security considerations including question of loyalty to the State so warrant.
- (ii) If the proprietor of the firm, is employee partner or representative is convicted by a court of law following prosecution for offences involving moral turpitude in relation to the business dealings.
- (iii) If there is strong justification for believing that the proprietor or employee or representative of the firm has been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolation, mis-representation, evasion or habitual default in payment of any tax levied by law; etc.
- (iv) If the firm continuously refuse to return government dues without showing adequate cause and government are satisfied that this is not due to reasonable dispute which would attract proceeding in arbitration or court of law, and
- (v) If the firm employs a government servant, dismissed, removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants.

5.18.4 PROCEDURE FOR SUSPENSION AND BANNING OF BUSINESS DEALINGS:

All cases in which suspension or banning is proposed will be referred to the Registration Branch DGS&D Hqrs. With full details together with connected papers. After due scrutiny and after obtaining such further information as may be necessary, the case will be put up before the Director General of Supplies and Disposals for orders, whether the recommendation may be made to the competent authority namely the Chief Vigilance Officer, Department of Supply for initiating the required proceedings for suspension/banning of business dealings with the firm. If the Director General approves, formal reference will be made to the Chief Vigilance Officer, Department of Supply, in a self-contained note along with relevant documents relied upon in support of the allegations.

Further action will be taken by the Chief Vigilance Office, Department of Supply. The Officers of the Registration branch, Purchase Directorates and Quality Assurance Directorates will provide all necessary assistance that may be required by the CVO in the conduct of the proceedings by him.

On receipt of the order of suspension of business/banning of business dealings with a firm passed by the CVO, the Registration Branch(Hqrs.), New Delhi will communicate the same to the Purchase Directorates and also the Quality Assurance Directorates. A list of all such firms and the period for which business dealings are banned will be updated and circulated periodically to the Purchase Directorates/Quality Assurance Directorates.

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

5.19 REGISTRATION OF SSI UNITS WITH NSIC: Under the Single Point Registration Scheme introduced with effect from 1.7.1976 the Small Scale Units can also apply for registration to the National Small Industries Corporation Limited, New Okhla Industrial Estate, New Delhi. Firms, who are registered under this Scheme will be entitled to all benefits of the DGS&D registration subject to following:

- (a) DGS&D reserves the right to call for capacity report on the advice of QA Wing.
- (b) NSIC will register Small Scale Units for stores which are required by Defence whether to IS specification or to Defence specification and where both Inspection Authority and the Inspector are belonging to Defence only on the basis of an Inspection Report from Defence Inspectorate. NSIC while intimating DGS&D about the registration in such cases would also specifically indicate that the firm has been registered on the basis of the Inspection Report from Defence Inspector and also forward a copy of the Inspection Report to DGS&D. The Defence Inspector will furnish the inspection report within eight weeks of the request from NSIC.
- (c) In case of pharmaceuticals, medical drugs, surgical instruments, tentage for Defence and items for the manufacture of which seasoned timber is required. Defence Inspectorate of concerned stores will be consulted by NSIC as being done by DGS&D.
- (d) In regard to the Paint items, NSIC would call for inspection report from RDSO also in addition to undertaking normal inspection of the firms. While communicating registration of firms to DGS&D in respect of Paint items, NSIC would clearly state whether the firm concerned has been approved by the RDSO. NSIC may register firms even if they are not approved by RDSO but in such case the firm concerned would be suitably advised by them that they would not be eligible for placement of order for supply to Railways.

CHAPTER – 6

EARNEST MONEY AND PERFORMANCE SECURITY

6.1 EARNEST MONEY DEPOSIT: As per the General Financial Rules (Note-2 below Rule 273), Earnest Money Deposit should be called for from the Tenderers, who are participating against DGS&D ad hoc/tender enquiry, if they are not registered with DGS&D/NSIC. The following guidelines may be observed while calling for EMD.

6.2 QUANTUM OF EMD:

6.2.1 The EMD is to be charged at the rate of 2% of the estimated value of the store subject to a ceiling of Rs.2 lakhs.

6.2.2 EMD should be calculated taking into account the value of all the components and the exact amount of EMD is to be indicated in the Invitation to the Tender Enquiry/Tender Notice.

6.2.3 For tenders of the value of rupees one lakh or less EMD need not be called for.

6.3 FIRMS WHO MAY BE EXEMPTED FURNISHING EMD: Firms who are registered with DGS&D/NSIC irrespective of the stores for which they are registered, may be exempted from payment of EMD. Organisations like KVIC/NSIC who are treated as registered suppliers against DGS&D contracts on the prescribed norms are also exempt from furnishing EMD.

6.4 FORMS OF EMD:

6.4.1 EMD may be accepted in the form of Demand Draft, fixed deposit receipts, banker's cheques, bank guarantee (BG) from any of the Scheduled Commercial Banks as per the format at [Annexure-6](#).

6.4.2 If EMD is furnished in the form of BG, then it should be kept valid for 45 days beyond the validity period of the offer.

6.5 IGNORING THE OFFER OF FIRMS NOT ACCOMPANIED WITH EMD:

6.5.1 Offers of the firms submitted without EMD as demanded are summarily to be ignored. Such a policy will be adopted even in respect of cases where offers received are to be referred to the indenting departments for their technical evaluation/acceptance of the offers.

6.5.2 The offers received without EMD will not be processed for referring the same to the indenting department.

6.6 ADJUSTMENT OF EMD TOWARDS PERFORMANCE SECURITY: The supplier may adjust EMD furnished towards the Performance Security wherever possible.

6.7 REFUND OF EMD:

6.7.1 The EMD of successful tenderers shall be refunded after the Performance Security as called for in the contract is furnished.

6.7.2 EMD furnished by all unsuccessful tenderers will be returned as early as possible after the expiration of the period of tender validity but not later than 30 days of the award of the contract.

6.8 FORFEITURE OF EMD:

6.8.1 EMD will be forfeited, if the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of his tender.

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

6.9 PERFORMANCE SECURITY:

6.9.1 In terms of Clause-7 of Conditions of Contract DGS&D-68(Revised) all the successful tenderers against DGS&D ad hoc tender enquiries, irrespective of their registration status with DGS&D/NSIC, have to furnish the Performance Security within 30 days of issue of contract for the due performance of the contract.

6.10 QUANTUM OF PERFORMANCE SECURITY: The performance security shall be for an amount of 10% of the contract value payable in Indian rupee or any other convertible currency acceptable to the purchaser in any one of the following forms.

6.11 FORMS OF PERFORMANCE SECURITY AND CONDITIONS FOR ITS ACCEPTANCE: Performance Security is acceptable in any one of the forms mentioned below on the conditions stipulated against each of them. No other form of Performance Security will be acceptable.

FORM	IN WHOSE NAME TO BE OBTAINED HQRS REGION	CONDITION OF ACCEPTANCE	CUSTODY
1 Demand Draft on Scheduled Commercial Banks	DG(S&D) HEAD OF OFFICE	Government will not pay interest on any deposit held in the form of cash	Demand Draft or receipts will be passed on to the Cash Section by the Purchase Section for depositing the amount into Government Treasury for

credit, in favour of the Controller of Accounts concerned and the treasury challan forwarded to him.

The Purchase Section, while forwarding documents like Demand Draft etc to Cash Section, should also furnish Treasury Challans in triplicate, so that there is no error/omission in the particulars furnished in the challan.

2 Bank Deposit Fixed Deposit Receipt on Scheduled Commercial Banks.	DG(S&D	HEAD OF OFFICE	The deposit receipt should be made out in the name of pledge. If it is made in the name of the pledger the bank should certify on it that the deposit can be withdrawn only on the demand or with the sanction of the pledge.	Should be kept in the safe custody of the departmental authority which takes the security deposit in accordance with the provisions of the Rule 277(1) of the General Financial Rules (Extracts given in Appendix IV). These should be kept in the Cash Section as valuable documents.
			The Depositor should agree in writing to undertake any risk involved in the investment.	
			The bank should agree that on receiving signed treasury challan and withdrawal order from the pledgee in respect of the deposit or any part thereof, it will at once remit the amount specified into the nearest treasury along with the challan and send the treasury receipt to the pledgee.	Deposits at Call Receipts should be encashed and deposited into Government Treasury for credit in favour of

The responsibility of the pledgee in connection with the deposit and interest on it will cease when issues a final withdrawal order to the Depositor and sends an intimation to the bank that he has done so.

the Controller of Accounts under the relevant Head of Account and the Treasury Challan forwarded to him.

Letters addressed to the RBI forwarding the securities to be kept in their custody and those calling them back should be signed by an officer whose signatures are available with RBI. Such letter should, therefore, be put up in fair to Dy. Director(CDN) and then the documents be forwarded to RBI.

3 Bank Guarantee In the name of the Purchaser name in the schedule to the contract.

Bank Guarantee will be accepted in the prescribed format as per [Annexure-7](#).

The Guarantee as well as revalidation letters if required should be accepted only on non-judicial stamp paper.

The Bank Guarantee should be valid up to 60 days after the date of completion of performance.

Acceptance of the Bank Guarantee shall be subject to verification as follows:-

The Bank Guarantee shall be subject to verification for its genuineness. For this purpose, the purchase

The Bank Guarantee should be passed on to the Cash Section for the safe custody after retaining a photocopy thereof for reference and any action which may arise thereon. While forwarding the securities , the procedure laid down in sub-para 101(b)(ii), 107(a) and para 108(a)and para 113 of Chapter-IX of Government Securities Manual should be followed.

officer shall address a registered A.D letter to the concerned Branch of the Bank with a copy to the Manager of the Head Office of the Bank, enclosing a photocopy of the Bank guarantee with each letter requesting them to confirm within 10 days that the Bank Guarantee has been issued by them. The letter may be addressed in the form given in [Annexure-8](#).

For the purpose of verification of the genuineness of the Bank Guarantee, the name, designation and code numbers of the officer/officers signing the Guarantee are incorporated under the signature(s) of officials signing the Bank Guarantee may be got verified by approaching the Regional Manager/Zonal Manager of the concerned Banks in Delhi/New Delhi/Chennai/Mumbai/Cuttack depending upon the office from which the contract has been placed who can furnish the necessary confirmation in writing.

6.12 ADJUSTMENT OF PERFORMANCE SECURITY:

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

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

6.12.2 The competent purchase officer may consider such requests wherever possible.

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

6.12.4 A register in the prescribed form should be maintained in respect of all securities lodged with the RBI for safe custody, or retained in the DGS&D.

6.13 INTIMATION REGARDING RECEIPT OF PERFORMANCE SECURITY TO THE CONTROLLER OF ACCOUNTS:

6.13.1 The concerned Controller of Accounts shall be informed immediately of the receipt of the Performance Security when it is furnished within the period stipulated in the contract.

6.13.2 In the case of Performance Security furnished in the form of Demand Draft, the Controller of Accounts, on receipt of intimation thereof, will go ahead with the payment of firms bill if otherwise in order without, awaiting the encashment of the Demand Draft.

6.13.3 The Cash Section to whom the Demand Draft will be passed on, shall take immediate steps for encashment of the Demand Draft and intimate to the Purchase Directorate about its encashment or if any difficulty is faced in its encashment at the earliest, so that the latter can take suitable action. Purchase Officers will be responsible for getting confirmation from the Cash Section about the encashment of the Demand Draft for which they should review the cases fortnightly.

6.13.4 In the case of Bank Guarantee obtained as Performance Security Deposit, the concerned Controller of Accounts will be informed of its receipt promptly indicating clearly the validity period of the Bank Guarantee and that the same has been examined and found acceptable.

6.14 INTIMATION TO QUALITY ASSURANCE OFFICERS:

6.14.1 Purchase Officers should ensure that the Quality Assurance Officer is informed promptly of the fact that the firm have deposited the Performance Security demanded in terms of the contract. Otherwise, the Quality Assurance Officer will start inspection of the stores one week after the expiry of the date stipulated in the contract for furnishing of the Performance Security.

6.14.2 The contractors are not expected to offer the stores prior to submission of the Performance Security within the stipulated time. If the stores are offered by the contractor prior to receipt of intimation from the Purchase Officer about furnishing of the Performance Security, the QA Officer may undertake the inspection after obtaining the undertaking from the contractor that the requisite Performance Security in the acceptable form has been submitted to the Purchase Officer within the stipulated time.

6.14.3 It shall be the responsibility of the QA Officer to check the veracity of the statement of the firm with the Purchase Officer before release of goods final instalment.

6.15 COURSE OF ACTION IN THE EVENT OF FAILURE ON THE PART OF THE CONTRACTOR TO FURNISH THE PERFORMANCE SECURITY: In case of failure on the part of the contractor to comply with the requirement of Performance Security, it shall be lawful for the Secretary to cancel the contract or any part thereof and to purchase or to authorise to purchase the stores invoking the provisions of clause-14 of General Conditions of Contract DGS&D-68 (Revised).

In respect of registered firms, they will be treated as unreliable suppliers and will not be considered for award of contract for a duration of one year from the due date for submission of performance security. In case of unregistered firms the EMD furnished by them may be forfeited.

- (a) If, however, a request is received from the contractor for extension of time for submission of Performance Security, the same may be considered on merits in exceptional cases and additional time allowed with the approval of DG and Finance.

6.16 RENEWAL OF SECURITIES: Where execution of the contract is going to be delayed beyond the period for which the Performance Security furnished is valid, the concerned Purchase Officer will take action well ahead of the date of expiry of the validity of the Performance Security for its renewal. This action will be taken for both the securities lodged with the Reserve Bank of India for safe custody and for those retained in the DGS&D. Following authorities will be responsible for taking action in this regard.

- | | | |
|---|----------------------------|--|
| 1 | HEADQUARTERS OFFICE | The concerned Purchase Officer as well as the Officer in-charge of the Cash Section (In respect of the securities in the custody of the Cash Section). |
| 2 | REGIONAL OFFICES | Heads of the Office |

6.17 DRILL FOR REVIEW OF DOCUMENTS: The following drill is laid down for the review of the documents pertaining to Performance Security Deposit.

- (a) The Section Officer in-charge of the Cash Section is required to review all the pending Security Documents and to circulate, through the Deputy Director(Admn) at the end of every month, a list of such security documents as may have become due for revalidation during the next month or so, to the Directors of Supplies concerned, by name.
- (b) In the Purchase Directorates, Deputy Director, will review every month the Performance Security Registers of the Purchase Sections in his charge and initial them in token thereof. The Director of Supplies will forward a quarterly certificate to C-ordination Directorate to the effect that there are

no documents where validity period has expired and not suitably revalidated against contracts in terms of which such documents are still required to be valid. If there are any documents where the validity has expired and are to be revalidated, the details along with the present position should be indicated. Co-ordination Directorate will compile the certificate/reports from the Directors and put up to Deputy Director General and Additional Director General/Director General for information.

- (c) The Cash Section will maintain properly its register which will be reviewed by the Deputy Director(Admn) concerned once every 3 months to ensure that the drill prescribed in (a) above is being followed and that no documents remained invalid.
- (d) The Deputy Director(Admn) concerned will carry out a physical check of all the security documents maintained by Cash Section, once in 6 months to ensure that no document is lost and misplaced and submit a report to Director General through Director(Admn.)

6.17.1 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.

6.17.2 Provision has been included in the Instructions to the Tenderers in the Booklet DGS&D-229 to the effect that whenever a firm fails to supply the stores within the delivery period of the contract, wherein Bank Guarantee has been furnished, then request for extension of delivery period will automatically be taken as an agreement for getting the Bank Guarantee extended. Banks have also been instructed to make similar provisions in the Bank Guarantee for automatic extension in the guarantee period.

6.17.3 If the supplies have been completed within the contracted delivery period and within the validity of the Bank Guarantee, balance final payment of 5% should not be withheld by the Controller of Accounts for want of the renewal of the Bank Guarantee irrespective of the date of submission of the bills provided the same are supported by the receipted copies No.2 and 5 of the Inspection Notes and where more than 60 days have passed after the dispatch of the stores.

6.18 REFUND OF PERFORMANCE SECURITY:

6.18.1 Performance Security is taken for the due performance of an individual contract and becomes liable to be refunded when the contractor duly performs and completes the contract in all respects and presents an absolute No-Demand Certificate in the prescribed form and returns in good condition the specifications, drawings, and samples or other property belonging to the purchaser.

6.18.2 The contractor is required to submit an application-cum cash bill for refund of the Performance Security as per [Annexure-9](#). As indicated therein, the contractor has to give certificate that he has not received any complaints from the consignee(s) regarding non-receipt, shortage or defects in the stores supplied under the contract. Where the Performance Security has been paid in cash or is encashed and lies with the Controller of Accounts, Part-C of the application will be filled in and signed by the Purchase Officer and passed on to the

Controller of Accounts for making payment of the amount of Performance Security to the Contractor. Where the Performance Security lies with the Purchase Directorate or assigned to the Reserve Bank of India, the same will be released by the Purchase officer.

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

6.18.4 In the case of contracts where the period of delivery and price are yet to be finalized this will be done separately without linking up with the refund of security which, as stated above becomes liable to be released on satisfactory execution of the contract.

6.19 FORFEITURE OF PERFORMANCE SECURITY: Performance security taken for the due performance of the contract can be forfeited and credited to the Government, in the event of a breach of contract.

6.19.1 Bank Guarantees 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. The decision to invoke the guarantee should be taken as far as possible by an officer higher in the rank than the one who accepted the guarantee.

6.19.2 If any Bank delays its action in releasing the guaranteed money thereby giving an opportunity to a firm to get a stay order or to take other legal measures preventing the encashment of the guarantee, the following course of action would be taken.

- (i) To report to the Central Office of the Bank clearly expressing that because of the Bank's failure to take timely action Government had to incur loss and also to request, where considered appropriate, to initiate proceedings to investigate the matter and to fix responsibility on the concerned Bank Officer.
- (ii) An administrative decision should be taken to debar acceptance of Bank Guarantee issued by such Branches and from such firms.

6.20 LAPSING OF PERFORMANCE SECURITY:

6.20.1 Performance Security Deposits which are not claimed within three complete account years are treated as '**LAPSED DEPOSITS**' and are credited to the Government under the Consolidated Fund in terms of Rule 189 of Central Government Account, Receipts and Payments Rules.

6.20.2 Refund of lapsed deposits can be arranged as per the procedure laid down in Rule 190 of Central Government Account, Receipts and Payment Rules.

6.20.3 Time bar will not operate in so far as refund or Performance Security Deposit is concerned.

6.20.4 Extracts of Rules 189 and 190 of Central Government Account, Receipts and Payment Rules are given in [Annexure-10](#).

6.21 ADJUSTMENT OF FORFEITED PERFORMANCE SECURITY: Performance Security obtained from the Contractors should, on breach of the contract be credited to the indenting department, provided the indent still exists. The head of account to which the amount forfeited should be credited will be the same as given in the indent or A/T. In the cases where the contract is cancelled or account of breach and the indenter also withdraws his demand from the DGS&D, the security forfeited from the contractor should be credited to the account of DGS&D under the **Head “057 Supplies and Disposals –other Receipts.”**

CHAPTER - 7

INDENTS RECEIPT, REGISTRATION, ALLOCATION, PLANNING & MONITORING

7.1 PURCHASE POWERS

7.1.1 The Central Government Departments/Ministries have been delegated full powers to meet their adhoc requirements and in case of urgent requirements the items on rate contract could be purchased by the departments from the open market as long as the price to be paid for such items does not exceed those stipulated in the rate contracts. Such purchases should not exceed Rs.20,000 at a time and Rs.1 lakh in aggregate in a year.

EXPLANATIONS :

- (a) The monetary limit of direct purchase powers is inclusive of the cost of stores, sales tax etc. In the case of imported stores, the monetary limit for the purpose of direct purchase is to be inclusive of freight, customs duty etc.
- (b) The limit of Rs. 1 lakh is applicable to the value of each article or class of similar articles or inter-connected nature of articles, the following two conditions should be satisfied :
 - i) The item of stores should belong to the same Trade group, and
 - ii) The item should be obtainable from the same source of supply.

7.2 CRITERIA FOR PLACING ADHOC INDENTS

7.2.1 notwithstanding the powers delegated to the Central Government Departments/Ministries they may indent on the Central Purchase Organisation for stores covered under rate contract and for other class of stores where the indenting officers are unable to make suitable arrangements for supply, such adhoc indents will be entertained by DGS&D as exceptions as per the following guidelines :

- (I) Items indented should normally come under the following one or more characteristics.
 - (a) Items indented should be of sophisticated and not of a routine nature.
 - (b) Items should be such where the purchasing Department/Organisation is not having expertise or adequate man-power, and cannot create additional man-power only for the sake of a particular store required for purchase.
 - (c) The store should be such where even though the purchasing Department/Organisation has a purchase unit but the item does not have standard specification, and/or the existing broad specification

needs to be defined/redefined by the Quality Assurance Wing of DGS&D. Further, it should be ensured that the cases require in process quality control or multi-stage inspection.

- (II) Indents should come from the Ministry/Department/Organisation only with the approval of Secretary/Head of that Ministry/Department/Organisation and should spell out the justification and give reasons as to why the stores should be purchased by DGS&D. Such indents with due prior approval of the Secretary/Head of the concerned Ministry/Department/Organisation will normally be entertained by DGS&D.
- (III) Where an indent duly received as (II) above is proposed to be returned, the case will be shown to DG(S&D) for approval. In the absence of DG the case would be decided by the concerned ADG. Such cases need not be referred to the Department of Supply for prior approval.
- (IV) Indents of proprietary nature are not to be entertained by DGS&D.
- (V) The value of indents raised on DGS&D should exceed Rs.10 lakhs. However, in the case of indents from North-eastern States, Sikkim, Union Territories and externally aided projects, indents above Rs.1 lakh can be entertained. In exceptional cases, DGS&D may also consider accepting the indents below the above values on merits.

7.3 INDENTS : For definition of an indent reference may be made to “Definition”.

7.4 CATEGORISATION OF INDENTS

7.4.1 Indents projected on DGS&D will be categorised as :

- (a) Urgent Indents
- (b) Ordinary Indents

7.4.2 Urgent Indents : This classification is given to the indents when the stores are required to be supplied immediately within the stipulated date and non supply will result in a break down of essential services or will cause great inconvenience or loss to the State. This classification will be used where it is essential that the supply of stores should materialised by a specified date not exceeding four months from the date of receipt of indents.

The “**Urgent indents**” are to be counter signed either by the Secretary or Joint Secretary of the Ministry/Department. Head of the Department or a duly authorised officer whose name has been notified by the indenting Ministries/Departments to the Department of Supply. Such indents are to be accompanied by a Certificate prescribed below :

CERTIFICATE FOR AN URGENT DEMAND :-

- (1) Description of item
- (2) Delivery date

Name, address and telephone number of Officers, detailed to progress the stores with Department of Supply/DGS&D.

(4) I certify that provisions of Rule 102(1) of GFR as amended by OM No.5(2)/E.II(A)/98 dated 28.5.99 has been complied with.

- (a) (i) The concurrence of Associated/Integrated Finance for the above classification has been obtained.
- (ii) The undersigned has been authorised by the administrative Ministry/Department to give this certificate without consultation with the Associated/Integrated Finance.
- (b) I am duly authorised by the Competent Authority to sign this certificate.

**Name and Designation
Of Certifying Officer**

7.5 CLASSIFICATION OF INDENTORS : The indentors are divided into following categories depending upon the provision of funds and the manner of adjustment thereof.

a Central Government Departments/ Union Territories, Constitutional Bodies like UPSC, Election Commission, Supreme Court, C&AG, etc. These are the indentors on whose behalf the payment is initially made to the contractors by the Chief Controller of Accounts, Department of Supply, New Delhi or its Regional Offices at Calcutta, Chennai and Mumbai and payment made for the cost of stores along with the departmental charges levied thereon are adjusted by the Chief Controller of Accounts, Department of Supply against the Accounts Officer of the consignee by obtaining the reimbursement.

B) Others These parties will have to deposit the cost of stores including the necessary departmental charges along with their indents.
These include State Governments, Public Sector Undertakings, Autonomous Bodies, Local Bodies etc.

7.6 PROVISION OF FUNDS :

7.6.1 It will be the responsibility of the indentor to obtain the necessary financial sanction of the competent authority to incur the expenditure involved in the purchase of stores for which an indent is placed on the DGS&D. The indent will be accompanied by a certificate over the signature of the indentor to the effect :-

- (a) that the expenditure involved in the indent including the estimated cost of freight and the departmental charges where leviable, has received the sanction of the competent authority, and

(b) that the funds are available to meet the expenditure under the proper head in the sanctioned budget allotment of the indenting department or office.

7.6.2 Indents not accompanied by the above certificate shall be returned straightaway to the indenter for re-submission after completion of the certificate of funds. Indents lacking particulars of head of account and the name of the Accounts Officer will not, however, be returned but the necessary particulars would be called for from the indenting department.

7.6.3 Funds will not lapse once an indent is placed on the DGS&D within one year of the date of issue of the sanction even if the actual payment in whole or in part is not made during the delivery period.

7.6.4 It is not necessary to obtain fresh certificate of availability of funds from the indenting department where supply of stores is delayed beyond the stipulated delivery period in which funds have been arranged. Nevertheless, the indenting department should be kept informed of the prospects of supply within the delivery period or otherwise so that funds are carried forward where necessary.

7.7 PROVISION OF FUNDS IN RESPECT OF INDENTS PROJECTED BY STATE GOVERNMENT DEPARTMENT/PSUs/AUTONOMOUS/LOCAL BODIES AUTHORISING CCA NEW DELHI OR HIS REGIONAL OFFICE TO MAKE PAYMENT :

7.7.1 The indent will be accompanied by a pre-deposit of funds according to the criteria mentioned below :-

- (i) In the case of ad-hoc indents the indenter should provide along with the indents funds equal to the cost of stores (based on indentors' estimates) plus sales tax plus excise duty and additional excise duty plus 1% departmental charges plus 5% of the basic estimated price to cover freight and other incidentals,
- (ii) In case of rate contract on FOR destination basis where the prices are fixed (without any price variation) the indenter should provide along with the indents, funds equal to basic price indicated in the RC plus sales tax, excise duty, additional excise duty, plus 1% departmental charges. However, where prices are FOR Station of Despatch, besides the aforesaid funds, additional funds to the extent of 5% of basic price would also be provided.
- (iii) In case the indents' estimate is based on the rate contract with provision for price variation, the indenter should provide along with the indents, funds as per (ii) above plus 10% of the basic price.

7.7.2 During the process of indents for coverage if it is found that funds already provided as per (i) to (iii) above are inadequate for any reason, additional funds would be called before actual coverage.

7.7.3 The pre-deposit of funds may be made by any of the following forms :

A demand draft or crossed cheque drawn on the Reserve Bank of India/State Bank of India duly marked "On Government Account Only" and in favour of the Chief Controller of Accounts, Department of Supply, New Delhi.

Note :- Unutilised balance of deposits made by non-government indentors must be claimed by parties by an application direct to the Chief Controller of Accounts in the form at [Annexure-11](#). Separate application should be submitted for each case. Unclaimed deposits will lapse to Government, refund of which will be possible only under Rules governing refund of such lapsed deposits.

7.8 RECEIPTS AND REGISTRATION OF INDENTS : Indents projected on DGS&D Headquarters, New Delhi will be received by the Management Information Services Directorate (MIS Directorate) and in the Regional Offices by the designated section. They will take following actions before allocating the indent to the concerned Purchase Directorate/Section.

- (i) Check whether the indent has been sent to the correct office. If not, transfer the same to the concerned office.
- (ii) Intimate such transfer of indent to the Indentor and the consignee.
- (iii) Acknowledge the receipt of the transferred indent to the office by whom the indent has been transferred.
- (iv) Register the indent by establishing a reference No. as per code numbers allotted to various indenting departments and to different purchase directorates/sections working under them. The code numbers are given in [Annexure-12](#).
- (v) Acknowledge receipt of the indent to the indenting department by giving reference No. so established and advise them to give this reference number for future correspondence relating to the concerned indent.

7.9 ALLOCATION OF INDENTS :

7.9.1 MIS Directorate of the designated section of the Regional Office(s) of DGS&D will allocate the indent to the concerned purchase section along with the case sheet after filling the portion concerning MIS Directorate. They would ;

- (i) ensure that indents are sent to the purchase sections within 48 hours of their receipt in DGS&D.
- (ii) ensure that the indentor's forwarding letter, if any, drawings, specifications (number of copies to be mentioned) and also any other documents such as Demand Draft, cheque etc. enclosed with the indent are sent to the purchase section along with the indent.
- (iii) obtain receipt of the indent allocated from the purchase section and shall keep the record of the receipt.
- (iv) keep the copy of the indent allocated to the purchase section/cancelled one.

7.9.2 In case of any indent being treated as cancelled and withdrawn, the date thereof will be written boldly on the right hand corner of the indent.

7.10 SCRUTINY OF INDENTS :

- (i) All indents received in the purchase section will be entered in the prescribed register.
- (ii) The base officer would scrutinise the indents with regard to the particulars given therein and the documents attached thereto. If the indent is found deficient or does not concern his Directorate, it would be returned to MIS Directorate without any loss of time for re-allocation.
- (iii) The base officer would also check in case of urgent indent, the availability of required certificate duly signed by the competent authority.
- (iv) In respect of indents for computers, including Personal Computer, the competent authority for the purchase of Computer shall ensure that the system to be purchased is compatible with the system of National Informatic Centre (NIC) so as to facilitate transfer, storage and processing of the information between their system and the NIC system including NICNET, the Computer Communication network of the Government.
- (v) The purchase referred to above shall be restricted to indigenous computers and shall be subject to the instructions, if any, issued by the Department of Electronics from time to time in this regard.
- (vi) The purchase of Electronic equipments viz. Typewriter, Electronic Typewriter, Computer, Personal Computer and any other such office equipment will be in accordance with the provisions contained in Official Languages Act, 1963 and Office Language Rules, 1976 and orders issued from time to time by the Department of Official Language.
- (vii) For imported stores, it would be checked that the indent is accompanied by the certificate confirming that indented store does not fall under the "Negative List".

7.11 CHECKING OF TECHNICAL PARTICULARS :

7.11.1 It is essential for procurement of an item that the indent contains correct and detailed technical particulars as per which stores are required.

7.11.2 For Indents raised on DGS&D, responsibility of checking and vetting of Technical Particulars normally rests with the QA Wing of DGS&D. Where, however, the Indenting Departments decide to have their own inspection agency/technical authority such indents should be accompanied by a certificate reading as under :-

"It is certified that the technical particulars/specifications of the indent have been checked by our technical authority/officer and that all dimensions/drawings are expressed in MKS units."

7.11.3 In the case of Defence indents for stores conforming to Defence Specifications and drawings it is to be submitted with 10 copies/5 copies each of specifications and drawings indicating also the price per copy; if not, the indent should be returned for resubmission duly completed.

(10 copies – for common user items; 5 copies for items like vehicles, electric, electronic, engineering stores etc. or where the drawings and specifications are bulky and costly.)

7.11.4 The Quality Assurance Wing of the DGS&D, New Delhi or the Regional Quality Assurance Offices on receipt of the indents from the Purchase Directorate/Section would :-

- Check whether the technical particulars are detailed, correct and complete in all respects.
- Avoid procurement of stores conforming to stock samples or trade pattern and effort should be made to standardise the specifications, to Indian Standards, British Standards, Railway Standards, Defence Standards etc.
- Vet the technical particulars to make them broad based.
- Return such indents having incomplete technical particulars or unclear specifications and drawings to the indenting department through the Purchase Directorate.
- Obtain directly from the indenting department, essential data, if lacking or seek clarifications on technical aspects with a view to finalise the technical particulars.
- Advise the indenter of the Standard stores and the latest modifications or improvement in the stores if the indenter has indented either non-standard or obsolete stores or desires to purchase goods conforming to stock sample or to specifications different from IS specifications.
- Advise the indenter to get the concurrence of the Finance, if he insists on procurement of items as indented not conforming to established standards.
- Return the indent to the Purchase Section as the case may be after settling and vetting the technical particulars.
- Advise the indenter to withdraw the condition regarding requirement of tender samples if the same is not necessary. The tender sample stipulation should be made with great care and caution.

7.11.5 In case where the Indenter wants DGS&D to purchase goods to the specifications which are different from IS specifications or additional to them the DGS&D will ask the indenter to give reasons. If the reasons are found satisfactory, DGS&D may proceed to procure the stores accordingly and kept the Bureau of Indian Standards informed for taking action to modify the existing specifications or to evolve new specifications if need be.

7.11.6 In cases where the Indenter wants to purchase stores with specifications which are clearly superior to IS specifications, the DGS&D may proceed with procurement but inform the BIS so that the latter may consider updating the IS specifications, if necessary.

7.12 SCRUTINY OF INDENTS AS TO AVAILABILITY OF FUNDS : The indent will be scrutinised :

- to check that the availability of funds has been certified commensurate with the delivery period.
- To check that the head of account and name and address of the Accounts Officer on whom debit is to be raised has been clearly given.
- To check the adequacy of funds provided by taking into account the Last Purchase Price (LPP) of the item.
- Ensure that the funds provided are adequate keeping in view the guidelines given in para-7.7 if the indent is received with pre-deposit of funds.

7.13 PLANNING OF INDENTS IN THE PURCHASE DIRECTORATE :

7.13.1 Planning of indent means determination of the method of purchase and also drawing up stage-wise programme of coverage. Programme so laid down is to be strictly adhered to.

7.13.2 A planning meeting will be held in respect of indents, received, everyday at a fixed time in the room of Director of Supplies, in which the concerned Dy. Director(s) and Assistant Director(s) would be associated. Planning of indents would be the direct responsibility of the Director of Supplies.

7.13.3 Planning of indents will be done in all cases within one working day from the date of receipt of indents and in no case shall be delayed beyond two working days.

7.13.4 The Director of Supplies would determine the method of purchase after taking into account following factors :-

- (a) Nature of the demand
- (b) Likely sources of supply
- (c) Delivery schedule given by the indentor
- (d) Tolerance available against existing orders for the stores.
- (e) Existing or proposed R/C for stores
- (f) Any other relevant factor.

7.13.5 Where approval of higher authorities is required such indents with planning notes, will be put up to higher authorities within two working days from the date of receipt of indents in Purchase Section.

7.13.6 Check points for planning of an indent are given in [Annexure-13](#) for the guidance of the purchase officer.

7.14 COVERAGE UNDER RATE CONTRACT :

7.14.1 DDOs, as notified in the R/Cs concluded by DGS&D are expected to draw the supplies against the R/C by placing direct orders on the R/C holders of their choice in the prescribed form. The indents received in the DGS&D at Headquarters or in Regional Offices for placement of order for rate contract items should not be returned but instead it should be covered by placement of supply orders against the rate contract.

7.14.2 In case of items which are on Rate Contract, the Competent Authority would decide the Rate contract holding firms on whom supply orders are to be placed. For coverage of such indents against rate contract DGS&D would be free to decide the coverage keeping in view the most beneficial cost to the consignee.

7.14.3 The competent purchase officer in the DGS&D can combine the demand of several DDOs of the Central Government Departments and place consolidated supply order with the firms provided there is nothing contrary in the rate contract.

7.14.4 In the case of other purchasers named in the schedule of purchasers attached to the rate contract; e.g. Governors of States, Chairman of Municipal Corporations etc., the

competent purchase officer has to place separate supply orders on behalf of each of the different purchasers.

7.14.5 DG/ADG in the DGS&D have full powers to approve placement of supply orders of value exceeding their purchase powers.

7.14.6 Action regarding the coverage of the indents by placement of supply orders against rate contracts should be taken immediately after receipt of indents and within the framework of the existing instructions. References to firms, asking for guaranteed delivery, before placement of orders, at the fag end of rate contract should be avoided.

7.15 COVERAGE UNDER TOLERANCE CLAUSE :

7.15.1 As per the provision made in the DGS&D Enquiry (Clause No.31 Option Clause in Form DGS&D-230), the purchaser reserves the right to place orders on successful tenderer(s) for additional quantity upto 25% of the quantity offered by them at the rates quoted.

7.15.2 If different rates for specific items of stores or slab rates are quoted, the tenderer shall supply the additional quantity in respect of each specific item and each slab at the respective rates quoted by them for these items at these slabs.

7.15.3 With the above provision of the Option Clause in the enquiry coverage can be made either :

- (a) by availing full tolerance quantity at the time of placement of contract;
- (b) availing part tolerance quantity at the time of placing the contract and the remaining tolerance is to be availed during the currency of the contract;
- (c) utilising tolerance subsequent to placement of contract but during the currency of contract.

7.15.4 Depending upon the decision to avail the Option Clause, appropriate provisions as given in the chapter, "Drafting of Contract" are to be incorporated in the contract.

7.15.5 A register in the prescribed proforma should be maintained by the purchase section giving details of the contract, quantity available for coverage under tolerance, delivery period etc.

7.15.6 As per the legal opinion the right to order additional quantity under the option clause will subsist only till the original delivery period as fixed in the contract. If the contract delivery period is extended the tolerance availability is limited to quantity outstanding for supply for which extension has been granted. Keeping this legal opinion in view the Register for Utilisation of Tolerance Clause should be updated and maintained giving the correct position.

7.15.7 Coverage under tolerance can be made with the approval of the officer within whose powers the value of the fresh indent falls i.e. the powers will be decided with reference to the value of the indent under planning and not with reference to the contract value.

7.15.8 Performance of the firm and the trend in price may be kept in view while deciding this coverage. Non-utilisation of tolerance quantity available in a contract on account of poor performance would require approval of Finance.

7.16 COVERAGE BY INVITING TENDERS : If it is planned to cover the demand by inviting tenders following factors will also be considered at the planning stage :

7.17 SINGLE BID/TWO BID SYSTEM :

7.17.1 Single Bid System – Single Bid System may be followed for items governed by National Standard Specifications i.e. for items like Blue Air Mail Bags, Leather Cash Bags, Tents of various types etc.

7.17.2 Two Bid System – Two Bid System may be followed for items of sophisticated nature like Automatic Message Switching System, Super Computer System etc., Capital Equipments and Plant & Machinery items requiring erection and commissioning. ADG will be the minimum competent level for deciding the procurement through Two Bid System.

7.18 SPECIFICATION

7.18.1 Details as vetted by the Inspection Authority should be discussed on the planning note. It should also bring out the requirement of Tender Sample/Advance Sample/Special Capacity Reports on DGS&D/NSIC registered firms in respect of certain category of items as suggested by the Inspection Authority.

7.18.2 By an administrative direction it is enjoined upon the DGS&D to buy only ISI marked goods; and in the alternative, to buy goods conforming to IS specifications where (i) either ISI marked goods are not available or (ii) the prices of ISI marked goods are not competitive. In other words, while no price preference will be available for ISI marked goods, these will enjoy purchase preference, other things being equal.

7.18.3 If the stores are to be procured as per BIS specification it may also be decided at the planning stage whether stores with ISI mark only are to be procured. Depending upon the planning decision suitable clause should be incorporated in the tender enquiry/and resultant contracts.

7.19 PRICE : At the planning stage it should also be decided whether any variation in price will be allowed on account of variation in raw-material prices. It is required of the purchase officer to indicate in the tender enquiry the base price on which the firms should offer the prices in case of variable offers. Otherwise there will be difficulty in comparison of the offers on equitable basis if the tenderers base their prices differently. It will, therefore, be ensured to decide the base price to be indicated in the tender enquiry on which the firms should offer the prices. The planning note should discuss the base price and the variation clause on which the tenders will be invited for consideration and approval of the competent authority.

7.20 DELIVERY REQUIREMENT - CONSIDERATION OF INDENT DELIVERY:

7.20.1 It should be seen at the planning stage whether the delivery period given by the Indentor is realistic; if not, the Indentor should be informed immediately giving the likely period by which deliveries can be expected. Tender action need not await confirmation from the Indentor.

7.20.2 However, in case of Urgent Indents such intimation will be sent by FAX/Speed Post/with a target date for reply by Telegram/FAX whether the Indentor is agreeable to the suggested delivery period or the indent be returned to him. Tender Enquiry will be issued only after receipt of confirmation from the Indentor.

7.20.3 Where purchase of large quantities of stores are involved it has to be decided at the planning stage whether the delivery required is to be stipulated on specific instalment delivery either per month or per quarter basis. Such a decision is all the more necessary where contracts are likely to be concluded with the price variation clause which would effect the price to be paid in respect of stores delivered against each instalment.

7.21 GRACE PERIOD APPLICABILITY : Clause 14(8) of the General Conditions of contract Form No. DGS&D 68(Revised) provides that a grace period of 21 days may be allowed to the contractor from the date of expiry of the originally stipulated delivery period unless the provision has been specifically deleted. If it is intended not to allow the grace period in any particular case, the fact should be clearly stated in the Invitation to Tender that clause 14(8) of the General Conditions of Contract DGS&D 68 (Revised) will not apply in respect of this Invitation to Tender, and a similar provision made in the contract. The grace period is not to be allowed in respect of the following categories of contracts :-

- (i) Contracts to be placed against Urgent Indents.
- (ii) Jute purchases particularly where stores are delivered according to the established practice in Jute trade viz. tendering of stores for inspection in the last working day of the month of delivery of 2/3 days earlier.

For excluding operation of the grace period in any type of contracts other than those mentioned above, specific orders of an Officer not below the rank of a Director of Purchase should be obtained. The major consideration which should weigh at the time of deciding whether grace period should be denied in particular contract should be whether the delay of 21 days would have a perilous effect on the contract itself.

7.22 SPECIFIC REQUIREMENTS OF INDENTOR : Any commercial terms specifically indicated in the indent like special packing conditions, warranty obligations, training of personnel etc. should also be considered.

7.23 BULKING OF DEMANDS : Demand for stores received simultaneously from different Indentors will be combined and bulked as far as possible for the purpose of inviting tenders. However, Urgent Indents should not be bulked with ordinary indents. Where quantities in an indent are amended and intimation is received after planning, each case will be decided on its own merits taking into account on the quantum of the amendment. Where

the quantities are increased, every endeavour should be made to cover at least the initial quantity straightaway so as to ensure delivery within the time required.

7.24 VALIDITY PERIOD : At the time of planning an indent, in each case, a conscious decision will be taken regarding the validity period of the tenders to be received. This will be recorded in each file as a part of the planning proposal and got approved by the authority competent to approve the planning proposal.

As a general rule, the tendering firms should be asked in the tender enquiries to keep their offers open for acceptance for not more than two months from the date of opening of tenders. In the case of specific items, however, depending on the market conditions as also other factors like time required for consultation with the indenter, time for tender sample approval etc. the validity period as required should be specifically stated and got approved.

7.25 TIME NORMS LAID DOWN FOR THE ACTIVITIES EMPLOYED IN THE COVERAGE OF INDENTS :

Time interval between	Ordinary	Urgent
i) Date of approval of planning note and issue of tender enquiry	10 WD	5 WD
ii) Date of opening tenders and preparation and submission of comparative statement to the base officer	5 WD	2 WD
iii) Date of submission of comparative statement and date of initial scrutiny by base officer	15 WD	5 WD
iv) Date of approval of purchase proposal and placement of formal contract	10 WD	10 WD

(WD means Working Days)

7.26 REVIEW OF INDENTS : It would be the responsibility of each Purchase Officer to ensure timely action on each indent falling within his purchase powers. It would be his responsibility to review the progress of the case from time to time so as to ensure that action is taken at various stages, on date and no item is lost sight of.

- A Monthly Review will be conducted of all indents received in DGS&D.
- The Review will be conducted at various levels within whose powers the indent value falls.
- Review of Indents exceeding the value of Rs.5 crores will be done by DG(S&D).
- The Review will be made with reference to time limits prescribed for principal stages of purchase action, as given in para-7.25.
- Review will be made on the basis of Computer Print Outs/and with the help of case-sheets.
- Computer Print Out of a particular month will be furnished by MIS Directorate to all Reviewing Officers in the 4th week of the following month.

7.27 PREPARATION OF CASE-SHEETS :

7.27.1 For each indent allocated to a purchase section, a Case-sheet in triplicate will be prepared in the proforma in form DGS&D-228.

7.27.2 Two copies of the case-sheet will be sent to the Purchase Section alongwith the Indent. The 3rd copy of the Case-sheet will be forwarded separately to the officer within whose purchase power the case falls to enable him to exercise supervision over the indent. Where the value of the indent is not known or cannot be reasonably estimated, the third copy of the case-sheet will be sent to the concerned Director of Supplies whose duty it would be to send it to the competent Purchase Officer.

7.27.3 In respect of indents of value more than Rs.5 crore (case falling within the purchase powers of the Department of Supply) the third copy of the case-sheet will be sent to and maintained by the respective Under Secretary/Deputy Secretary dealing with the purchase cases in the Department of Supply. The case sheets will be sent from the Department of Supply, in the beginning of every month, to the Director (MIS) who will get the details updated and return the case-sheets to the Department of Supply. The Director (MIS) will be the focal officer for receiving, updating and sending the case-sheets to the Department of Supply in respect of indents over Rs.5 crore in value.

7.27.4 Of the two case-sheets received in the Purchase Section alongwith the indent, one copy will be kept in the relevant purchase file and the other copy will be kept with the Base Officer (AD/SO).

7.27.5 It will be the duty of the Base Officer to ensure that the copy of the case-sheet kept on the file is maintained up-to-date.

7.27.6 The case sheet copies retained with the Base Officer will be kept in a folder and will be used for furnishing information about the progress of action on the indents to MIS Directorate.

7.27.7 All Base Officers will review the case sheets on the 2nd of every month and after updating the position forward the sheets to MIS Directorate by 4th of every month. The case sheets of the indents which have been completed/covered during the previous month may be removed from the folder before sending to MIS Directorate. The removed case sheets should be kept in separate folder marked 'Case-sheet for post, A/T progressing'. The case sheets of the indents which have been partially covered are to be retained in the folder sent to MIS Directorate till the indent gets completely covered. However, if 80% of the quantities of an indent has been covered, and the balance 20% remaining outstanding can be covered later under the tolerance clause (s) of existing contracts then such indents may be treated as covered indents and need not be retained in the folder of case sheets of pending indents sent to MIS Directorate.

7.27.8 The competent purchase officer to whom the 3rd copy of the case sheet is sent will devise his own system for updating the case sheet. He may seek the assistance of Director/Base Officer. In any case, the personal section attached to the officers of Director and above will ensure that case sheets are maintained up-to-date, watch for their safe custody and put up the same to the officers for review as indicated by them.

7.28 EFFECTIVE DATE OF INDENT :

7.28.1 The effective date of an indent received by DGS&D New Delhi or by its Regional Offices, is the date on which the indent has been received complete in all respects enabling procurement action to be initiated/completed. When any reference is made to the indenter seeking clarifications on any point before accepting the indent, the effective date of the indent is the date on which complete reply is received from the indenter.

7.28.2 For any clarification that may have to be sought for from the indenter, realistic time should be allowed. Time limits to be followed from the date of issue of letters are :

- | | | |
|-------|--|-------------------------------------|
| (i) | Clearance regarding acceptance of delayed delivery. | - 2/3 weeks |
| (ii) | Clearance regarding availability of additional funds | - 4 weeks |
| (iii) | Clarifications regarding certain technical matters. | - 4/6 weeks |
| (iv) | Any other clarification | - A reasonable time is to be given. |

7.28.3 When no reply is received from the indentors to reference made for technical comments/provision of additional funds etc. by the stipulated date, the indent is to be treated as withdrawn. When such an indent is subsequently sought to be reinstated, the indenter may be advised by the Purchase Directorates to revise the date of indent before sending it to DGS&D for reinstatement. Such indents are to be allotted with fresh DGS&D indent number.

7.28.4 In case where the indentors for some reasons request DGS&D to withhold action on their indents they should be advised that the indent would be treated as cancelled and restored only from the date on which advice for restoration is received.

7.28.5 Competent Officer's approval will be taken to change the effective date of indent or to return/cancel the indent for valid reason(s).

CHAPTER – 8

METHODS OF PURCHASE, ISSUE AND PREPARATION OF TENDER ENQUIRY

8.1 METHODS OF PURCHASE : The recognised methods of purchase are :

(i) BY INVITATION OF TENDERS

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|--|--|
| <p>(a) Advertisement
(b) Limited Tender
(c) Single Tender</p> | <p>Invitations to tenders by Advertisement should be used as a general rule, in all cases. This may be dispensed with by the Competent Purchase Officer, as an exception to the general rule, for reasons to be recorded and, in its place, any of the other recognised modes of purchase may be adopted as may be warranted by the circumstances of the case.</p> |
|--|--|

(ii) BY COVERAGE UNDER TOLERANCE AVAILABLE IN EXISTING CONTRACTS Instructions contained in Chapter-7 under Planning of Indent may be seen.

8.2 INVITATION OF TENDERS : This system calls for inviting tenders in sealed covers to be opened in public by following any one of the methods indicated below :

- | | |
|--|--|
| <p>a) (i) Advertised Tender Enquiry (ATI)</p> | <p>To be followed as a general rule in all cases in which the estimated value of demand is Rs.2 lakh and above.</p> |
| <p>(ii) Global Tender Enquiry</p> | <p>For imported stores where wider competition is considered necessary.</p> |
| <p>b) Limited Tender Enquiry</p> | <p>This method should ordinarily be adopted in case of all orders the estimated value of which is less than Rs.2,00,000.</p> |

This may be adopted even when the estimated value of demands is more than Rs.2,00,000 in the following circumstances.

- a) When sufficient reasons exist which indicate that it is not in the public interest to call for tenders by advertisement. In every such case the reasons must be recorded.
- b) 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.

c) When the source of supply are definitely known and possibility of fresh source beyond those being tapped is remote. In all such cases approval of the competent authority to dispense with advertisement should be taken.

c) **Single Tender Enquiry (STI)** 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 store demanded or as per policy of Government, purchase is to be made only from selected firm.

8.3 PUBLICITY OF TENDER ENQUIRIES

8.3.1 SINGLE TENDER/LIMITED TENDER ENQUIRIES : Where decision has been taken to purchase the stores by adopting single tender or limited tender system, the tender sets will be sent directly to the suppliers to respond.

8.3.2 ADVERTISED/GLOBAL TENDER ENQUIRIES : Where it has been decided to advertise the demand, advertisement should be given by indicating the requirement briefly, with a view to enabling intending tenderers to have a clear idea of the stores to be purchased. This is done in the form of Tender Notice ([Annexure-14](#)). Particular attention should be paid to the points mentioned below :

- a) A brief but clear description of stores required should be given with the raw material involved. For example, where the stores required is “Container”, it should be indicated “Plastic” or “Metal” as the case may be so that only the firm dealing with the stores would buy the tender sets for the stores in which they are interested.
- b) The destination of the stores and not the name of the consignee/indentor should be mentioned in the notice.
- c) 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, he should exercise his discretion not to disclose full quantitative details.

The Indian Trade Journal published by the Director General of Commercial Intelligence and Statistics, Calcutta, which is a Government publication, is regarded as the standard medium for advertising tender notices in India. It is not necessary all tender notices intended for publication through ITJ, should be sent in one lot. The notices issued on each day may be sent on the same day.

For purchase of value of Rs.2 lakhs and above but less than Rs.5 lakhs tender enquiries may be issued in the form of Classified Advertisements in the local News Papers. For purchases of value of Rs.5 lakhs and above, Invitation of Tenders may be advertised in the National Dailies in addition to the Indian Trade Journal.

8.3.3 FORWARDING OF TENDER NOTICE : Simultaneously, with the despatch of tender notice for publication in the Indian Trade Journal, copy should be sent to the following, under certificate of posting :-

- i) Tender Sale Section of Headquarters Office and Regional Offices for exhibition on the Notice Board.
- ii) All Quality Assurance Wing Offices for exhibition on the Notice Board.
- iii) Registered/known/likely suppliers.
- iv) Director MIS New Delhi, for giving publicity through NICNET Service and through DGS&D Monthly Bulletins.
- v) All known Trade Associations/Chamber of Commerce to give wide publicity.
- vi) National Small Scale Industries Corporation, Calcutta, Chennai, Mumbai and New Delhi.
- vii) Chief Liaison Officer NSIC New Delhi.
- viii) Director (Technical Publicity) NSIC, Nirman Bhawan, New Delhi.
- ix) The Director of Industries of State Governments.
- x) State Small Industries Development Corporations.
- xi) Director,
Small Industries Service Institutes under DC (SSI), Government of India
- xii) Khadi and Village Industries Commission, 3 Kurla Road, Vile Parle, West, Mumbai-56
- xiii) KVIC Departmental Unit, Gram Shilla Khadi and Village Industries Emporium, A-1, Baba Kharak Singh Road, New Delhi.

Note : Tender Notices for imported stores need only to be sent to parties at S.No.(i) to (v).

8.3.4 In addition to above, two copies tender notice be sent to Indian Missions/Embassies in major trading countries USA, JAPAN, GERMANY, FRANCE, ITALY, SINGAPORE, U.K., AUSTRIA, SWITZERLAND, SWEDEN, HOLLAND, AUSTRALIA, DENMARK, BRAZIL AND HONG KONG besides Commercial Attaches of Missions/Embassies.

8.3.5 A copy each of the Non-standard specification and the drawing which is required to be obtained by the tenderer directly from the concerned Quality Assurance Authority/or Indentors should be supplied to each of the regional offices to enable them to exhibit the same to the prospective tenderers.

8.3.6 In case of purchases financed from foreign Loan/Aid by international/foreign agencies publicity of tender enquiries/tender notices will be made as per the provisions included in this regard in the Loan/Aid Agreement.

8.3.7 When a tender enquiry is scrapped and a fresh tender enquiry is issued, notice thereof should also be sent to the firms who had quoted in response to the scrapped tender enquiry.

8.4 MONTHLY TENDER BULLETIN :

8.4.1 All the purchase directorates at the Headquarters shall deliver to the Section Officer, Publication Cell under MIS Directorate a copy of Tender Notice immediately on issue but not later than 48 hours. The Regional Offices shall send the copies of tender notices by FAX/Speed Post.

8.4.2 All the tender notices received during the month will be compiled by the Publication Cell for publication in the next issue of monthly bulletins. The Publication Cell will send copies of the monthly bulletin to the subscribers and to the following :

- (i) Secretaries to the Government of India
- (ii) Apex Bodies of industry
- (iii) Controller of Stores
- (iv) Heads of Department
- (v) Chief Engineers (CPWD)
- (vi) SPIUs
- (vii) Industry Secretaries of the State Governments

8.5 TENDER ENQUIRIES : PREPARATION AND ISSUE OF :

8.5.1 This is an important document as the supplier's offer to be received in response thereto would be based on the information given and called for therein. The Tender Enquiry should, therefore, be prepared with utmost care setting out in unambiguous terms the requirements of the purchaser as to the quantity, quality, delivery, destination etc. and any information which may be helpful to the tenderer in the submission of the offers, complete in all respects.

8.5.2 DOCUMENTS COMPRISING THE TENDER ENQUIRY.

- 1) Invitation to Tender DGS&D-241 or DGS&D-241A for Two Bid Enquiry
- 2) Schedule to Tender DGS&D-242 giving description of stores, quantity, delivery requirement, special conditions, if any etc.

- 3) Document to be signed DGS&D-68A or 69A, 71A, or 73A and returned by the tenderer agreeing to General Conditions of contract governing the Enquiry/resultant contract(s) as applicable.
- 4) Questionnaires

8.5.3 The contracts to be concluded will be governed by the Conditions contained in the Booklet entitled “Conditions of Contract Governing Contracts placed by the Central Purchase Organisation of the Government of India”, as amended upto date and those contained in the Booklet DGS&D 229 entitled “Instructions to Tenderers quoting against the Tender Enquiries issued by DGS&D as well as any special conditions contained in the Schedule to Tender as indicated in the Form DGS&D 241, as the case may be and it is, therefore, not necessary to refer to them separately in the Tender Sets.

8.5.4 In addition to these standard forms, the Tender Enquiries should also incorporate special conditions which do not find a place in the standard forms and which have been notified from time to time or those considered necessary for a particular store or those based on the instructions contained in the indent etc.

8.5.5 Any clause which inhibits the scope of inspection or which may have a bearing on the inspection functions, should be included in the Tender Enquiry or in the contract, only after such clause has been vetted by the competent Inspection Authority.

8.5.6 TIME TO BE ALLOWED FOR SUBMISSION OF TENDERS

- | | | | |
|-----|--------------------|---|-----------------------|
| (1) | Global Tenders | - | Not less than 8 weeks |
| (2) | Advertised Tenders | - | Not less than 6 weeks |
| (3) | Limited Tenders | - | Not less than 4 weeks |

Note :

- i) A period of 10 days should be added to the above time schedule where the firms have to obtain specifications/drawings from outside parties. A margin of 15 days is also to be allowed by the Purchase Directorates to enable them to send the tender notice in time for publication in the Indian Trade Journal.
- ii) While allowing the above period for submission of tenders or in fixing the tender opening date purchase officer should ensure that it does not fall on Monday or a day following a closed holiday or a series of closed holidays or on pay day of the month. The latest hour for receipt

and opening of tenders will be indicated in the Form DGS&D-242-Schedule to Tender Enquiry.

- iii) In the event of the specified date for tender opening being or is declared as a closed holiday for Government offices then the tender will be opened on the following working day at the same time. The tender enquiry should contain a clause to this effect.

8.5.7 VALIDITY OF OFFERS : Validity period mean validity for the period notified in the enquiry excluding date of tender opening. As decided at the planning stage validity period upto which the responding firms have to keep their offer valid is to be indicated in the tender enquiry. No specific date for validity of offer will be indicated in the schedule to tender (Form DGS&D-242). The Tenderers will be asked to keep their offers valid for Days (as decided at the time of planning of indent) from the date of tender opening or any extended date of tender opening.

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

The tender enquiry can be issued under the facsimile signature of the base officer with the office copy of the tender enquiry duly signed in ink.

If procurement of store is to be as per non-standard specification/drawing, and sufficient copies of those non-standard specification/drawing have not been furnished alongwith the indent, indentor should be asked to provide them for timely issue of enquiry. For DGS&D specifications/drawings requisition for adequate number of copies should be sent as per [Annexure-15](#). It is only on receipt of the requisite number of specifications/drawings the tender enquiry will be issued.

8.6 FORWARDING OF TENDER ENQUIRIES :

8.6.1 FORWARDING ADVERTISED TENDER ENQUIRIES : Advertised tender enquiries will be forwarded to the following agencies free of cost :-

- (1) Small Scale Industries Units who are registered with DGS&D and/or have already completed contracts successfully instead of through NSIC with a view to save time.
- (2) Chief ‘Liaison Office, NSIC, Jeevan Tara Building, Parliament Street, New Delhi. Two copies will be sent and they are permitted to cyclostyle the number of copies of tenders required and issue them to Small Scale Units after ensuring that they are stamped with the seal of the Corporation.
- (3) Directors of Small Scale Industries Service Institutes.
- (4) Director of Industries of all the States and Union Territories.

- (5) State Small Industries Development Corporations.
- (6) Khadi and Village Industries Commission, 3 Kurla Road, Vile Parle, West, Mumbai-56.
- (7) KVIC Departmental Unit, Gram Shilla Khadi and Village Industries Emporium, A-1, Baba Kharak Singh Road, New Delhi.

On request from the representatives of Foreign Embassies and Trade Missions in India, they can be supplied with a specimen set of advertised/Global tender of heavy equipment of substantial value of over Rs.50 lakhs complete with non-standard drawings. Saleable drawings and specifications will be procured by them direct. Such tender sets supplied free of cost will not be used for the purpose of submitting quotations.

8.6.2 FORWARDING OF LIMITED TENDER ENQUIRIES : In case of LTI, Enquiries will be issued under Certificate of Posting to all firms on the mailing list to be maintained upto date by the Purchase Directorate for the purpose, which list will include

- (i) Suppliers registered with DGS&D/NSIC/KVIC
- (ii) Past suppliers
- (iii) Likely suppliers for the subject item as intimated by indentor etc.
- (iv) Firms who are known to have the capacity to supply the stores.

Note :

- (a) It will also be ensured that the firms whose performance was considered unsatisfactory are not allowed to participate against the Tender Enquiry.
- (b) Purchase Directorates are required to maintain lists of registered firms store-wise as intimated by the Registration Branch from time to time and ensure that the list is kept upto date by removing the names of those firms who have been suspended/banned and including those new suppliers and past supplier.
- (c) The concerned Purchase Section will prepare, in duplicate, a list showing the names, addresses of the firms to whom the enquiries are to be issued. One copy of the list will be returned by the despatch section duly endorsed as a token of having despatched the tender sets. Any alteration or addition to the list should be authenticated under the full signature of the dealing hand and the base purchase officer concerned.

8.7 SALE OF TENDER SETS :

8.7.1 The Purchase Directorates should see that the tender sets are made available for sale at Headquarters Office and the Regional Offices and the designated Quality Assurance

Wing's Offices as given in [Annexure-1](#) of Chapter-1 immediately after tender notice is sent for publication in the Indian Trade Journal. The tender sets and also subsequent amendment issued if any are to be sent by registered parcel post.

8.7.2 In case of non-receipt of tender sets within two days after receipt of tender notice, tender sale section should take up with Director of Supplies concerned for further follow up action.

8.7.3 Two copies of tender sets should be marked specimen and furnished to the Tender Sale Section at Headquarters, Regional Offices and the designated Quality Assurance Wing Offices for exhibition/display on the Notice Board.

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

8.7.5 Unsold Tender Sets should be returned to the office of issue of the tender sets.

8.7.6 One copy of the tender set will be kept intact by the above offices. In case the tender sets initially supplied get exhausted photocopy of the scheduled to tender (DGS&D-242) should be made duly attested and with the availability of other standard documents, they can make complete tender set for further sale. However, before issue of such tender sets, invitation to tender (DGS&D-241) will be signed by a gazetted officer in charge of the tender sale.

8.8 TWO-BID SYSTEM : In the TWO-BID system the tenders are invited simultaneously in two parts :

- a) containing the techno-commercial offer and
- b) containing the price

with the stipulation that price bids will be opened after techno-commercial evaluation of the offers is done. [Annexure-16](#) gives the related instructions.

8.9 CHECK LIST FOR PREPARATION OF TENDER ENQUIRY : A Check List of points for preparation of Tender Enquiry is given in [Annexure-17](#). These Check Points should be referred to and kept in view while preparing the Tender Enquiry so as to avoid any omission or complications at a later stage.

8.10 ENDORSING OF COPIES OF ENQUIRIES TO CERTAIN AUTHORITIES : Copies of tender enquiries may be sent to -

- (a) the indentor
- (b) Inspecting authority and authority to whom tender samples are required to be sent as per tender enquiry condition.

8.11 COST OF TENDER SETS :

8.11.1 The tender sets in respect of Advertised Tender Enquiry will be sold on payment of prescribed rates given below.

Estimated Value of the Tender	Price of Tender Set ATE
(1)	(2)
i) Upto Rs.50 lakhs	Rs. 100
ii) From Rs.50 lakhs to Rs.1 crore	Rs. 250
iii)From Rs.1 crore to Rs.5 crore	Rs. 500
iv) Above Rs. 5 crore	Rs.1000

8.11.2 The cost of drawings and specifications will be extra.

- a) Wherever the stores are to be procured as per standard specification, the enquiry will indicate the details of specification and the source from where it can be purchased.
- b) Tenders for supply of stores such as plant and machinery, for which special or ominous specifications have to be prepared, a consolidated charge will be made for tender forms which will include the cost of specification. The charges for such tender sets will be fixed in each case by the Purchase Officer concerned in consultation with the Quality Assurance Wing.

8.11.3 In case of Limited Tender Enquiry, the first tender set will be issued free of charge. Additional or duplicate tender sets will be issued Rs.100 per set irrespective of the estimated value of the tender.

8.12 SALE RECORD TO BE MAINTAINED BY TENDER SALE SECTIONS :

8.12.1 The Tender Sale Section will keep the Tender Sets received from the Purchase Directorates, and on receipt of request from individual firms, will issue these after affixing on each set of tender, the tender fee coupon for the requisite amount as the price of the set.

8.12.2 Each office selling the tender sets will maintain a register indicating the number of sets received from the Purchase Directorate, number of additional copies prepared, number of tender sets sold, list of firms to whom sold and number of tender sets destroyed after the date of opening.

8.12.3 Payment on account of the tender sets as a rule be received in the form of demand draft, pay orders issued by the bank and postal orders. In respect of offices where the cashier is available, tender sets can be sold on payment of cash also. The demand drafts, pay orders and postal orders shall be "Account Payee" in favour of the Controller of Accounts, Department of Supply of the area concerned.

8.12.4 The sale proceeds shall be deposited with the Reserve Bank of India under the Head 5-520-120-001. The offices where the RBI branch is not available, the proceeds should be deposited with the State Bank of India or its subsidiary branch or the designated branch of the scheduled bank.

8.12.5 The sale proceeds should be entered in the specified register DGS&D-121. The sale proceeds shall be maintained by the cashier and wherever the cashier is not available, the work will be allotted to one of the employees as designated. The sale proceeds register is to be submitted to the Drawing and Disbursing Officer (DDO) who has to attest all the entries.

8.12.6 In case of any change in the T/E (date of opening or any other amendment) requisite number of copies should be sent to the Tender Sale Sections. Since the Tender Sale Section retains the requisitions received from the trade for supply of tender sets, they should send intimation to the trade directly about any intimation received from the purchase directorate regarding the tender enquiry.

8.13 RECEIPT, CUSTODY AND DISTRIBUTION OF TENDER :

8.13.1 Tenders are received either through the Tender Box or by Post/Courier. Tenders sent by Hand Delivery shall be dropped in the Tender Box.

8.13.2 The latest hour for receipt and opening tenders shall be as indicated in the schedule to the Tender Enquiry.

8.13.3 Bulky tenders which cannot be dropped in the Tender Box can be accepted by Director (Co-ordination/Director of Supplies in Regional Office(s) or by an official authorised 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).

8.13.4 Co-ordination Directorate in the Headquarters at New Delhi/Co-ordination Section in the Regional Office(s) is responsible for care, custody and distribution of the tenders.

8.13.5 Tenders deposited in the tender box are cleared twice daily once at 11.00 AM and next at 1.30 PM by the Tender distribution Clerk of the Co-ordination Directorate/concerned section in the regional office(s) in the presence of the officer in-charge of the designated Section and after sorting, are placed in the Tender Cabinets which should always be kept locked.

8.13.6 The officers opening the tender box at 11.00 AM and 1.30 PM will remove the tenders from the box, count them, put the tenders in the gunny bag and then lock the Tender Box.

8.13.7 A statement showing the total covers cleared through the Tender Box will be prepared and signed by the Dealing Hand in CDN-3 Section and Section Officer (CDN-3) daily. This will be checked periodically by Dy. Director (CDN).

8.13.8 All tenders sent by post including those by courier will be initially received by :

- (a) Central Receipt and Issue Section, if delivered during working hours;
- (b) Night Duty Assistant, if delivered after working hours or on holidays.

8.13.9 Tenders received by registered post/courier will be entered in a Register. They will be sent to the Co-ordination Directorate/concerned Section in the Regional Office(s) before 10.30 AM on working days.

8.13.10 If the cover(s) containing the tender(s) received by post/courier do not bear any tender No. and/or other marking to show that a tender is enclosed therein these will be opened by an official in presence of in-charge of the Central Receipt and Issue Section; the requisite details (Tender No., and date of opening) will be noted and the tender including the cover should then be put into a new envelope, closed and sealed in the presence of same set of persons. A certificate duly signed by these persons should be endorsed on the envelope indicating that the opening and resealing was done in their presence.

8.13.11 These tenders will be entered in a register and, immediately passed on by Central Receipt Section to the Co-ordination Section/concerned section in the regional office(s).

8.13.12 In the case of tenders dropped in the Tender Box, when some envelopes do not find a mention about the tender number, date and time of tender opening such tender will be opened jointly by the Section Officer CDN-3 Section (or the alternative officer in his absence) and another Section Officer, the latter being nominated every month; the requisite details will be noted on the envelope and sealed in the presence of same set of persons. A certificate duly signed by these persons should be endorsed on such envelopes indicating that the opening and resealing was done in their presence. The fact should also be brought out in a register under the signature of both the officers as mentioned above.

8.13.13 In case of envelopes which are torn, the fact should also be brought out on such an envelope and should also be recorded in the above register giving appropriate remarks about finding the cover in torn condition and placing the same in another cover in the joint presence of the same set of officers as mentioned above.

8.13.14 Unmarked tenders cleared from the tender boxes and those received by the Night Duty Staff outside office hours and on holidays will be dealt with by the Section Officer (CDN) and the Night Duty Assistant respectively in the similar manner as stated above.

8.13.15 In such cases where firms enclose more than one tender in one cover and the cover is unmarked to show that it contains tenders, the officer opening the covers (in-charge Co-ordination or Central Receipt Section), as the case may be should initial the schedule containing prices and, immediately, enclose the tenders in separate covers which should be closed and sealed. Necessary particulars such as “tender No. and date of opening” should be noted on the cover under the signature of the In-charge.

8.13.16 Telegraphic quotations received shall be passed on by the Central Receipt Section to the Purchase Officer concerned, who shall put it in a closed cover and seal it if it is not a late quotation. Necessary particulars viz. tender No. and the date of opening of the tender must be noted on the cover under the signature of the Purchase Officer concerned, which should then be put in the tender box without any delay.

8.13.17 Telex/Fax quotations will immediately on receipt in Central Receipt Section be passed on to S.O. (CDN-3)/concerned section in the Regional Office who is responsible

for tender box. Any such offer received prior to the time stipulated for receipt of tenders would be taken over by CDN-3 Section who would arrange to drop them in the tender box after closing them in an envelope. Any offer received after the time stipulated for tender opening will be passed on to the purchase section on the date of their receipt.

8.13.18 No tenders including late tenders should be passed on from one officer to another in open condition. The late tenders should be passed on to the purchase officer concerned on the date of their receipt.

8.13.19 All Purchase Sections will send to Co-ordination (CDN-3) everyday a statement indicating the tender Nos. due for opening on the following day. The statement should be sent for each Directorate as a whole and not section-wise. A copy of the statement should be endorsed to the Tender Sale Cell who will exhibit it on the notice board for information of tenderers.

8.13.20 On the date of tender opening, the tender covers for that day will be taken out first in the morning, by the tender clerk of the CDN Directorate/or concerned section in the Regional Office and handed over to the concerned Assistant Director of the Purchase Directorate with a forwarding challan DGS&D-96 (in duplicate). The Assistant Director concerned will give his acknowledgement of the receipt of tender covers in the tender slip in form No. DGS&D-96. He will pass on the tender covers to the officers authorised for opening of the respective tenders, along with the relevant purchase file; and obtain signature of the purchase officer on the duplicate copy of the challan, which will then be forwarded to CDN Section.

8.14 OPENING OF TENDERS :

8.14.1 The tenders shall be opened by the authorised purchase officer, who will be other than the one who has to deal with the purchase subsequently. The latter should under no circumstances open the tenders.

8.14.2 Unless good and sufficient reasons have been recorded on the file, as a rule, all tenders will be opened only in the presence of representatives of the firms, who have quoted.

8.14.3 The purchase officer opening the tenders should verify that only authorised representatives of the firms, which have actually submitted the tenders are present at the tender opening. Unauthorised representatives (or representatives of firms which have not submitted the tenders) should not be allowed to be present.

8.14.4 The representative of National small Scale Industries Corporation will, however, be admitted when tenders are opened in public to enable him to take down necessary information for communication to Small Industries Units concerned.

8.14.5 The purchase officer, opening the tenders, will prepare a list of representatives present at the opening of tenders with full name and address in the form DGS&D-97 and obtain their signatures on the list. The list will be initialled with date by the Purchase Officer, opening the tenders, and kept along with the tenders.

8.14.6 The officer opening the tenders will read out following particulars only from each tender opened by him for the information of the representatives attending the opening.

- (i) Tender No. and the name of tenderers.
- (ii) Articles/nomenclature of the stores
- (iii) Quantity offered in the tender.
- (iv) Unit price – whether Excise duty, statutory duties, sales tax extra or not
- (v) Whether any rebate/discount offered. If so, quantum and conditions if any.
- (vi) Delivery period offered.
- (vii) Terms of Delivery
- (viii) Any other special conditions like packing charges deviations from standard DGS&D conditions etc.

8.14.7 While opening of tenders, the officer should read out the particulars in the covering letter only in case where an indication calling the attention of the purchaser to these particulars has been given in the tender form. If no such indication is there in the tender form, the particulars in the covering letter need not be read out at the tender opening.

8.14.8 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 officer opening the tenders should get the signatures of at least two representatives present on the covers of all the unopened tenders. He will also record a note as to the total number of tenders remaining unopened which may also be got counter signed by two representatives whose signatures have been obtained on the covers of the unopened tenders. Thereafter the tenders will be kept in the safe custody of the officer opening the tender.

8.14.9 Each tender shall be numbered serially, initialled, and dated on the first page. Each page of the schedule or letter attached to it shall also be initialled with date particularly, the prices, delivery period etc. shall be circled and initialled. Blank tenders should be cancelled under the initials and the date of the purchase officer opening the tenders, and their numbers noted separately in the note portion of the relevant file.

8.14.10 Alterations in tenders, if any, made by the firms, should be initialled legibly by the officer opening the tenders 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 initialled and the fact that erasing/cutting of the original entry was present on the tender at the time of opening be also recorded.

8.14.11 No amendments to the tenders will on any account be permitted.

8.14.12 In cases where only one tender is received against an advertised or limited tender enquiry it will be opened in the presence of Deputy Director of the Directorate other than the one who would be dealing with the purchase of the item. In case there is only one Deputy Director in the Directorate a D.D. from another Directorate will be associated in the tender opening. The D.D. will counter sign the tender documents so opened in token of having witnessed the tender opening.

8.15 SPOT COMPARATIVE STATEMENT : The officer opening the tender shall prepare “on the spot” a comparative statement of the quotations received indicating the particulars read out at the time of opening of tenders as per format at [Annexue-18](#).

8.16 POSTPONEMENT OF TENDER OPENING DATE :

8.16.1 Requests for the postponement of tender opening date received from the tenderers should be decided on the individual merits of each case with the approval of the competent authority. Such requests from unregistered firms should normally be refused except in case of stores for which competition is lacking.

8.16.2 Whenever it is considered necessary to postpone the tender opening date, quick decision must be taken and communicated to the tenderers, who have purchased the tender sets, and should be at least 10 days before the original due date of opening. Such notice of extension of date of tender opening of tenders should be put up on Notice Board, and published in the Indian Trade Journal/DGS&D Monthly bulletin without delay.

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

8.17 LATE AND DELAYED TENDERS :

8.17.1 Tenders or modifications to tenders received after the specified time of opening are treated as "late" tenders while tenders and modifications to tenders received before the time of opening but after the due date and time for receipt of tenders are considered as "delayed" tenders.

8.17.2 In Two-Bid system techno-commercial offers received after the date and time for its receipt and opening will be considered as **late or delayed** tender as the case may be.

8.17.3 Price bid received after the opening of the techno-commercial offer though before the date fixed for opening of price bids will be regarded as **late tender**.

8.17.4 If late/delayed quotations are received through post, a similar action should be taken i.e., the officer should write "late/delayed" on such tenders and file them. Late/delayed tenders shall not be opened but kept sealed in their original envelopes.

8.17.5 All late/delayed tenders may be returned unopened immediately after opening of the tenders received within the stipulated time by registered post.

CHAPTER - 9

EVALUATION OF TENDERS AND FORMULATION OF PURCHASE PROPOSAL

9.1 The purchase officer on receipt of tenders along with the Spot Comparative Statement will have Comparative and Ranking statements prepared to enable him to formulate the purchase proposal.

9.2 PREPARATION OF COMPARATIVE/ RANKING STATEMENTS:

9.2.1 COMPARATIVE STATEMENT: After the tenders have been opened and made over to the Purchase Officer concerned along with the “ On the Spot” abstract , he will have a comparative statement prepared (in forms DGS&D 94 & 95) on the same day or latest within the time periods given in **Para- 7.25 of Chapter –7** on the form prescribed for the purpose. 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 extracted and neatly entered in the comparative statement. The status of the firm(s) whether registered or unregistered whether SSI unit/Public Sector Undertaking, shall be boldly indicated. The LPP (Past Purchase Price) must be given in the appropriate column of the statement.

9.2.2. RANKING STATEMENT: In addition to the Comparative Statement, a comprehensive ranking statement will be prepared in ascending order of the prices quoted, in all cases where more than three offers have been received. The ranking statement will be prepared after compiling prices on equitable basis taking the incidence of all elements of price such as Excise Duty/Customs Duty, Sales Tax, Freight, Transit Insurance etc. up to destination. The proforma of the ranking statement is given below:-

- (a) Name of the firm
- (b) Reg. Details/ML/Validity
- (c) Basic Price per unit
- (d) Excise Duty
- (e) Sales Tax
- (f) Total Price
- (g) Remarks
 - i. Price firm or variable
 - ii. Terms of Delivery
 - iii. Delivery offered
 - iv. Whether the stores offered Conform to the required Specifications/drawing.
 - v. Offer Validity.

9.2.3 The Directorate shall also prepare a statement in the following Performa:

1. Name of the firm
2. Capacity of the firm
3. Past Performance (indicate also the proven performance)
4. Load in hand.

9.2.4 If a tenderer is exempted from payment of Excise Duty upto any value of supplies, or is entitled to concessional rate/quantum of Excise Duty 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 was presently not applicable, but the same will be charged, if it becomes leviable later on, the quoted prices shall be loaded with the quantum of excise duty which is normally applicable on the item in question for the purpose of comparing its prices with other tenders.

9.2.5 In respect of imported stores, when foreign bids are received in different currencies, conversion of foreign currency into rupees is to be done taking into account the B.C. Selling rate of State Bank of India on the date of opening of price bid.

9.2.6 The base Officer initiating the purchase proposal will be responsible for the correctness of the facts for both the Comparative Statement and Ranking Statement, and initial them in token of having verified them

9.3 INITIAL ANALYSIS OF TENDERS RECEIVED:

9.3.1 The Base officer will scrutinize the tenders received to find out whether these are complete in all respects and binding on the tenderers. 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.

9.3.2. 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.

9.3.3. 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 documents, like whether the store conforms to technical particulars/specifications, drawings as specified in the schedule to tender, 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 NSIC registration etc, the base officer may make a reference to the firm seeking further information provided soliciting of such information will not amount to revision of the offer.

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

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

9.3.6 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.

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

- a) tenders received after due date and time of tender opening (Late Tenders);
- b) it is an unsolicited offer i.e. offer from tenderer other than those asked to quoted against LTI/STI. These can be considered for acceptance only in exceptional circumstances in consultation with the Finance.
- c) it is in the form of letter head/FAX/Telex/Telegram.
- d) It is from, stockist(s) or agent(s) without indicating details of the manufacturer whose products are offered.
- e) it is from agents without proper authorization from the manufacturers.
- f) it is from agents quoting for imported stores but they are not enlisted with DGS&D under Compulsory Enlistment Scheme of Ministry of Finance.
- g) it is not accompanied with Earnest Money in case the firm responded is not registered with DGS&D/NSIC.
- h) it does not indicate delivery period by which supplies can be made or delivery offered is vague.
- i) it does not indicate the terms of delivery.
- j) it is ambiguous with regard to any of the essentials i.e. the items being offered, prices quoted and the period of delivery.
- k) Tender samples as required in the enquiry conditions have not been submitted by the due date..

9.4 OFFER WITH SHORTER VALIDITY: Tender indicating the validity shorter than the validity period asked for in the Tender enquiry should be ignored as a rule. In exceptional cases, shorter validity tenders may be admitted with the approval of DG and Finance irrespective of the value for valid reasons to be properly recorded in writing. The said authority should not be further delegated.

9.5 OFFERS WITH DISCOUNTS FOR QUICK COVERAGE INSPECTION/PAYMENT:- In case any tenderer offers discount for coverage within a shorter period for quicker inspection/payment such offer is to be considered/compared only as per the price quoted (without consideration of discounts). The contracts as a result of acceptance of such offers shall not include any clause with regard to these discounts.

9.6 POST TENDER REVISION:-Any post tender revision which has the effect to influence the purchase decision should make the firm's tender unacceptable and be rejected.

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

9.7 GUIDELIENS FOR CONSIDERING TENDERS FROM AUTHORISED AGENTS/DISTRIBUTORS OF INDIGENOUS MANUFACTURERS:- The consideration of tenders form authorised agents/distributors of Indian manufacturers will be governed by the following guidelines:

- a) If the tender is made by an authorized agent/distributor who is not registered with DGS&D the purchase officer would see whether he has furnished the following documents:-
 - i) An authenticated copy of the written agreement between the manufacturer and the firm by which the latter has been appointed as authorized agent/distributor {as specified in clause 24(c) of Form DGS&D-230
 - ii) An undertaking from both the manufacturer and the tendering firm as specified in Clause 24 (c) of Form DGS&D-230
- (b) When considering the offers from authorised a gents/distributors, care must be taken to examine the agency agreement, particularly with regard to:-
 - i) Period for which the authorise period embraces/extends the delivery period stipulated in the Tender Enquiry.
 - ii) The percentage of commission/profit payable to the agent has been specifically indicated.
 - iii) The agent/distributor has the authority to enter into agreements and to sign contracts for supply of stores/equipment on behalf of the manufacturers.

- (c) In case where the manufacturing firm happens to have been banned/suspended the offer of the authorized agent/distributor shall not be considered.

9.8 OFFERS FROM AGENTS OF FOREIGN MANUFACTURERS/FIRMS:

9.8.1 It is not the policy of the government per se to look for, encourage or engage agents for procurement of stores from abroad. Wherever it is possible to secure supplies and after sales service etc. on reasonable terms directly without the inter session of agents, there is no need for engaging any such agent. Therefore, in all foreign suppliers, Indian agents of foreign principals will be entertained, as may be found necessary, on a case to case basis.

9.8.2. The special conditions for imported stores given in Form DGS&D-237 contain also provisions governing the Indian Agents, the documents to be obtained and the payment of agency commission to them. Following further instructions are given for regulating such cases.

- i) There shall be compulsory Enlistment of Indian Agents of Foreign Principals with DGS&D as per the guidelines of Ministry of Finance. As such, tenders from only such agents who have got themselves enlisted with the DGS&D before the date of opening tenders will be considered. Tenders of agents not enlisted with the DGS&D will be ignored summarily.
- ii) The agency arrangements and the amount of commission payable should be brought on record and made explicit so as to ensure compliance of Tax Laws and to prevent leakage of foreign exchange. An authenticated photocopy of the agency agreement shall mandatorily be filed by the registered agent while bringing on record the agency arrangement. If this has not been done at the time of registration, a copy of the agency agreement shall be obtained by the purchase officer before considering the tender.
- iii) Purchase of varied range of products has made it impossible for laying down a uniform rate of agency commission. The amount of agency commission agreed to between the principals and his agents will, therefore, be accepted on merits of each case. What is to be ensured is that the amount of agency commission agreed to between the foreign principal and the Indian Agent is specifically disclosed and the agency commission is paid in Indian rupees only (in compliance with the provisions of the FERA 1973 and the Hand Book of Import /Export procedure).
- iv) All particulars relating to agency commission shall be reported to the Enforcement Directorate who in turn, will further communicate the information to the Central Board of Direct Taxes, Central Board of Excise & Customs and Reserve Bank of India to prevent leakage of foreign exchange and tax evasion on agency commission.

9.8.3 The Compulsory Enlistment of Indian Agents of Foreign Principals with DGS&D above is of the nature of general enlistment with government and such enlistment does not confer on the Indian Agents the status of a supplier registered with DGS&D.

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

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

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

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

9.8.8 Agents quoting on behalf of their principals should;

- i) Produce their foreign principals' Performa invoice indicating commission, payable to the Indian agent, nature of after-sales service to be rendered by the Indian agent.,
- ii) Clearly indicate, if their offer is on F.O.R basis, the break up of the prices viz. net f.o.b/f.a.s. value, insurance, freight and clearing/handling charges at the Indian Port, profit margin and charges for dispatch upto destination.
- iii) Produce copy of the Agency Agreement with their foreign principals.
- iv) Give particulars regarding precise relationship with the foreign principals and their mutual interest in the business.

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

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

9.9 EVALUATION OF TENDERS AND SUBMISSIONS OF PROPOSAL:

With the above initial analysis, the purchase officer will formulate a comprehensive proposal by evaluating the responsive offers received, keeping in view the following parameters:

- a. The technical acceptability of the offer
- b. The technical and financial capability of firms coming in the zone of consideration.
- c. The delivery period offered vis-à-vis indent delivery requirement.
- d. Reasonability of the prices quoted.

The proposal will also discuss the non responsive offers coming in the zone of offers being considered clearly indicating the reasons for ignoring them.

9.10 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 indent specifications/drawing or other particulars governing the requirements.

In the procurement of plant and machinery the responding tenderers have to furnish deviation statement as required in the enquiry if the stores offered deviates from enquiry requirements. Where offers received deviate from the specification requirements but the firm have not furnished the deviation statement it should be brought out clearly in the purchase proposal for consideration of the competent authority.

9.11 REFERENCE OF TENDERS TO INDENTORS:

9.11.1 Tenders should not ordinarily be referred to the indenter even if an indenter has asked that they should be shown to him before order is placed. Consultation with the indentors may, however, become necessary for special reasons in case of stores of a specialized nature (and not in case of common use item) The following are the broad categories of cases where tenders may have to be referred to the indentors:

- (a) stores of specialized nature and scientific equipment :
- (b) where none of the offers received or those proposed to be accepted are strictly in conformity with the specifications :
- (c) stores of which technical scrutiny rests with DG (Shipping) and other indentors :
- (d) where suitable indigenous alternatives are offered to save foreign exchange.

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

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

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

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

9.11.6. The recommendations of the indenter should be examined in an objective manner because the ultimate responsibility for accepting or ignoring any offer lies with DGS&D. In cases where there is honest and genuine difference of opinion between the indenter and the DGS&D over accepting or rejecting any lower offer on technical or other grounds, a dialogue with the indenter should be arranged at the earliest to iron out the differences and reach mutual accord. Where the differences persist, the case may be shown to the next senior officer for decision in consultation with Finance.

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

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

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

9.12 TECHNICAL /FINANCIAL CAPABILITIES OF FIRMS IN ZONE OF CONSIDERATION: The contracts are to be placed on firms who have the technical and the financial capabilities to execute them. In respect of firms who are registered with DGS&D or NSIC, these aspects are taken into consideration at the time of registration which is granted for specific items and specifications.

As already indicated it is enjoined by administrative directions that procurement of stores by the DGS&D will normally be made from manufacturers/suppliers registered with DGS&D or National Small Industries Corporation (Under Single Point Registration Scheme). However, with a view to encourage new industrial units and to establish additional alternative sources, competitive and acceptable offers from unregistered/untried firms may be considered to the extent as detailed hereinafter:-

9.13 DETERMINATION OF STATUS OF A FIRM AS REGISTERED OR UNREGISTERED:-

9.13.1 A firm shall be treated to have registered status, in the case of a Tender Enquiry, if the date of registration is prior to the date of opening tenders (as distinct from the date of opening revised bids) of that Tender Enquiry. The tendering firms securing registration subsequent to the original date of tender opening will apply to the Tender Enquires for both add-hoc contracts and rate contracts.

9.13.2 A firm is considered registered for such items of stores for which the registration has been specifically granted. The firm should be in the approved list maintained by the Registration Branch of the DGS&D for this purpose.

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

9.13.4 Firms registered with NSIC will be considered at par with firms registered with DGS&D. However, where Quality Assurance Wing of DGS&D feels that special capacity report was required to be called for the same may be indicated so at the time of checking of technical particulars and incorporated in the tender enquiry. The NSIC is required to register the firms for such items only after obtaining special capacity report from QA Wing of DGS&D. Only then such firms registered by NSIC shall be treated as registered.

9.13.5 For Defence stores, the firms registered with DGS&D/NSIC are not recognized by DG QA, Ministry of Defence, if capacity assessment has not been done by that organization. Capacity assessment for stores to Defence specifications for such firms should be called for from DGQA. If the capacity report received is favorable the firm registered with DGS&D/NSIC without obtaining inspection report initially from Defence Inspectorate in question will be considered as registered for all purposes.

9.13.6 For Drugs and medicine items firms registered by Director General of Health Services and or Director General (Quality Assurance), Ministry of Defence will be recognized by DGS&D.

9.13.7 In ad-hoc procurement of stores with ISI marking the status of a firm as to whether they hold valid BIS licence to supply stores with ISI mark will be determined as prevailing on the date of initial date of tender opening.

9.14 CONSIDERATION OF OFFERS FROM UNREGISTERED FIRMS:

The financial standing and technical capacity of such firms have to be verified while considering their offers and before placement of order. The financial capacity will be verified by the concerned purchase section and the technical capacity will be got verified from designated technical authority.

9.15. VERIFICATION OF FINANCIAL STANDING:

- a) This has to be done by calling Banker's Report and valid Income Tax Clearance Certificate, if not already furnished with the tender documents.
- b) The firms are required to submit their latest ITCC with the quotation. Extension of time may be allowed if the offer received is otherwise complete and acceptable. DG/Finance can waive the requirement of ITCC.
- c) **Banker's Report:** A report will be obtained from the Bank(s) concerned in the form as per [Annexure-19](#) regarding financial standing of the firm. The Bank's Report could be dispensed in respect of firms, which are covered by statutory auditing process. In all other cases the report shall be called confidentially in respect of firms, which are not covered by statutory auditing requirements. However, if a Report from Bank does not come upto a period of 10 weeks after a reference to the Bank, the financial aspects on the basis of balance sheets shall be considered and decision taken.

9.16 VERIFICATION OF TECHNICAL CAPACITY:

9.16.1 Capacity reports will be called for on all such unregistered firms whose offers, on initial scrutiny of tenders are found to be otherwise technically acceptable and are in the zone of consideration. For this purpose, performance and equipment statements will be obtained from the firms in the prescribed forms given in Appendices D and D1 of DGS&D Form 230, which will be forwarded to the concerned technical authority for capacity verification.

9.16.2 Detailed guidelines for calling the capacity reports are given in [Annexure – 20](#).

9.16.3 Based on the satisfactory capacity report, financial standing and performance consideration, offers of unregistered firms will be considered if they are otherwise found acceptable and orders placed on them to the extent indicated in subsequent paras.

9.17 DELIVERY PERIOD CONSIDERATION:

9.17.1 The purchase officers are to ensure that the contracts are placed on firms whose performance is good and who are offering delivery nearest to the indent delivery period.

9.17.2 If revised delivery period was suggested to the indenter at the stage of planning of indents, it should be ensured at this stage that confirmation thereof has been received. This should be recorded in the indent as well as in the purchase proposal.

9.18 DEVIATION IN DELIVERY SCHEDULE:- As per the tender enquiry conditions, the stores are required to be delivered (shipped) within an acceptable range of 3 months specified in the Schedule of Requirement. No credit will be given to earlier deliveries and offers with delivery beyond this range will be treated as unresponsive. Within this acceptable range, for evaluation, an adjustment per month at 2% will be added to the quoted

price of tenders offering deliveries later than the earliest delivery period specified in the schedule of requirements.

For urgent indents no relaxation will be allowed. For such indents the offers which are not meeting the required delivery period may be treated as unresponsive offers.

9.19 REASONABILITY OF PRICES:

9.19.1 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. The various elements of price and their variations are discussed in Chapter –10.

9.19.2 As per DGS&D Tender Enquiry conditions, a responding firm can quote on firm price basis as well as on variable price basis and each such offer 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 condition of unusual character should be considered.

9.19.3 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. Certain price variation clauses have been standardised for allowing variation on account of change in the prices of raw materials, wages etc. The standard price variation clauses form part of the DGS&D Enquiry.

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

9.19.5 The reasonability of the price proposed to be accepted has to be established by taking into account the competition observed from the response of the trade to the enquiry, last purchase price, estimated value as given in the indent and market price wherever available.

9.20 LACK OF COMPETITION: Lack of competition exists if the following factors intervened;

- 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 number of quotations;
- d) Store under purchase is chronically in short supply against which a number of acceptable offers never exceed two.

9.21. LAST PURCHASE PRICE:

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

- i) The last purchase price will be the price paid in the latest contract of a similar magnitude which is not more than three years old.
- ii) Where the firm holding the LPP contract has defaulted, the fact should be highlighted in the purchase proposal and the price paid against the latest contract placed prior to the defaulting LPP contract where supplies have been completed, should be indicated.
- iii) Where the price indicated in the LPP is subject to variation, besides indicating the original price as of the LPP contract, the updated price as computed in terms of the price variation clause, may also be indicated.
- iv) Where the supply against the LPP contract is yet to commence i.e. delivery is not yet due, it should be indicated in the purchase proposal, whether the contract holder is a past supplier/registered supplier/ new supplier. In case of new supplier, the price paid against the previous contract as in the case of (ii) above should be indicated.
- v) In the case of wholly imported stores the comparison of the last purchase price should be made with the net C.I.F. Value in foreign currency only.

9.21.2 Indication of the percentage of increase over last purchase price should invariably be given in the purchase proposals.

9.21.3 For this purpose, an L.P.P. register will be maintained by all purchase sections.

9.22 ESTIMATED VALUE: The estimated value given in the indent 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.

9.23 MARKET PRICE: The trend in market prices of the item or its main raw material as circulated by the MIS Directorate may also be kept in view for establishing the reasonableness of the rates received.

9.24 PROPOSAL FOR COVERAGE:

9.24.1 With the above analysis and evaluation of offers received against the enquiry, the purchase officer will give a comprehensive proposal for conclusion of contract.

9.24.2 All proposals should begin with relevant facts and information which are necessary for arriving at a prudent decision.

BASIC DATA OF TENDER NO.....

1. ITEM

- (a) Description
- (b) Specification

2. INDENT PARTICULARS

- (a) Name of the indenter
- (b) Class of indent
- (c) Indent delivery period
- (d) Date of receipt of indent.

3. TENDER DETAILS

- (a) Type of Tender Enquiry
- (b) Date of tender invitation
- (c) Date of tender opening
- (d) No. of offers received

4. Last Purchase Price

5. Tolerance Availability

9.24.3 The terms and conditions offered by the firm(s) within the zone of consideration should be clearly discussed by highlighting those terms and conditions which are at variance with our General conditions of contract.

9.24.4 The proposal should not only discuss the merits of all the offers lower than the one to be accepted but also the merits of the higher offers from SSI/PSUs which come within the range of price/purchase preference allowed under Government policies, as discussed in the **Chapter-3**. The base officer should also certify that no quotation from an SSI unit or other such privileged class has been left out of consideration.

9.24.5 In respect of purchase proposals attracting the powers of the Department of Supply the self-contained proposal should be made and the referring note should be signed an officer not below the rank of DDG. Difference of opinion if any, emerging in DGS&D at the level of Director(IF)/ADG/DG should be suitably reflected in the I.D. Note.

9.25 COVERAGE OF DEMAND:

9.25.1 Before considering the coverage of the indent against the tender received against the enquiry the Purchase Officer should examine the possibility of coverage of quantity against tolerance clauses in the existing contracts. Detailed instructions as given in Chapter-7 are to be referred to.

9.25.2 Quantity left after utilization of tolerance Clause should be covered so as to ensure that;

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

9.26.1 CONSIDERATION OF PURCHASE PROPOSAL:

9.26.1 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 to ensure that the proposal.

- (a) brings out the reliability of the firms whether they are registered with DGS&D/NSIC for the stores as per the required specification, date on which they are registered and if unregistered their capacity/capability based on the report furnished by technical authority, financial status etc.
- (b) avoids the tendency to place orders on firms offering low prices but with poor or no prospect of supply as per the delivery requirements of the indent.
- (c) Gives due consideration to the price aspect whether firm or subject to any variation and, in the latter case, the elements affecting the price have been reasonably asked for.
 - i) 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 the law. In working out the ultimate cost to the indenter, at the time of tender decision, the element of Sales Tax should also be taken into consideration.
 - ii) All purchase proposals should clearly mention whether or not prices quoted in tenders are inclusive or exclusive of Sales Tax. The tender rates reproduced in the purchase proposals should be followed by the remarks such as “No Sales Tax” or “Sales Tax Extra”; and in the latter case the name of the State Sales Tax with the rate thereof based on the firm’s stipulation in tender should be indicated.
- (d) analysis the reasonability of prices being considered for acceptance comparing with LPP, market price etc.
- (e) gives due consideration to the delivery period offered vis-à-vis the requirement of the indenter.
- (f) analysis the past performance of the firm, if they have executed any order, the load they are carrying on, if they are in the process of executing any contract(s).

- i) While proposing a second order on a firm who have not started supplies against their earlier order, the total load on the firm should be kept in mind together with their financial capability as well as the capacity of the firm.
- (g) leads to placement of order on firm(s) who have agreed to abide by the DGS&D Conditions of Contract and clauses and they have not stipulated any abnormal conditions in their offer.
- (h) results in placement of order for the imported stores on F.O.B./F.A.S. basis ; for any departure , the proposal is supported by the concurrence from Ministry of Surface Transport.
- (i) leads to placement of order on Indian Agents enlisted with DGS&D under Compulsory Enlistment of Indian Agents Scheme of Indian Agents Scheme of ministry of Finance and that the amount of agent's commission, if any, agreed to between the foreign principals and the Indian Agent is specifically disclosed and the Agency Commission is paid in Indian rupees only.
- (j) Considers the possibility to secure supplies and after sales service etc. on reasonable terms directly without the involvement of an agent. (There is no need for engaging agent in every case and the involvement of Indian Agents is to be decided on a case to case basis)

9.27 REQUIREMENT OF ADDITIONAL FUNDS:

9.27.1 Once the coverage of the indent requirement has been decided, the purchase officer should ensure availability of requisite amount of funds.

9.27.2 The orders for indigenous stores be placed in excess of the estimated value of the indent without reference to the indenter if the extra expenditure over the total estimated amount is not more than the following limits:

Category of Indentors	Limits
Defence	Upto 50% subject to the total increase over estimated cost limited to Rs. 10 Lakhs.
Surveyor General	Upto 66.2/3% subject to the total increase over estimated cost limited to Rs. 5 Lakhs.
BSF	Upto 25% subject to the total increase over Estimated cost limited to Rs. 1 lakh
DGHS	Upto 25% subject to the total increase over Estimated cost limited to Rs. 1 lakh
Railways	Upto 25% subject to the total increase over estimated cost limited to Rs.3 lakhs.

Other Civil Indentors.	Upto 15% subject to the total increase over Estimated cost limited to Rs.1 Lakh the indenting department gives his concurrence.
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9.27.3 If these limits are exceeded, the indenter's concurrence should be obtained (by telegram, if necessary before placing the contract). In cases, where the indenting department gives his concurrence for the extra expenditure involved he should specifically certify the availability of additional funds to cover the extra expenditure involved in the following manner:

"I certify that the extra expenditure involved has received the sanction of the competent financial authority and that the funds are available under appropriate head in the sanctioned budget of the indenting department for the year."

9.27.4 If purchase is for imported stores, the purchase officer will check the adequacy of funds to meet the transaction in the proposed foreign currency before placement of order by applying the B.C Selling rate as notified by SBI on the relevant date.

9.27.5 The conversion of foreign currency into rupees is to be done taking into account the B.C Selling rate of State Bank of India on the date of tender opening. Where the time lag between opening of price bids and final evaluation exceeds 3 months, B.C.Selling rate on the date of final evaluation is to be adopted for conversion as per following procedure:

- (i) In respect of imported cases where the purchase decision is to be taken in DGS&D, the exchange rate prevailing on the date on which the DDG/ADG/DG as the case may be, approves the purchase proposal will apply. The purchase officer concerned will indicate in the margin that on the basis of exchange rate ruling on that date the proposal holds good.
- (ii) In respect of cases requiring the approval of the Government, comparative ranking of offers shall be checked with reference to the exchange rate prevailing on the date when DG approves the proposal for submission to Department of Supply and comparison need not be checked again till placement of order. If additional funds are required to meet the foreign exchange commitment, reference should be made to the indenting department.

9.27.6. When extra funds are required over the estimated cost shown in the indent a reference will be made to the indenter to provide the additional funds by informing him the reasons for calling additional funds. Order will be placed only after the indenter confirms the availability of required funds. Such confirmation should certify that the extra expenditure involved has received the sanction of their competent financial authority. As coverage will be held up till the confirmation is received, the purchase officer in the communication to the indenter asking for additional funds should make it clear to the indenter for timely action to avoid any financial implications due to delay in providing the additional funds.

9.28 POST TENDER NEGOTIATION:

9.28.1 Negotiations, after tenders have been opened, should be severely discouraged. Negotiations vitiate the sanctity of the tender system & reduce the credibility of the

purchase organisation. Quality becomes the causality. Unless some definite evidence is forthcoming to show that the prices received are unreasonably high or there is tendency to obtain unreasonably higher prices by ring formation or on account of the lack of capacity, negotiations should not be resorted to at all.

9.28.2 Post tender negotiations are banned in adhoc procurement except in case of negotiations with L1 (Lowest Tender)

9.28.3 Since the rate contracts are required to be concluded with number of firms to cater to the requirements all over the country and as also to make available the source of supply nearest to the location of the users at times negotiations in the R/C system become unavoidable. Detailed guidelines to be followed are enumerated in the Chapter-13 on Rate Contracts.

9.28.4 Negotiations/counter offers may be decided by the competent authority in association with Finance.

9.28.5 Counter offer of a price by the purchaser is also covered by the term “negotiations” and counter – offers on the basis of unestablished prices for small gains should be discouraged. Where the prices offered are less than the cost of inputs, such offers may not be ignored. If, however, such low offers are made, it may not be desirable to counter offer with a view to break the cartel.

9.29 EXTENSION OF VALIDITY OF OFFERS

9.29.1 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.

9.29.2 The tendency to request the tenderers to extend the period of validity of offers should be curbed. This is of considerable importance, for, apart from the delay which would invariably occur in covering the demand, and thereby cause delay in the receipt of stores by the consignee, there is also a risk of the firms refusing to accede to the request for extension or the firm’s withdrawing the offers, or extending the offer with revised rates, all of which might lead to avoidable expenditure.

9.29.3 In cases where seeking extension of the offers becomes inescapable, action should be taken up 8 to 10 days in advance of the expiry of offers and the letter asking for extension should be issued to the firms at least one week in advance as in such cases, the offers of firms who do not agree to the extension will still be available for consideration for a few days more. In order to retain the right of the purchaser of accepting the offer till its original validity period, the revised form DGS&D-112 only should be issued.

9.29.4 The letter seeking extension of offer should be issued under Postal Certificate in order to avoid any complaints from the firms that they have not received such letters. For this purpose, the acknowledgement of letters sent under Postal Certificate should be obtained from the Central Receipt Section and placed in the purchase file.

9.29.5 Where only part quantity/items of the tenders are accepted and for the remaining quantity/items the tenderer(s) are required to keep their offer(s) open upto a subsequent date,

such quantity/items should be specifically mentioned in the communication addressed to the tendering firm(s)

9.29.6 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 on the purchase proposal is taken at the appropriate level within the validity period. In cases, where the offers had been extended due to inescapable reasons, the fact must clearly be stated in the purchase proposal as under:-

“Original Validity period of tender expired on..... Tenderers requested to extend the offers upto.....This is first extension, second extension, third extension etc.”

9.29.7 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 taken into consideration, such and such firms have agreed to extension proposed and confirmations from such and such firms are yet to be received.

9.29.8 Tenderers whose quotations cannot be considered otherwise for obvious reasons such as unsatisfactory capacity report, late/delayed tender, should not be requested for extension of their offers.

9.29.9 All base officers should make sure that the purchase decision as recorded by the competent authority is clear for purchase action. If there is any doubt, the file should be put up immediately to competent purchase officer or to Finance for clarification required.

9.30 SCRAPPING OF TENDERS AND ISSUE OF FRESH ENQUIRIES;

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

N.B.

- (1) The case where no offer has been received, should be treated as if purchaser has not gone out for tender at all.
- (2) In cases where inquiries against the same demand are sent in the second or subsequent round, the previous one having been scrapped for one reason or the other, it should be made clear to the parties who may have quoted against the previous tender that the fresh Invitation to Tender is in supersession of the previous one.
- (3) Tender Enquiries/Notices should also be sent to those firms who had participated in the Tender Enquiry subsequently scrapped.

9.31 RETURN OF TENDERS RECEIVED AGAINST TENDER ENQUIRIES CANCELLED/SCRAPPED SUBSEQUENTLY: Such tenders may be returned on request. It is not necessary to authorise automatic refund of cost of tender on scrapping. Claims when received should be finalised with the approval of competent authority.

9.32 INTIMATION OF ACCEPTANCE OF TENDER:

9.32.1 The contract is brought into existence upon communication of the acceptance which must be within the time prescribed. Where the post is the medium of communication between the parties, the acceptance is complete as soon as it is posted. Proper care should be taken to address the letter or telegram of acceptance correctly.

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

9.32.3 After a purchase decision has been taken formal A/Ts must issue as quickly as possible but in no case later than 10 days of the decision.

9.32.4 In the circumstances like where the time left in the expiry of the offer is short an Advance Acceptance of Tender can be issued by telegram or letter, but this should be avoided as far as possible. The advance A/T may be issued in the prescribed form (DGS&D-212). The Advance Acceptance whether by telegram or letter must bear the same number which would be allotted to the Formal Acceptance of Tender.

9.32.5 The Advance Acceptance should incorporate the following clause invariably:-
"The Contract is concluded by this acceptance. A formal Acceptance of Tender will follow."

9.32.6 It should be ensured that the formal Acceptance of Tender is issued immediately after issue of the Advance Acceptance of Tender but in any case not later than 10 days of the purchase decision.

9.33 DESPATCH OF CONTRACT:

9.33.1 The Acceptance of Tender, Advance A/Ts by letters), Rate Contracts, should be dispatched under Registered post with acknowledgement due.

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

9.33.3 Post copies of telegraphic Acceptance and copies of any advance of Acceptance of Tender containing the above particulars must be endorsed to various authorities concerned as per instructions available in the Chapter-11 "Drafting of Ad-hoc Contract".

9.33.4 Six copies of all Acceptance of Tenders, rate contracts and amendments thereto, if any, placed on the SSI Units should be forwarded to NSIC, New Delhi through their Liaison Office.

9.33.5 In respect of contracts for imported stores a consolidated monthly statement indicating brief details of contract finalised for imports during each month should be furnished in two parts – one for FOB/FAS imports and other in respect of C&F/CIF imports to Chartering Wing of Ministry of Surface Transport.

9.33.6 Where purchase of stores which involve C/F value of Rs.10 Crores or more, the Ministry of External Affairs is to be kept fully informed of all bilateral and multi-lateral proposals for contracts. The amount of Rs. 10 crores C.I.F. will be cumulative in case it involves purchased related to a programme or project spread over a number of years.

9.34 INTIMATION TO UNSUCCESSFUL TENDERERS:

9.34.1 The unsuccessful tenderers should as far as possible, be informed of the reasons for non-acceptance of their tenders by a standard letter as per [Annexure-21](#). For the guidance of the officers an illustrative and not exhaustive list of reasons due to which the tender may be rejected has been given in the [Annexure-22](#). However, where any exceptions are to be made, decisions in this regard should be taken only at DDG and above level. In such cases, the unsuccessful tenderers should be informed of the non acceptance of their tender in the prescribed form DGS&D-56 without assigning any reason.

9.34.2 When an offer from the cottage and SSI Units received through the NSIC is rejected on grounds of the sample being not found to conform to specifications or acceptable limits under deviations full details of the defects should be furnished to the NSIC after a decision has been taken on a particular tender. This will enable the Corporation to apprise the small scale and cottage industrial units or the defects thereby giving them an opportunity to rectify them.

9.35 RESERVATION OF REJECTED QUOTATIONS: Purchase Directorates should preserve the rejected quotations in a separate folder along with the relevant purchase file.

9.36 AUTHENTICATION OF CONTRACTUAL DOCUMENTS:

9.36.1 Copies of all the contractual documents (acceptance Tenders, Supply Orders, Rate Contracts, Amendment Letters to the Contracts, Refund of Performance Security Deposit, and instructions regarding withholding payment etc.) are required to be sent duly authenticated by the designated officer, within 48 hours from the date of their issued to the concerned Accounts Officer along with Performa “A” & “B” ([Annexure-22](#))

9.36.2 Each Directorate will designate one or more than one officers to function as the Authentication Officer The signatures of all the Authentication officers duly certified by the Director are to be furnished to the controller of Accounts concerned through the Coordination Section. The officer so designated will be empowered to authenticate documents subject to the provision that he will not authenticate the contractual documents signed by him.

9.36.3 Similarly, the Chief Controller of Accounts will nominate Accounts Officers for receipt of authenticated documents at New Delhi, Calcutta, Mumbai and Chennai.

9.36.4 The Authentication Officer will append their signatures and authentication stamp on the last page of the contractual documents below the signatures of the purchase officer.

9.36.5 All authenticated documents meant for outstations should invariably be dispatched by registered post A.D and to local Accounts Officers through a messenger.

9.36.6 The authentication officers should also ensure that

- (a) The requisite details are shown properly in the proforma “A” and “B” and in full and continuity in the serial No of the documents authenticated is maintained.
- (b) The list in proforma “A” and “B” are dispatched to the concerned officers on the same date as is assigned to the list.
- (c) Documents are authenticated by the authorised officer and not by the officer who has signed them.
- (d) The authenticated documents are sent to the concerned nominated Accounts Officer and not to any other Accounts Officer.
- (e) The documents are authenticated by an officer after he has been actually authorised to do so.

CHAPTER – 10

ELEMENTS OF PRICE AND THEIR VARIATIONS

10.1 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 indigenous/imported stores is arrived at by considering the following elements:-

10.1.1 INDIGENOUS STORES : In the case of indigenous stores the elements of price consist of :

- (i) Basic Price : (the F.O.R. Station of despatch price which in turn includes raw-material price, wages, processing charges, overhead, 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) Octroi Duty/
Terminal Tax : if applicable

10.1.2 ELEMENTS OF PRICE RELATAING TO IMPORTED STORES: The elements of price and their variations relating to imported stores are discussed below:

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

10.2 VARIABLE PRICE:

10.2.1 One of the general principles of entering into contracts is no contract involving any uncertain or indefinite liability or any condition of an unusual character should be entered

into without the prior approval of competent Financial Authority. Therefore, it is the general policy that, as a rule, contracts should be entered into on firm price basis and 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 continual charges in national and international fiscal practices, variable prices are often quoted by supplier firms and these are admitted in DGS&D contracts. 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. Accordingly, certain “Price Variation” clauses have been standardized for DGS&D contracts and these are given below :-

- (i) Price variation clauses relating to raw-material.
- (ii) Price variation clause relating to wages.
- (iii) Price variation clause relating to excise duty.
- (iv) Price variation clause relating to customs duty.
- (v) Price variation clause relating to foreign exchange.

The standardized price variation clauses referred to in above para are incorporated in the Instructions to Tenderers (Form DGS&D-229); for facility of reference, the price variation clauses relating to raw-material, wages and excise duty are reproduced in [Annexure 23](#).

10.2.2 PRICE VARIATION CLAUSE RELATING TO RAW – MATERIAL : As far as practicable, contracts should be placed on fixed price basis. Offers on firm price basis as well as on a variable price basis will be considered on merits of each case. To this end, the following clause has been incorporated in the Instructions to the tenderers (Form DGS&D-230)

“Offers on firm price basis as well as on a variable price basis will be considered on the merits of each case. Where firms quote with price variation, the price variation formula should be clearly spelt out, indicating the base price of the raw-material etc. on which variation is desired.”

10.2.3 It is required of the purchase officers to indicate in the tender enquiry the base price on which firms should offer their prices in case of variable offers. Otherwise there will be difficulty in comparison of the quotations on equitable basis if different tenderers base their prices differently. The purchase officers should, therefore, ensure to clearly indicate in the tender enquiry, the base price on which the firms should base their rates in respect of variable price quotation.

10.2.4 STANDARD PRICE VARIATION CLAUSES ON RAW-MATERIAL;

Given in [Annexure-23](#) cover the following items of raw-material :-

- (i) Metal variation clause for insulated cables/wire.
- (ii) Metal variation clause for ACSR conductors.

10.2.5 These standard price variation clauses should be incorporated in tender enquiries and acceptance of tenders in all appropriate cases.

10.2.6 In other case, the price variation clause may be suitably drafted in consultation with Finance allowing price variation in raw material with a suitable price variation factor on net weight of raw-material and a suitable time lag.

10.2.7 WAGES ESCALATION CLAUSE: It is considered inappropriate to fix any wage escalation clause for any type of stores manufactured indigenously. Where, however, it is agreed to allow wage escalation the standardized clause given in [Annexure-23](#) should be adopted. The escalation factor should be carefully worked out to ensure that no undue advantage accrues to the supplier. The actual claims of the firms for variation will have to be checked by the Cost Accounts Officer. It should be made clear to the tenderers that other things being equal, preference will be given to the tenderers whose wages escalation factor quoted is the lowest.

10.2.8 Price variation clauses relating to costs of raw-materials and wages may be accepted subject to the following conditions.

- (i) A break down of quotations is obtained to enable the purchaser to satisfy himself that the variations in respect of raw-materials and wages demanded by the firm are reasonable.
- (ii) The right to examine firm's books is reserved except where details furnished by the firm provide an adequate check and are satisfactory in all respects.

10.3 CONSIDERATION OF DUTIES AND TAXES IN DGS&D PURCHASES :

10.3.1 The duties and taxes as levied by the Governments vary 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.

10.3.2 While custom duty on imported stores is levied and collected at the ports of entry, taxable event for central excise duty is manufacture or production of goods, though, for administrative convenience duty is actually collected at the stage of removal or clearance of goods from the factory. Government has allowed bonded warehousing facility all over the country in the case of petroleum products. In such cases duty is payable when goods are cleared from such bonded warehouse.

10.3.3 Taxable event for sales tax is sale of goods which may or may not coincide with such removal.

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

10.3.5 The liability of reimbursement or adjustment of any duty or tax is covered under the section 64A of sale of Goods Act.

10.4 DUTIES / TAXES ON RAW-MATERIALS:

10.4.1 As per the standard clause incorporated in the “Instructions to the Tenderers” (Form DGS&D-229), the purchaser shall not be liable to any claim on account of fresh imposition and/or increase of Excise Duty, Customs Duty, Sales Tax on raw-materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract, unless otherwise specifically agreed to in terms of the contract.

10.4.2 In terms of Section 64A of Sales of Goods Act 1930, reimbursement of any duty or increase in duty on raw-materials used in the manufacture of the ordered stores would depend upon the terms and conditions of the contract. Section 64A of Sale of Goods Act is attracted when,

- (a) There is no different intention apparent from the term of the contract.
- (b) Any duty of customs or excise on goods or any tax on the sale or purchases of goods has been imposed, increased decreased or remitted in respect of any goods after the making of the contract for sale or purchase of such goods.

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

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

10.4.5 As per DGS&D Enquiry conditions unless, otherwise specifically agreed to in terms of the contract, the purchaser shall not be liable to consider any claim on account of fresh imposition and/or increase of Excise.

10.4.6 Where tenderers ask for payment of Customs Duty and Excises Duty and/or Sales Tax on raw-material/components in spite of the aforesaid provision in the Invitation to Tender, such tenders should be considered on merits and decided by the competent purchaser officer in consultation with Finance.

10.5 EXCISE DUTY:

10.5.1 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 leviable on percentage basis this percentage is reckoned on the assessable value of the store to be determined in accordance with the Excise Rules. Changes in Excise Duty or fresh impositions are notified by the Excise Authorities under the powers vested with them under the and the Central Excise Tariff Act, 1985.

10.5.2 To levy Central Excise Duty, it is necessary that goods in question has 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.

10.5.3 Repair or reconditioning of a 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. For the same reason, repacking of goods from bulk pack to smaller packs would not ordinarily amount to manufacture.

10.5.4 TARIFF AND RATES OF EXCISE DUTY : Since excise duty is on manufacture or production, the liability to pay the duty is on the manufacturer or producer.

10.5.5 The rates of excise duty are specified in the Schedule to the Central Excise Tariff Act, 1985. The 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.

10.5.6 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 object, such as encouragement of small scale sectors, village industries and handicrafts, promoting the use of non-conventional raw materials, etc. Such rules and notification take effect from the date of their publication in the official gazette.

10.5.7 CRUCIAL DATE FOR DETERMINATION OF RATE OF DUTY : 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 exempted from duty, but removed from the factory when exemption stood withdrawn are liable to duty.

10.5.8 VALUATION OF GOODS FOR THE PURPOSE OF EXCISE DUTY : This will be as per provisions of Section 4 of the Central Excise and Tariff Act 1985. The salient aspects under Section 4 which guides to arrive at the value of goods – deemed value or normal price - are

- a) it should be the price at which the goods are “ordinarily “ sold by the assessee in the normal course of business and on commercial basis. Such commercial price should include (List is not exhaustive)
 - 1. Full cost of manufacture
 - 2. taxes and duties paid on inputs.(However Modvat credit of Excise Duty, where admissible can be taken into account)
 - 3. cost of wholesale packing
 - 4. after – sale service charges during warranty/guarantee period.
 - 5. commission paid to the agents for selling foods on assessee’s behalf

6. testing and inspection charges before delivery of goods. Charges for additional tests, over and above those done by the assessee in the normal courses, required by the customer to be carried out by an outside specialized agency are not included.
- b) Where a customer gets goods manufactured according to his specification the prices charged from such customers would be acceptable as commercial price
 - c) If an assessee chooses to sell his goods partly at the factory gate and partly at the depot, there shall be two normal prices.
 - (i) In respect of goods sold from the depots, no abatement of transport charges from factory gate to depot is permissible. But the duty is still required to be paid by the assessee at the time of clearance of goods from the factory even for those goods which are sold through the depots. The assessee is required to declare the normal price at which such goods are sold at the depots at the time of clearance of goods from the factory.
 - d) It should be a whole sale price.
 - (i) Where goods are sold only in retails, the retail price has to be suitable reduced to arrive at a deemed wholesale price.
 - (ii) "Wholesale trade" is defined as sales to dealers, industrial consumers, Government, local authorities and other buyers who or which purchase their requirements otherwise than in retail.
 - (iii) Where whole sale price or the maximum price of any goods is fixed by law, the price so fixed shall be deemed to be the normal price of such goods.
 - e) assessee can have varying prices for different classes of customers viz. Wholesale traders, industrial customers,, Government departments and local bodies.
 - f) Following elements which are generally in the nature of post – removal expenses or post – factory expenses or trade discounts are allowable for deduction to arrive at the assessable value;
 1. cost of special packing
 2. cost of packing supplied free by the customer or cost of durable packing returnable
 3. cost of transportation, that is, freight, unloading charges, forwarding and handling charges, delivery charges, and transit insurance charges incurred for transport of the goods beyond the assessee's place of sale
 4. installation, erection, commissioning, maintenance and supervision charges at customer's site

5. after sale service charges incurred beyond warranty/guarantee

10.5.9 PROCEDURE OF COLLECTION: While different procedure have been prescribed for levy and collection of Central Excise Duties keeping in view the needs of different industries sector, SELF ASSEMENT Procedure covers major portion of excisable items.

10.5.10 Under the Self Assessment Procedure which was hitherto known as self removal procedure, the assessee files a classification declarations for his goods, price declaration, MODVAT declaration for inputs MODVAT declaration for capital goods. The assessee in addition will file a declaration of his market pattern and discount structure. Such a declaration by the assessee will be done by 15th April of every financial year.

10.5.11 Where the rates of duty are ad valorem (expressed as a percentage value of goods) assessable value of goods has to be found out before the amount of duty leviable thereon is determined and paid. Earlier there was a practice of assessee filing a price list, excise authority approving the assessable value after enquiry and then the assessee determining the duty on the basis thereof. This practice has been discontinued and now it is the assessee's responsibility to determine the assessable value of the goods, declare them on the file invoice and pay duty on the basis thereof

10.5.12 There is no need for the assessee to enclose the invoices. Invoice has replaced gate pass as the clearance document. The invoices should be bound in a book form and should be machine serially numbered for each financial year beginning from 1st April. Each page in the invoice book should be pre-authenticated by an authorized officer of the assessee (owner or person holding power of attorney/ working partner/managing director or company secretary or any person authorized by the board) alongwith company seal. Invoices are issued in triplicate with respective marking of original, duplicate and triplicate pre-printed (not stamped).

10.5.13 There will be routine assessment and checking of invoice and returns by Excise Authorities. The assessee will complete the self-assessment memorandum and sign it which should indicate the serial number of clearance invoices issued during the month.

10.6 REFUND : The assessee can appeal with the Excise Authorities in case of any dispute regarding the rate of duty leviable on their product. Refund of duty if any will be granted to the assessee only if he has not passed on the incidence of duty to the buyers of his goods. Otherwise the refund due would be sanctioned and credited to Consumer Welfare Fund.

10.7 REGULATION OF CLAIMS FOR EXCISE DUTY:

10.7.1 This Excise Duty clause provided in the instructions to the Tenderers (Booklet Form DGS&D-229) stipulates that where the tenderer intends to ask for excise duty as extra, he is required to state it specifically. Form DGS&D-242 (Schedule to Tender) has a specific clause for the tenderer to state whether excise duty is extra. In the absence of any such stipulation it is to be assumed that the prices quoted include the element of excise duty and no claim for the same will be entertained after opening of tenders.

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

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

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

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

(1) Unless a different intention appears from the terms of the contract, in the event, any tax of the nature described in sub-section

(2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax-paid where tax was chargeable at the time --

(a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition, and

(b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax, or remitted tax, and he shall not be liable to pay, or be sued for or in respect of such deduction.

(2) The provisions of sub-section (1) apply to:

(a) any duty of customs or excise on goods;

(b) any tax on the sale or purchase of goods.”

10.7.5 By virtue of the provisions of Section 64 A of Sales Goods Act, 1930, even in the absence of a stipulation in the contract providing for statutory variation in excises duty, the

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

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

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

10.8 PROCEDURE RELATING TO REIMBURSEMENT OF EXCISE DUTY :

10.8.1 Where excise duty is payable as extra it will be paid along with bills for initial payment.

10.8.2 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.

10.8.3 The tariff schedule should be indicated in the A/Ts, Rates Contracts themselves. The Controller of Accounts will reimburse the excise duty on the basis of the rates indicated in the tariff schedule incorporated in the contract. Subsequent changes in the tariff rate, if any, should be incorporated in the contract by means of an amendment, if admissible under the terms of the contract.

10.8.4 In contracts which do not stipulate any price variation clause and where the supplies have been completed within the original/refixed delivery period, claims for excise duty, if payable extra are required to be admitted by Controller of Accounts and without a formal amendment.

10.8.5 Irrespective of whether excise duty leviable is a percentage, ad-valorem or a fixed amount the suppliers while submitting the bills furnish the following certificate:

- (i) Certified that the Excise duty charged on this bill is not more than what is payable under the provisions of the relevant Act or the rules made there under.

(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 caused by the bills.

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

10.8.6 Besides, the suppliers, are required to submit the following excise certificates/undertakings :-

(i) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of Excise Duty made to the contractor during three months immediately preceding the date of claim covered by the relevant bill.

(ii) Firm's/Mill's statutory Auditor's certificate as to whether any refunds have been obtained or applied for by the firm/mills or not in the preceding financial year after the annual audit of their accounts, also indicating details of such refunds/applications, if any,. This certificate should contain reference to all ad-hoc A/Ts/Rate Contract/held by the firm/mills.

(iii) A Certificate ALONG WITH THE FINAL PAYMENT BILLS of the firm/mills to the effect whether or not they have any pending appeal/protest for refund/partial refund of excise duties already reimbursed to the firm/mills by the Government pending with the excise Authorities and if so the nature, the amount involved, and the position of such appeals. This certificate should be signed by the firm's/mill's Managing Director/Manager/Accountant.

(iv) AN UNDERTAKING to the effect that in case it is detected by the Government that any refund from excise authorities obtained by the firm/mills after obtaining reimbursement from the CCA and if the same is not refunded by the firm/mill to the CCA giving details and particulars of the transaction, the Controller of Accounts will have full authority to recover such amount from mill's/firm's outstanding bills against that particular contract or any other pending Government contracts and that no dispute on this account would be raised by the supplier.

Note :

(I) In cases firm intimates that any appeal regarding excise duty is pending under the above clause, then the final payment against the contract should not be released by the Controller of Accounts and necessary instructions should be sent to him by the Purchase Officer concerned.

10.8.7 The purchase officers should follow the above instructions in all contracts.

(ii) In cases where the firm's account (s) is / are audited and completed at the end of the year the certificate for the preceding year is acceptable. Once

the firm submits the certificate along with initial bill on the subsequent bills they can confirm having submitted the certificate and also that the accounts have not yet been audited. In this connection, it is also clarified that while the original certificates could be attached with one of the bills, a reference to this should be made in the subsequent bills and a copy of Xerox can be appended with the other bills.

10.8.8 Amendments to the A/Ts and contract allowing changed duties, are normally issued only after the Finance Act comes into force. The duties proposed in the Finance Bill may, however, be allowed to contractors, if otherwise admissible without waiting for the Bills to become an Act of Parliament provided that a written undertaking is obtained from the contracting firms in each case before authorizing reimbursement of duty that they will refund any excise duty paid to them if the duty proposed in the Finance Bill and collected by the Government from the contractor is reduced in the Finance Act.

10.9 EXCISE DUTY ON REPLACEMENT SUPPLIES : Where the replacement supplies is made under a contract Section 64A of the Sale of Goods Act is attracted and increased duty is payable by the buyer. However, as delivery of the goods is delayed the increase in excise duty would not have been payable, if the original supplies had not proved defective and been rejected or lost or damaged in transit, therefore, required to be replaced, the additional expenditure on account of increased excise duty is a loss directly occasioned by the delay in supplies.

10.9.1 Consequently, the purchaser is entitled to recover the liquidated damages at the contract rate upto a sum equal to the amount of extra expenditure incurred on account of the increased excise duty. In other words, if the rate of excise duty has increased when the stores are replaced the increased excise duty is to be reimbursement but the increased expenditure on enhanced rate of excise duty can be recovered by the purchaser from the supplier.

10.10 SALES TAX :

10.10.1 PURCHASER'S LIABILITY TO PAY SALES TAX : The liability for payment of Sales Tax is on the dealer/supplier and he cannot pass it on to the Government, as a purchaser as a matter of course, unless the latter has agreed as per terms of contract to reimburse that element.

10.10.2 As per the instructions given in the Invitation to Tender (Form DGS&D -229), if any tenderer desires to ask for Sales Tax to be paid extra, the same must be specifically stated. 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 the Sales Tax will be devolved upon the purchaser.

10.10.3 On tenderers quoting Sales Tax extra, Sales Tax 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 terms of the contract.

10.10.4 **ADMISSION OF SALES TAX :** Where the firms have quoted for the payment of Sales Tax extra in their tender, the firms may be allowed intra state or inter state Sales Tax as the case may be, as applicable and legally permissible on the date of supply.

10.10.5 ELEMENT OF SALES TAX IN TENDER DECISION : 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 the law. In working out the ultimate cost to the indenter, at the time of tender decision, the element of Sale Tax should also be taken into consideration.

10.10.6 All purchase proposals should clearly mention whether or not prices quoted in tenders are inclusive or exclusive of Sales Tax. The tender rates reproduced in the purchase proposals should be followed by the remarks such as “**No sales Tax**” or “**Sales Tax Extra**”; and in the latter case the name of the State Sales Tax with the rate thereof based on the firm’s stipulation in tender should be indicated.

10.10.7 ADMISSIBILITY OF STATUTORY INCREASE IN RATE OF SALES TAX : The provisions of Section 64 A of the Sales of Goods Act, 1930 are applicable (c.f. para 10.7.4). Therefore, unless a different intention appears from the terms of the contract, in the event of fresh imposition of or increase in the rate of Sale Tax after making of the contract, the Sales Tax or the increase in the rate of Sales Tax, as the case may be has to be allowed on sales taking place on and after 22nd September, 1963.

10.10.8 The payment on account of increase in the rate of Sales Tax will be made by the Controller of Accounts automatically whether the contract was on firm price or on variable price, without formal amendment, where the supplies are made within the original/refixed delivery period. The supplier while submitting their claims on account of increase in the rate of Sales Tax to the Controller of Accounts will also submit original (Photostat) copy of the relevant gazette notification. Purchase officers should ensure that amendment letters by which the prices of variable price contracts are finalized should contain the rates of Sales Tax (upward/downward) which took place during the currency of the contract to enable the Pay & Accounts Office to verify the correctness of payments already made to the suppliers(without formal amendment letter) and to make adjustments, if any.

10.10.9 THE SALES TAX CLAUSE IN THE ACCEPTANCE OF TENDER : In all cases where it is finally decided to admit Sales Tax, the rate of Sales Tax and the amount payable as Sales Tax should be shown as a separate item in the Acceptance of Tender to enable Controller of Accounts to pay firm’s bill for Sales Tax. The relevant clauses to be incorporated in the contract are given in the Chapter “Drafting of Contract”.

10.11 CENTRAL SALES TAX (INTER – STATE 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 the Central Sales Tax Act, 1956. All inter-state sales to Government are liable to tax at a concessional rate on Form ‘D’.

10.12 EXEMPTION AND CONCESSIONAL RATE OF SALES TAX :

10.12.1 In respect of contracts for sale to the Indentors who have been exempted or to pay concessional sales tax it should be ascertained from such indentors if the transaction in question will fulfil the requisite condition for exemption/concession before making provision for Sales Tax or specifying the rate of the tax in the contract. In cases where sales tax has already been provided for or the same has been provided for at the usual rate, although the

exemption or the concessional rate is applicable, suitable amendments to the relevant contracts are to be issued as quickly as possible.

10.12.2 In the case of Rate Contracts, the DDO's concerned should be advised to state clearly in all relevant supply orders placed by them that the exemption/concession is applicable so that the Controller of Accounts concerned may deal with firm's claim accordingly. They should be told that in the absence of any stipulation to the above effect in supply orders, the Controller of Accounts will assume that the exemption of the concessional rate, as the case may be, is not applicable.

10.13 INSTRUCTIONS RELATING TO FORM 'D' (Prescribed under Sales Tax Act, 1956 and applicable on Inter State Sales to Government):

10.13.1 One Form 'D' wherever applicable duly filled in and signed and stamped should be issued alongwith the Acceptance of Tender. The seal of the DGS&D (bearing ASHOKA CHAKRA) should be affixed on the left hand side of Form 'D' at the place provided for the purpose and the designation of Purchase Officer who signs Form 'D' is marked on the right hand side of the Form 'D' on a rubber stamp.

10.13.2 According to Section 8(4)9b), a certificate in Form 'D' is to be filled in and signed by a duly authorized officer of the Government. In no case, therefore, the supplier should be told to fill in the particulars left blank in Form 'D' by themselves.

10.13.3 In this form, Bill, Challan, Nos and Date is also to be filled in by the authorized officer of the Government. Sometimes the space provided is not sufficient to incorporate a series of bills pertaining to one purchase order and a separate sheet is attached to the form showing sale bills/challans, date and amount. The suppliers give these details of bills on a separate sheet requiring the authorized officer of the Government to sign the same so that it is accepted as a valid part of the certificate in Form 'D'

10.13.4 In the absence of records with purchase officers they are unable to check the correctness of these bills without reference to the Controller of Accounts which takes time. On the other hand, if a correct and complete form 'D' duly signed and stamped by the authorized officer is not furnished to the supplier or if it is delayed to the extent that the assessment of suppliers is finalised, the DGS&D would have to bear the liability for payment of Sales Tax at the full rate and the concessional rate is lost.

10.13.5 Purchase officers should, therefore, accept the details of bills, their Nos. and date and amount as furnished by the supplier unless for some cogent reasons the verification is deemed necessary. With a view to ensuring that Form 'D' furnished to the suppliers are complete in all respects and do not run the risk of being rejected by the Assessing Authority thereby resulting in the imposition of full rate of inter state Sales Tax the following guidelines have been laid down for strict observance by the purchase officers :-

- (i) It is imperative that the Form 'D' is issued in the prescribed form without any change. The portion marked 'Original' and 'Duplicate' are to be made over to the supplier and the portion marked 'counterfoil' is to be retained on record by the issuing officer.

(ii) Cases may arise where declaration in Form 'D' issued to a contractor may be misplaced or lost. In such cases a duplicate set of form "D" can be issued, marking it 'Duplicate'.

(iii) One certificate in Form 'D' will not cover transaction of sales effected in two financial years. A separate form "D" is to be issued for every financial year

(iv) Generally one certificate in Form 'D' is sufficient for all supplies made during the financial year against one order. However, if the suppliers request for more form "D" on a quarterly basis, these may be supplied as requested by the firm after filling in all the necessary particulars. Unless the firm is in the habit of asking duplicate forms, the requests made by suppliers for form "D" should be acceded to.

(v) Vide G.S.R.898 dated 23.9.58 issued by the Department of Economic Affairs, Ministry of Finance, the Central Government in pursuance of Clause (b) of sub-section 4 of Section 8 of the C.S.T.Act, 1956, has specified, the Officer duly authorized by the Central or a State Government to effect purchases of goods on behalf, as the authorized officer for the purposes of the said clause (b). Therefore, whenever the assessing authorities ask the suppliers to give a proof that the signatory of form "D" is the authorized officer for the purpose of Section 8(4) (b), their attention should be drawn to the above order in G.S.R.898.

(vi) Where orders are placed on behalf of the President of India or a Governor of State or against indents received from non-Government indentors, Certificates in Form "D" can be used. The fact that the consignee is a non-Government body makes no differences to the position. [Advice of Ministry of Law dated 3.11.1967]

(vii) In cases where records are not available and certificate in Form "D" is required to be issued as requested by the firm the same may be issued after fill-in in all the particulars as the non-issue of the same would render the sale to be assessed at the full rate of Sales Tax which contingency must be avoided.

10.14 SALES TAX CLAUSE IN THE SUPPLY ORDERS : Where the firm stipulates for Sales Tax extra in the tender, provision should be made in the contract for Sales Tax extra and the current rate or rates of Sales Tax applicable should be mentioned separately so that the firms may not have any difficulty in obtaining payment of Sales Tax at the rate applicable at the time of supply.

10.14.1 With regard to the contractual liability for payment of Sales Tax against a supply order, the Ministry of Law have advised as under :-

“The rate contract is in the nature of standing offer and a concluded contract comes into existence upon the issuance of the supply order, if the terms of the later are identical and are not in any way at variance with the terms and conditions contained in Rate Contract. If there is any variation between the two, the supply order is in nature of counter offer and the contractor would be bound by the same in case the contractor had unequivocally accepted the Supply Order”

10.14.2 The provision for Sales tax in the supply order should be in accordance with the Sales Tax Clause in the Rate Contract lest there should arise disputes regarding the payment of Sales Tax at the enhanced rate or State/Central Sales Tax applicable on the date of supply. For the same, if the Rate Contract provides for payment of Sales Tax extra and thereafter the current rate of Sales Tax applicable is shown separately, the supply order should also provide for Sales Tax extra and thereafter in a separate sentence, the rate or rates of Sales Tax applicable to the supply order and the current rate at the time of placing the same should be indicated as under:

“Sales Tax will be paid extra. The present rate ofSales Tax which is applicable on supplies against this supply order is.....“

10.14.3 As per the legal advice, in cases where supply order does not make any mention in regard to the Sales Tax the terms and conditions given in the Rate/Running Contract, i.e. provision in regard to Sales Tax embodied therein would prevail.

10.15 ISSUE OF AMENDMENTS IN RESPECT OF RATE OF SALES TAX PROCEDURE REGARDING :

10.15.1 There may arise cases where the contract, pursuant to the stipulation in the tender, provides generally for Sales Tax extra, but this provision is subsequently sought to be substituted on firm's request by clause providing for Sales Tax at a specified rate of State or Central Sales Tax. Such request cannot be deemed to have modified the original stipulation in the tender for payment of Sales Tax extra. Once contract has been concluded in regard to payment of Sales Tax extra, the provision cannot be changed unilaterally by deletion of original Sales Tax Clause. Therefore, while issuing amendments in such cases the original provision for Sales Tax extra should be retained and thereafter nature and the current rate(s) of State or Central Sales Tax applicable should be mentioned to enable the Controller of Accounts to make payment.

10.15.2 Cases may arise where the consignment instructions are changed at the instance of the consignee/indenter resulting in the conversion of intra-state Sales Tax to inter-State Sales Tax and vice versa. In such cases, the firms are not able to claim the Sales Tax which becomes applicable by the subsequent amendment by changing the station of consignee. It is, therefore, impressed that where the firm stipulated Sales Tax extra in their tender and a particular type of Sales Tax has been provided in the A/T, any subsequently amendment which has the effect of changing the nature of Sales Tax from one State to another or from the State to Centre or vice versa, the Sales Tax clause should be simultaneously amended along with the amendment changing the station of the consignee or addition of a consignee in different state.

10.16 ADMISSION OF BONAFIDE CLAIMS FOR SALES TAX

10.16.1 There may occur cases where the Sales Tax Clause is not included in the contract due to a bonafide error on the part of the purchase officer with the result that legally Sales Tax becomes not payable to the firm. In such a case, where the intention was to pay the Sales Tax at the time of consideration of the tenders the claim of the firm for payment of Sales Tax may be considered on merits with reference to the purchase decision embodied in the file and the element of Sales Tax, that was taken into account at the time of decision on

the purchases proposal and the claim may be admitted to the extent eligible, with the approval of the competent authority.

10.16.2 In the case of doubt on the question of payment of Sales Tax not covered by the provisions containing in this Chapter should be referred to the Sales Tax Section for advice.

10.17 OCTROI AND LOCAL TAXES :

10.17.1 As per DGS&D Enquiry terms given in DGS&D -229 stores supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such exemption certificate from any authorized officer. Contractors should ensure that stores ordered against contracts placed by this office are exempted form levy of Town Duty/Octroi Duty, Terminal Tax or other Local Taxes and duties.

10.17.2 Wherever required, they should obtain the exemption certificate from the purchase officer or Indentor concerned, to avoid payment of such local taxes or duties.

10.17.3 In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the contractor to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Purchase Officer concerned without delay together with a copy of the relevant act or by-laws, notifications of the Municipality or the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

10.17.4 The purchase officers will check up the claims with reference to the vouchers and counter sign the bills to authorize payment. The vouchers will be retained by the purchase officer for further action regarding refund, if necessary.

10.18 INSTRUCTIONS RELATING TO IMPORT OF GOODS

10.18.1 INVOLVEMENT OF INDIAN AGENTS : Regarding consideration of offers from the Indian Agents of foreign suppliers, the necessary guidelines are available in chapter, "Evaluation of Tenders and Formulation of Purchase Proposal".

10.18.2 Regarding clause to be incorporated for payment of Agency Commission, the necessary guidelines are available in Chapter, "Drafting of Contract".

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

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

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

10.18.4 EXCHANGE RATE VARIATION CLAUSE IN THE CONTRACT: The Special Conditions of Tender contained in Form DGS&D-237 provide that in respect of C.I.F./F.O.R. contracts in the event of variation by more than 1% (up or down) between the base rate and the rate of remittance to foreign principals, the contract prices (limited only to that portion of the C.I.F./F.O.R. prices that are required to be remitted according to the contractual terms to the firm's foreign principals in foreign currency will be subject to adjustment (up or down) in accordance with the T.T. Selling rate of exchange as quoted by any authorized Exchange Banker's ruling on the date the payment is made by the firm to their principals abroad which should not be beyond two weeks from the date on which initial payment is made by the purchaser to the contractor. No variation in price will, however, be allowed, if the variation in the rate of exchange remains within the limit of 1% plus or minus.

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

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

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

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

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

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

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

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

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

10.18.6 AUTHORITY FOR MAKING PAYMENT OF CUSTOMS DUTY : In respect of Defence contracts the payment of customs duty is to be arranged by the indenter himself and it will be paid by the Controller of Defence Accounts.

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

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

10.18.7 CUSTOMS DUTY ON REPLACEMENT SUPPLIES

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

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

10.18.8 ENTITLEMENT OF THE PURCHASER TO RECOVER DAMAGES ON EXCESS CUSTOMS DUTY PAID ON ACCOUNT OF REPLACEMENT : Where the replacement supply is made under the contract, according to legal opinion, Section 64-A of Sale of Goods Act is attracted and the increased customs duty is payable by the buyer. However, as the delivery of the goods is delayed and the increased customs duty would not have been payable if the original supplies had not proved defective and been rejected or lost or damaged in transit and therefore, required to be replaced, the additional expenditure on account of the customs duty is a loss directly occasioned by the delay in supply. Consequently the purchaser is entitled to recover liquidated damages at the contract rate upto

a sum equal to the amount of the extra expenditure on account of increased customs duty. Proper notice to give in accordance with the terms and conditions of the contract.

10.18.9 SALE TAX ON TRANSACTIONS RELATING TO IMPORTED GOODS : Sales Tax not leviable on transactions of sale in course of import. Categories of cases constituting sale in course of import.

- (i) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale.
- (ii) Where there is a privity of contract between the foreign supplier and the DGS&D.
- (iii) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

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

- (i) Sales of imported goods which are supplied from the already existing stock.
- (ii) Import of raw materials and components which have been utilised by the suppliers in assembling or manufacturing the goods ordered for sale where price of such raw materials, components and accessories have not been shown separately.
- (iii) Sales of imported goods which have been further processed in India before supply to the consignee.
- (iv) Sales of goods which are to be imported against firm's own 'Stock and Sale' licence for supply to various customers.
- (v) The goods have moved from foreign country to India as a result of the Indian supplier purchasing the goods from the foreign supplier, i.e.
 - (a) The movement of goods has been occasioned by the contract for purchase which the Indian supplier entered with the foreign seller.
 - (b) There was no privity of contract between the DGS&D and the foreign seller.
 - (c) The foreign seller has not entered into contract by himself or through the agencies of the Indian supplier.

10.18.10 THE SALES TAX CLAUSE IN THE ACCEPTANCE OF TENDER FOR IMPORTED STORES: In all cases where it is finally decided to admit Sales Tax, the rate of Sales Tax and the amount payable as Sales Tax should be shown as a separate item in the Acceptance of Tender to enable Controller of Accounts to pay firm's bill for Sales Tax. The relevant clauses to be incorporated in the contract are given in the Chapter, "Drafting of Contract".

CHAPTER 11

DRAFTING OF ADHOC-CONTRACT

11.1 DRAFTING OF CONTRACT(S):

11.1.1 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. The drafting should always be done in the prescribed blank format given in [Annexure-25](#) and the practice of drafting on the basis of an old A/T form should be desisted so as to eliminate the possibility of omission and commission. It has to be ensured that the contract is issued complete in all respects without leaving any room for avoidable correspondence at a subsequent stage.

11.1.2 Where a contract is concluded with the issue of Advance Acceptance of Tender, it has to be ensured that the formal Acceptance of Tender for all purposes should conform to Advance Acceptance of Tender, since, legally the contract stands concluded with the issue of Advance Acceptance of Tender. Any change of terms would tantamount to counter offer. For example, where specific date is indicated in Advance A/T for furnishing Performance Security or submission of acceptable Advance Sample, same date is also to be specified in the formal Acceptance of Tender.

11.1.3 The terms and conditions being incorporated in the contract are to be 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.

11.1.4 The contract should contain no more and 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 in the acceptance of tender only with the prior concurrence of the tenderer.

11.1.5 In particular the following aspects must be taken care of while drafting the contract.

11.2 PARTIES TO THE CONTRACT: The parties to the contract are the contractor and the purchaser, named in the Schedule.

11.3 NAME AND ADDRESS OF THE CONTRACTOR:

11.3.1 The complete name and address of the contractor alongwith their Pin Code number, telegraphic address/telex/fax number / E-Mail address wherever available should be indicated correctly as mentioned in their tender.

11.3.2 When the tender is submitted by a person representing as Sole Proprietor of the firm, the contract should be issued in the name of the Sole proprietor working in the name and style of the firm i.e. when XYZ signs the tender documents as the sole proprietor of the firm the contract can be issued as;

- (i) XYZ working in the name and style of M/s.ABC

or

- (ii) M/s.ABC through its sole proprietor XYZ etc.

11.3.3 By addressing in the above manner, the contract will be binding on the proprietor of the firm and the contractual rights can be exercised properly.

11.4 NAME OF THE PURCHASER:

11.4.1 The DGS&D enters into contract on behalf of the President of India or the Governor of State or on behalf of the public sector undertakings, corporations, local bodies.

11.4.2 The Purchaser should be correctly named depending upon the whose behalf the contract is being entered into.

CONTRACT COVERING THE DEMAND OF	NAME OF THE PURCHASER
1. Central Government Department/Ministries Union Territories	President of India Lt.Governor/Heads of Union Territories
2. State Governments	Governor of State/
3. Public Sector Undertakings Corporations or Local Bodies	Managing Director/ or Chairman of Public Sector Undertakings Corporations or Local Bodies as the case may be should be named as the Purchaser.

11.5 CONDITIONS GOVERNING THE CONTRACT:

11.5.1 All the contracts concluded by DGS&D are governed by the General Conditions of the Contract DGS&D 68 (Revised) as amended to date.

11.5.2 In cases where there are other special stipulations over-riding or supplementing the General Conditions of Contract, a suitable addition should be made inviting the attention to relevant clauses in the contract.

11.5.3 Clear and specific indication must be given as to the clauses of the General Conditions of the Contract that will not apply.

11.5.4 Where a contractor has agreed to clause 24 of the General Conditions of Contract-Arbitration, the words, "Including clause 24 thereof are to be added at the appropriate place, in the clause relating to the Conditions of Contract in the Schedule to the Acceptance of Tender. Where the contractor has not accepted the arbitration clause, the words "Excluding clause 24 thereof" are to be inserted.

11.5.5 The salient Conditions and Instructions for compliance by the contractor are given in [Annexure-26](#)

11.6 PERFORMANCE SECURITY: The contract should contain the standard clause as given in the contract format, indicating correctly the quantum of performance security and the time for furnishing the same.

Normally a period of four weeks from the date of issue of the A/T should be allowed to the firm to furnish Performance Security. Where advance A/T is issued, the purchase officer should, as per his judgement, indicate a realistic date for submission of performance security. And ensure that same date is incorporated in the formal A/T.

11.7 DATE OF DELIVERY:

11.7.1 As per clause 14(4) of the General Conditions of Contract (Form DGS&D - 68(Revised) the time for and the date of delivery of the stores stipulated in the contract shall be deemed to be the essence of the contract. It is therefore necessary that a definite date for supply of stores must be stipulated in the contract.

11.7.2 Expressions, such as “Immediate”, “Ex-stock”, “As early as possible”, should be avoided.

11.7.3 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 legal binding contract.

11.7.4 When tenderers quote in terms of weeks or months, example

“Supply to commence within 18-20 weeks at the rate
of 10-12 MT per month”

a specific date should be worked out on the basis of the firm’s offer reproducing the terms of the tender. The period will be counted from date of issue of formal contract.

11.7.5 When delivery period is quoted as above the date of completion should be fixed taking commencement in 20 weeks at the rate of 10 M.T. per month and supplies to be completed by------(Insert here the specific date).

11.8 DELIVERY IN INSTALMENTS IN CASE OF PURCHASE OF LARGE QUANTITIES: IN case of contracts where purchase of large quantities of stores are involved, delivery may be specified in instalments, wherever possible. As per the instructions given in the DGS&D Form-230, it will be open to the purchase officer to have contract on instalment delivery basis when delivery period has been quoted by the tenderer specifying to supply of number of units per month.

The purchase officer should ensure that where quantity in indent is large, specific instalment delivery either per month or per quarter should be indicated in the tender enquiries so that such instalment deliveries can be included in the contract.

11.9 PROVISIONAL DELIVERY DATES: Where the delivery of stores is linked with the approval of advance sample or opening of Letter of Credit, initially delivery period will be shown as quoted by the firm. The delivery period will be subsequently refixed as per the provisions of this clause after receipt of communication regarding approval of the advance sample or opening of Letter of Credit.

11.10 DELIVERY LINKED WITH APPROVAL OF ADVANCE SAMPLE: Where advance sample is required, a target date for submission of acceptable advance sample in accordance with the contract specification and the authority to whom it is to be submitted ; should be clearly indicated in clause 16 of the contract.

Considering the period required for approval of sample tentative delivery date for completion of supply will be worked out in line with the delivery offered by supplier and will be indicated in Clause 10 of the contract. As soon as the intimation is received from the concerned authority about the approval of the sample the delivery date should be refixed in accordance with the offer of the firm as initially indicated in the delivery clause. The date on which the approval of sample was communicated either by Purchaser or by the Inspecting Authority/Quality Assurance Officer should be duly accounted for.

11.11 DELIVERY LINKED WITH OPENING OF L/C: Where firms offer delivery in terms of weeks or months after opening of Letter of Credit, e.g. delivery 8-10 months after opening Letter of Credit, the delivery period in the contract may be stipulated initially as quoted by the firm. Immediate action should be taken to open the Letter of Credit and as soon as the intimation is received from the Controller of Accounts about opening of Letter of Credit, the delivery date should be refixed in accordance with the offer of the firm as initially indicated in the delivery clause.

11.12 DELIVERY ATE IN CIF CONTRACT: In C.I.F. contracts the date of delivery is stipulated as “Supplies to be completed by the particular date”. The delivery period is intended to be calculated in such cases with reference to the arrival of goods at the Indian Port by the specified date.

But the stipulation in the manner stated above will not be sufficient to exclude the ordinary rule of Law that the date of delivery in the C.I.F. contract is the date when the shipping documents are effectively tendered to the buyer.

Therefore, to make the intended delivery period legally in order, in cases where the terms of delivery are c.i.f. Indian Port, the date of delivery should be expressly stipulated as follows to make the intention clear that the date of delivery is to be the date when the goods actually arrive at Indian Port.

“Date of Delivery:-	Date on which the goods actually arrive at Indian Port.
“Delivery date :-	Date on which the stores should arrive at _____ (name of the Indian Port) by.....(here insert the date)

11.13 GRACE PERIOD: As per the planning decision /or category of indent against which coverage is being made, the contract should clearly spell out the applicability of grace period. The grace period is not applicable in imported stores contract.

11.14 DESPATCH INSTRUCTIONS: Despatch instructions given by indentors on the indents and forwarding letter or other communications relating to the same i.e. whether by Goods paid or Passenger Train, Owner's or Railway risk, freight paid/to pay should be carefully observed and should not be departed from without their previous consent.

11.15 DESPATCH OF STORES ON MILITARY CREDIT NOTES:

11.15.1 The use of Military Credit Notes is permissible only if the following condition are fulfilled.

- (a) The goods should be the bonafide property of the Ministry of Defence at the time of despatch.
- (b) The freight on the goods should be chargeable to Defence Services Estimate and
- (c) The goods are not sold or for sale, Loan or transferred to the Civil Department of the Government or general public.

11.15.2 SIGNING AND ISSUE OF MC NOTES: As far as possible, provision should be made in the Acceptance of Tender/Supply Order for the issue of Military Credit Notes by the Quality Assurance Officer (whether of the QA Wing of this Director General or the Defence Services) alongwith the Inspection Notes. The Purchase Officer should normally issue Military Credit Note in cases where inspection is carried out by the consignee after receipt of the goods at destination or where the Quality Assurance Officer is not authorized to issue Military Credit Notes.

11.15.3 The following officers of the Directorate General of Supplies and Disposals have been authorized by the Government of India to sign and issue Military Credit Notes:-

1. Director (Co-Ordination), DGS&D, New Delhi.
2. Director(Admn.), DGS&D, New Delhi.
3. Deputy Director(Admn.), DGS&D, New Delhi.
4. All Directors and Deputy Directors of Supplies in the DGS&D, New Delhi.
5. Directors of Supplies & Disposals, Calcutta/Mumbai/Chennai.
6. All Deputy Directors of Supplies in the Directorate of Supplies and Disposals Calcutta/Mumbai/Chennai.
7. Assistant Director of Administration, Directorate of Supplies and Disposals, Mumbai.
8. Assistant Director(Shipping), Directorate of Supplies & Disposals, Calcutta/Mumbai/Chennai.
9. All Directors, /Deputy Directors and Assistant Directors of Quality Assurance.
10. All Quality Assurance Officers, Assistant Quality Assurance Officers in the Quality Assurance Wing of the Directorate General of Supplies and Disposals.
11. All Examiners of Stores(non-gazetted) in the Quality Assurance Wing of the Directorate General of Supplies and Disposals.

11.15.4 Consignments booked under M.C. Note are treated as freight paid at owner's risk at Military concessional rate under Military Tariff regulations whereas consignments booked freight to pay or at Railway Risk are charged at Public Tariff rates.

11.16 DESPATCH INSTRUCTIONS FOR IMPORTED SOTRES: In order to arrange clearance and also to finalise all customs and port trust formalities promptly, suppliers should be asked to ensure that the relevant shipping documents such as negotiable copy of bill of lading, copy of consignee's invoice, copies of packing accounts or slips etc. are, invariably, forwarded by them to the consignees indicated in the contracts well in advance of arrival of Cargo.

As per the directive of the Government shipping arrangements for all government cargos are required to be made through the Chartering wing (TRANSCHART) in the Ministry of Surface Transport, New Delhi. In turn the Ministry of Surface Transport. (chartering Wing) have appointed forwarding agents area-wise for the shipment of the consignments.

The Ministry of Surface Transport have laid down specimen shipping clauses which inter-alia give the particulars of the forwarding agents and the shipping line, the shipping document to be submitted by the tenderers etc. These specimen clauses to be incorporated in various types of contracts for purchase of imported stores have been given in DGS&D Form-237.

11.17 AIR-CONSIGNMENT: As per the directive of the Government, airlifting of the imported store from abroad will be done only through the National Carrier i.e. Air India wherever applicable.

11.18 PARTICULARS GOVERNING SUPPLY: Specifications/technical particulars along with Maker's name, Brand and country of origin should be clear and complete without any ambiguity. Terms as such "Foreign Make" should be avoided. Where the tender of the firm does use the terms "Foreign Make" or "Indian Make" without indicating the name of the makers, the name of the manufacturer and the country of origin the case of imported stores should be obtained from the tenderer and incorporated in the A/T.

In the case of contracts where stores are desired to be manufactured by a particular concern only, a specific clause should be incorporated in the schedule to the A/T under special instructions that the goods supplied shall be of the particular make and the Purchaser shall have the right to reject any goods which are not of specified make even though they are of contractual quality.

11.19 INSPECTING AUTHORITY / INSPECTING OFFICER:

11.19.1 The designation of the Inspecting Authority/Officer and Place of inspection where the stores are to be tendered for inspection should be indicated correctly. Where final inspection and tests are required at site, the Quality Assurance Circle and the Officer who are to carry out the same should also be indicated.

11.19.2 INSPECTION BY CONSIGNEE: In cases where consignee has to carry out his own inspection of stores after receipt of the same at destination, the purchase officer should, simultaneously with the placement of the contract, issue a separate letter to the consignee emphasizing on him the desirability of inspection of stores immediately on receipt and issue of necessary inspection certificate without delay. Purchase Officer while issuing the contract

should send the required number of copies of the inspection notes forms to the consignee for inspection of the stores to avoid delay in the issue of inspection certificate by them.

11.20 PAYING AUTHORITY: The paying authority and the financial year against which the funds have been earmarked for making the payments need to be correctly stipulated. With a view to facilitate the work in the office of the Paying Authority, the number allocated to the A/T should also indicate the paying authority in the abbreviated forms as indicated in the chapter, 'Payment of Cost of Stores'.

11.21 SPECIAL INSTRUCTIONS: Clause 19 of the schedule to A/T is meant for Special instructions and the following points should be specially checked:-

(A) PRICE

- (i) Whether the prices are firm and final or variable; if variable, price variation clause agreed upon in the Purchase decision should be incorporated.
- (ii) In respect of imported stores, Clauses related to payment of Agency Commission, price variation clause regarding exchange rate variation and custom duty variation clause are to be stipulated if agreed upon. Standard Clauses are given in the [Annexure-27](#).

(B) EXCISE DUTY

- (i) Applicability of Excise Duty (whether inclusive or payable extra) rate of excise duty applicable, documentary evidence required, variations to be allowed or not etc. should be clearly spelt out.
- (ii) Where the tender mentions that the prices are exclusive of excise duty which will be payable extra, it should be definitely stated in the Acceptance of the tender that the duty is payable at a specified rate, in addition to the cost of stores, instead of mentioning its payment in an indirect manner.
- (iii) The mere statement in the tender that the prices are exclusive of excise duty does not entitle the firm to the reimbursement of the duty. Where the tenderer indicates in his tender that prices are exclusive of excise duty but no mention has been made that excise duty will be charged extra, no claim for the same will be entertained after the opening of tenders. Therefore, while it should be stated in the Acceptance of Tender that prices are exclusive of excise duty, it should also be stated that excise duty will not be payable extra and prices shall be treated firm and final.

iv) EXCISE DUTY CLAUSE TO BE INCORPORATED

- a) when the rate of duty is on fixed amount basis “The prices are based on the current rates of Excise Duty viz.....and in the event of any statutory variation in this rate the prices will be adjusted accordingly.”

- b) When the duty is on percentage ad-valorem basis _____% ad-valorem the excise duty at present leviable in this case is _____% on Rs.____-being the unit value of the stores as assessed by the Controller of Excise, _____are.”
- c) Addl. Clause to be incorporated in A/T where tenderer desires statutory variations fro the date of the tender. “The prices are based on the current rate of excise duty viz.....and in the event of any statutory variation in the duty adjustment will be allowed from.....(date specified here should be date of the firm’s tender). Firm’s claim for statutory variations in the excise duty leviable on percentage ad-valorem basis should be supported by the Form I and the Manufacturer’s price list as approved by excise Authorities. The two certificates after payment of excise duty as indicated above is required to be submitted in such cases also”.
- d) Certificates to be produced with the bill for claiming reimbursement of excise duty paid.

(C) SALES TAX

(i) In all cases where it is finally decided to admit Sales Tax, the rate of Sales Tax and the amount payable as Sales Tax should be shown as a separate item in the Acceptance of Tender to enable Controller of Accounts to pay firm’s bill for Sales Tax.

(ii) Applicability of Sales-Tax (whether interstate/intrastate) and whether any forms are to be provided by the Purchaser or consignee should be clearly spelt out.

(iii) In response to firm’s stipulation that Sales Tax will be charged extra, the advance acceptance letter and/or the formal contract (whichever concludes the contract), should provide for Sales Tax at the specific rate. The Sales Tax Clause in such cases should be in general terms that

“Sales Tax will be paid extra. The current rate of Sales Tax applicable is _____(rate applicable at the time of the acceptance of the tender may be shown here)”.

(iv) In cases where the firm's tender stipulated State's Sales Tax or Central Sales Tax at a specified rate, the same specific rate should be stipulated in the document, concluding the contract. (i.e. advance acceptance or formal contract), after verifying that the tax is legally leviable and the rate is correct.

In no case should general stipulation be made in such cases in the document concluding the contract to the effect that Sales Tax will be paid extra but firm's stipulation in the tender for payment (i) a particular type of Sales Tax e.g. 'Bombay Sales Tax', 'State Sales Tax' or 'Central Sales Tax' and (ii) Sales Tax at a specified rate should be stated.

(v) In all cases where stipulation for Sales Tax in the formal contract is subject to legal leviability an amendment has to be issued subsequently mentioning the character of Sales Tax (i.e. 'Bihar Sales Tax' or 'Central Sales Tax' etc.) and the rate of Sales Tax so as to enable Controller of Accounts concerned to make payment.

(D) SALES TAX CLAUSE IN CONTRACTS FOR IMPORTED STORES:

In case where goods ordered are to be imported by the supplier, the following clause should be incorporated in the contract when the firms have stipulated Sales Tax extra in their tender. "Sales Tax if legally leviable will be extra". In other cases the wordings 'If legally leviable' should be avoided and the provision for the actual sales tax which is leviable and the rate at which the same is to be paid should also be mentioned.

11.53 The following clause should be incorporated in the A/T wherever the contractor quotes a price exclusive of Sales Tax:-

"Sales Tax, whether inter-state Sales Tax or inter-state Sales Tax will be paid to the seller at the rate at which it is liable to the assessed or has been actually assessed provided the transaction of sale is legally liable to Sales Tax."

(E) OCTROI AND LOCAL TAXES: The clause as given in Form No.DGS&D-230 may be inserted in appropriate cases.

11.22 TOLERANCE CLAUSE

Where it is proposed to utilise the coverage of additional quantity upto 25% under Tolerance the clause at the time of placement of contract.

The tolerance as contained in the tender Enquiry agreed to by the firm has been utilized and an additional quantity upto 25% of quantity accepted has been ordered in this contract under the said tolerance clause.

When part tolerance is utilized at the time of placing the contract and remaining

This contract is, however, without any detriment or prejudice to the right of the purchaser to place order/orders

tolerance is to be availed during the currency of the contract.

during the currency of the contract at the same rate(s), for the balance quantity upto 25 per cent of the tolerance clause stipulated in the Purchaser's Tender Enquiry.

When full tolerance is to be utilized subsequent to placement of contract but during the currency of the contract.

This contract is, however, without any detriment or prejudice to the rights of the purchaser to place order/orders at the same rate(s) for additional quantities aggregating upto 25 per cent of the quantity stipulated in clause (here indicate the clause of the contract specifying qty. ordered) under the tolerance clause stipulated in the purchaser's Tender Enquiry.

11.23 JURISDICTION FOR SETTLING DISPUTES;

11.23.1 Where a contractor has not agreed to Sole Arbitration Clause-24 of the Conditions of Contract, Governing contracts placed by the Central Purchase Organisation of India the dispute/claims arising out of the contract entered into with him will be subject to the jurisdiction of clause 20 of the Conditions of Contract, Governing contract placed by the Central Purchase Organisation of India . Revised). In the Acceptance of Tender under the heading "Jurisdiction" the following should be inserted:-

"This contract is subject to jurisdiction of Courts at _____ only".

(The name of the place from where A/T is being issued should be inserted in the blank space.)

11.23.2 In so far as contracts entered into with Public Sector Enterprises are concerned the suitable clause should be included in the Acceptance of Tender that in the event of any dispute or difference of Tender that in interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the permanent arbitration machinery set up in the Department of Public Enterprises. If the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

11.24 GUARANTEE/WARRANTY: Unless special terms agreed to DGS&D standard Guarantee/Warranty clause should be made applicable.

11.25 FORCE MAJEURE CLAUSE: As per provisions of the Conditions of Contract, Governing contracts placed by the Central Purchase Organisation of India.

11.26 DESCRIPTION OF STORES: In respect of this clause regarding the description of stores ordered, the following points are to be carefully checked:-

- (i) Whether the description is complete without any mistake.
- (ii) Whether specification/drawings are correctly mentioned.
- (iii) Whether account unit and the quantity ordered, rate per unit and total cost in words and figures including taxes and duties are correctly mentioned.
- (iv) The contract should be signed for and on behalf of appropriate authority.

11.27 ENDORSEMENTS:

11.27.1 Post copies of telegraphic Acceptance and copies of any advance advice of Acceptance of Tender containing the above particulars must be endorsed to various authorities concerned such as QA Wing Officer, consignee, paying authority of the indenter (through Authentication Cell) to enable them to carry out their responsibilities under the terms of the contract. Post copy of telegraphic acceptance and copies of Advance Acceptance Letter, Acceptance of Tender and Amendments thereto intended for the Quality Assurance Officers or the Indenting Department should be sent under Certificate of Posting. Hence such documents should be clearly marked by the Purchase Sections “to be sent under Certificate of Posting” before sending them to the Despatch Section. The Postal Certificate will be retained by the Despatch Section for the record.

11.27.2 All A/Ts issued against “**URGENT**” demands should be prominently marked as such on the top left hand corner in the copies intended for the Quality Assurance Officer the office copy.

11.27.3 The permanent Income Tax Account No. of the firm should be indicated on the endorsement of the contract to the Income Tax Officer.

11.28 INSTRUCTIONS TO THE INDENTOR/CONSIGNEE: Following instructions should be given to the Indentor/ Consignee as a separate Annexure to the contract:-

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

b) Consignee should ensure that as soon as the stores are received by him and brought to account the receipt certificate is completed by him and copies No.2 and 5 of the Inspection Notes are returned to the contractor and the Paying Authority respectively as expeditiously as possible to enable him (contractor) to claim the balance 5 percent payment. Any delay in the issue of receipt certificates results in delay in payment of bills to the contractor.

DRILL TO BE FOLLOWED BY THE CONSIGNEE REGARDING RECEIPT OF STORES:

- (1) The consignee should be watchful regarding the arrival of consignment immediately on receipt of Railway Receipt and despatch details from the contractor.
- (2) In case entire consignment is not received within 30 days of its despatch, the consignee should immediately take up with Railways and lodge claim with them. Simultaneously, the consignee should advise the contractor asking them to take up the matter with the Railways for follow up action.
- (3) The consignee is responsible for taking prompt delivery of the goods immediately on arrival at destination and any delay in this respect results in payment of demurrage charges. Should any demurrage, wharfage or other charges whatsoever be claimed by the Railway on account of delay or default on the part of the consignee in taking delivery as aforesaid, he shall be responsible for such payment to the Railway”.
- (4) Any amount paid by the consignee, due to demurrage charges, under charges etc. on behalf of the contractor should be immediately reported to them, under intimation to the Paying Authority to enable him to retrench the amount from any of the bills due to the contractor.
- (5) The consignee is responsible for verifying at the time of taking delivery from the Railway Authorities that the stores have been received intact without loss or damages. When the stores are dispatched in full wagon loads, consignee should verify that the seals on the wagons are intact.
- (6) The consignee should invariably incorporate a certificate on the Receipt certificates on the following lines:-
“Consignment/s was/were dispatched
under
.....+.....

+ Indicate any one of the following:-

(i) Clear R/R

(ii) Said to Contain R/R

(iii) Railway/Owner’s risk.
- (7) In case the consignee observes some shortage/damage they should ensure to take Open Delivery invariably and lodge the claim with the Carriers immediately under intimation to contractor, DGS&D and the Paying Authority. Failure to act

properly may result in losing their claim of shortage /damage, if any observed at a later date.

- (8) If there is evidence of loss or damage, the consignee should arrange to secure necessary certificates from the appropriate railway officials before taking delivery. The loss or damage should in every case, be promptly reported to the contractor, Purchase Officer who placed order, as well as the concerned Controller of Accounts responsible for payment for the stores as otherwise the consignee will be deemed to have accepted the stores. In any event, the consignee should not give Receipt Certificate to the contractor before checking and verifying the stores.
- (9) The consignee should ensure that any loss or damage to the stores that have occurred during Transit should be notified to the Contractor within 45 days of the date of arrival of the stores at destination. Failure to do so would render Purchaser's claim for such loss/damage being rejected by the contractor.
- (10) If there are any discrepancies such as stores having been damaged, found deficient or below standard, the consignee, after taking into account special terms and condition, if any, that might have been stipulated in the contract regarding responsibility for breakage etc., in transit, should make the endorsement in the space provided in the Receipt Form against "Details of recoveries proposed by the consignees" together with amounts to be recovered from the contractor. Brief reasons as to why the amount is to be recovered from the contractor such as 'bad packing' etc. should be stated as guide to the Paying Authority regarding the action to be taken.
- (11) The consignee will then ascertain from the contractor whether he is going to :-
 - (i) make good any deficiency in store;
 - (ii) carry out rectifications; or
 - (iii) agree to the rectification being carried out by the consignee.

Regarding (i) - in the event of replacement after rejection of stores, the consignee should address a letter to the supplier for replacement giving details of stores rejected and endorse copies to the Controller of Accounts, Department of Supply and the Quality Assurance Officer concerned. On receipt of the copy of the letter, the Quality Assurance Officer will carry out inspection of stores tendered by the firm and issue inspection Notes. The Quality Assurance Officer must mention in the Inspection Note that the stores are supplied in replacement of rejection made against his Inspection Note No. _____ dated _____ as _____ per letter No. _____ dated _____ from _____. The consignee will also as usual, return to the 'firm' the Inspection Notes after making necessary endorsement

and completing the Receipt Certificates there in and the normal procedure for final 100 per cent payments will be followed in such cases.

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

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

- (12) when stores are rejected by the consignee, the officer-in-charge of the premises where the rejected stores are lying will intimate to the contractor the details of such rejected stores as well as the reason for their rejection and that the stores are lying at the consignee's premises at the risk and cost of the contractor. He will also call upon him either to remove the stores or to give instructions as to their disposal within 14 days, and in the case of dangerous, infected and perishable stores within 48 hours, failing which the consignee will either return the stores to the contractor freight to pay or otherwise dispose of them at the contractor's risk and cost. The consignee will intimate to the Pay & Accounts Officer, Department of Supply, the quantity of the stores rejected to enable him to recover the freight due at the full public tariff rate from the contractor. The incidental charges, if any, recoverable from the contractor should also be intimated.
- (13) Where stores are rejected on arrival on destination, these will be re-booked to, the contractor, if he so desires, "Freight to Pay" at Public Tariff rates.
- (14) Where the rejected stores are returned as above, and goods are not required to be replaced, the freight paid by the consignees, if any, on the original consignment will be recovered from the contractor either in cash or from their bills. In case original consignment was booked at concessional rate, the charges actually incurred by the consignee only will be recovered. If the contractor does not want the consignment to be re-booked, and the original consignment was booked at concessional tariff, the contractor shall be liable to pay the difference between the public tariff and the concessional tariff.
- (15) If the contractor on receipt of Notice/Intimation from the Quality Assurance Office does not remove or refuses to remove the stores and instead institutes a suit/initiates a reference to arbitration challenging the rejection of stores by

the Quality Assurance Office /Government may have to move an application for the disposal of stores through court as per following provisions of the C.P.C. and Arbitration Act:-

(i) Civil Suit: An application may be moved under

order XXXIX R 6 P.C.

(ii) Arbitration Cases: An application may be moved in the court under Section 41 & para 1 of Second Schedule of Arbitration Act read with order R 6 CPC.

- (16) The Inspectorate/Consignee will immediately on receipt of any such intimation write to the DGS&D for taking appropriate action in the matter.
- (17) In case Police/S P E seizes the stores and in the meanwhile keeps it under supervision of the Inspectorate/Consignee, they should press the Police/S P E to apply to the court and obtain appropriate orders with regard to its disposal.
- (18) The Ministry of Law should invariably be consulted to consider the question whether or not appropriate orders of the court should be obtained for the disposal of the goods during the time, the stores are kept in the custody of the Inspectorate/Consignee, they should exercise as much care as is expected of reasonably prudent man in respect of his own goods.

11.29 INSPECTION BY CONSIGNEE: Where the consignee himself acts as the Quality Assurance Officer, following instructions are to be noted:

- (i) The consignee must obtain from the concerned Purchase Officer of DGS&D who have placed the contract the requisite copies of the Inspection Note Forms. The Inspection note, the continuation sheets of the Inspection Note and the Receipt Certificate portion of the Inspection Note should be prepared and signed in ink.
- (ii) Copy No.1 and Copy No.2 of the Inspection Note are Accounts Office Copies against which payment is made by the Pay and Accounts Office. The words 'Accounts Copy No.1 ' and 'Accounts Office Copy No.2' should be attested with full signature in ink.

CHAPTER -12

DELIVERY DATE IN CONTRACTS / PROGRESSING OF SUPPLIES / REVIEW OF PERFORMANCE

12.1 ACKNOWLEDGMENT OF CONTRACT: The purchase officer has to ensure that the contracts placed are duly acknowledged by the contractor. If no acknowledgment 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 the matter pursued till acknowledgment is received.

12.2 PERFORMANCE SECURITY – COMPLIANCE THEREOF:

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

12.3 DATE OF DELIVERY-ESSENCE OF CONTRACT:

12.3.1 As per clause 14(4) of the General Conditions of Contract (Form DGS&D-68 (Revised) the time for and the date of delivery of stores stipulated in the contract shall be deemed to be the essence of the contract, it is 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.

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

12.3.3 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.

12.4 DEFINITION OF DELIVERY DATE: Delivery date in respect of contracts placed by the Directorate General of Supplies and Disposals shall be deemed to be as follows depending upon the terms of delivery specified in the contract.

TERMS OF DELIVERY

DATE OF DELIVERY

(a) Local Delivery

The date on which the delivery is actually effected to the consignee.

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

12.5 CLASSIFICATION OF INSTALMENT DELIVERY CONTRACTS: A contract in the sale of goods to be delivered by instalments may be:

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

ILLUSTRATIONS

- (i) **Entire Contract:** “Delivery to commence after 45 days within 3 months @ 20,000 units per month i.e. 31.3.99 or earlier.

(ii) Several contract

Delivery date : 7410 units by 15.2.99. 8510 units by 31.3.99”.

According to legal advice, in the case of a severable contract, each instalment constitutes a separate contract and extension in delivery period would be necessary for each instalment separately. If stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period being given with reservation of right to liquidated damages the purchaser will not be legally entitled to claim the liquidated damages. Therefore, in case of contracts provided for delivery in instalments(i.e. the severable contracts) purchase officers should grant extension in delivery period in standard form (DGS&D – 160) wherever there is delay in supplies against individual instalments.

12.6 GRACE PERIOD:

12.6.1 The General Conditions of Contract- DGS&D-68 (Revised) Clause 14(8) provides a grace period of 21 days automatically in all the contracts, unless specifically allowed. For cases where grace period is not to be allowed, the related instructions are available in Chapter-7.

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

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

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

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

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

12.7 PROGRESSING OF SUPPLIES/REVIEW OF PERFORMANCE:

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

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

12.7.3 Each purchase officer upto the level of DDG will keep special watch for contracts relating to;

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

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

12.7.5 The purchase officers may ascertain the supply position in the contract through Junior Field Officers at Head Quarters/Regional Offices by follow up action orally and ensure that the supplier takes necessary action. In terms of DGS&D Enquiry conditions the suppliers are bound to provide information concerning the contracts as required and enquired through Junior Field Officers.

12.8 REVIEW OF PERFORMANCE:

12.8.1 At the end of each month the MIS Directorate is required to forward to the Purchase Directorate lists of Acceptance of Tenders where the delivery dates are due to expire within next two months.

12.8.2 On receipt of the statement from MIS Directorate of the Acceptance of Tenders where delivery dates are due to expire in the next month, Purchase Officers should immediately review the purchase files and if supplies have not been completed against any Acceptance of Tender as per records that he has on the files, issue a registered letter (well within the contract delivery period) to the firm asking them to intimate within 15 days before the expiry of the contract delivery date, whichever is earlier the prospect of supplies. This letter will be issued without prejudice to Purchaser's right in terms of the contract. A copy of this communication may be endorsed (not on original) to the indenter/consignee asking for confirmation whether stores are required and extension may be granted for a reasonable period.

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

12.8.4 The purchase officer should watch for the response to the above communication for taking further course of action.

12.8.5 The base officer may scrutinise the statements produced by MIS Directorate and put up to Director of Supplies indicating the course of action.

12.9 OPTIONS AVAILABLE TO PURCHASER IN CASE OF NON MATERIALISATION OF SUPPLIES WITHIN THE CONTRACT DELIVERY PERIOD: When the supplies do not materialize by the stipulated contract delivery date, the purchaser has the following options depending upon the conditions/circumstances of the case:

- (i) To extend the delivery date,
- (ii) To refix the delivery date
- (iii) To cancel the contract and to re-purchase the unsupplied quantity.

12.10 POINTS TO BE CONSIDERED FOR EXTENDING THE DELIVERY/OR TO CANCEL THE CONTRCT: Whether the extension of delivery date is to be granted as asked for by the supplier or the contract may be cancelled, would be decided on the merits of each case. The purchase officer has to balance time factor required for making repurchase and the needs of the indentor i.e. whether supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative sources and in the latter case whether the indentor can reasonably wait to take advantage of lower trend in prices.

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

12.11 REFIXATION OF DELIVERY DATE: Normally, in the following categories of cases the delivery period should be refixed.

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

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

ILLUSTRATION: It is proposed to refix the delivery period in respect of the outstanding quantities in the following manner.

In an entire contract the delivery date was to commence supply after 45 days from the date of receipt of approval of the advance sample and to be completed within 3 months @ 5 Nos per month.

When there was delay in the submission of the advance samples, it was proposed to refix the delivery period in the following manner:-

“Supplies to commence from.....as follows:-

X Nos. by.....

Y Nos. by.....

Z Nos. by.....

Re-fixation of delivery period in the above manner in the case of ‘entire’ contract would not be in order. The delivery period should be refixed in the following manner:-

“Supply to commence from.....(date) @ X Nos. per month and to be Completed by.....(date)”

12.12 EXTENSION OF DELIVERY PERIOD

12.12.1 ESXTENSION OF DELIVERY DATE TO BE ONLY WITH THE EXPRESS CONSENT OF THE SUPPLIER: Extension of delivery date amounts to changing the terms of the original contract and such an extension can be only with the consent of the parties i.e. the purchaser and the supplier. Extension granted without any application on the part of the contractor has no effect in law and does not bind the contractor. Therefore, the purchaser would have to consider the question of granting extension of the delivery date on a specific request form the contractor as well as formal acceptance by the contractor thereof. This is necessary to avoid litigation.

12.12.2 CONSIDERATION OF REQUEST FOR EXTENSION In response to our follow up actions, the firm asks for extension of delivery period, the purchase officer can take further action to grant extension of delivery date

12.12.3 An extension is binding on the supplier firm if it is granted on the same terms as asked for by the firm. While granting extension of time on application from the contractor, the letter and spirit of the application should be kept in view in fixing the extended time for delivery.

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

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

12.13 EXTENSION OF DELIVERY DATE TO BE WITH R/R AND DENIAL CLAUSES:

12.13.1 The purchase officer within whose powers the value of the Acceptance of Tender falls will be competent to consider requests for extension and to decide whether the extension of time should be given. Such extension in delivery period will be given by the competent purchase officer by reserving the right of the purchaser to levy liquidated damages for delay and with denial of increase in price, taxes, duties etc. taken place during the extended period. These are called R/R and denial clauses.

12.13.2 Standardised form of extension letter (Form DGS&D 160) is given in [Annexure-28](#). In the case of contracts of imported stores on F.O.B./F.A.S. terms of delivery basis, the form given in [Annexure-29](#) should be used.

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

12.13.4 Such an intimation should be given to the Inspectorate even in cases where the delivery date has not expired so that the Inspector is forewarned.

12.14 PERFORMANCE NOTICE- NOTICE-CUM-EXTENSION LETTER:

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

In case it is considered expedient to give further extension in delivery period in a bonafide effort to procure the stores the purchase officer may do so by issuing **NOTICE-CUM-EXTENSION LETTER (PERFORMANCE NOTICE)** in the form as per [Annexure-30](#). If there is no response within 15 days, notice may be issued to the firm in the manner as provided for in [Annexure-31](#). If the contractor does not acknowledge/communicate acceptance of the extension-cum-performance notices, the Purchase Officer would then be in a position to cancel the contract after the aforesaid 15 days notice period, in which case the date of breach will still remain the originally agreed delivery date.

12.15 CONSULTATION WITH INDENTOR FOR GRANTING EXTENSION IN DELIVERY PERIOD: DGS&D are authorized to grant extension in delivery period of three months without consulting the indentors unless an indication to the contrary has been specifically given by the indentor in his indent that prior consultation is essential before granting extension in delivery period. This

provision is not applicable in the case of urgent tenders in which case prior consultation of the tenderer would be required before granting extension of delivery date.

12.16 EXTENSION OF DELIVERY PERIOD IN CASES WHERE DOWNWARD TREND IN PRICES IS INDICATED:

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

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

12.16.3 In case the amount of the pre-estimated damages does not cover the total cost differential on account of lower trend observed, then the lower price should be counter offered to the firm. Where there is a range of lower price available, the competent purchase officer in consultation with Finance will determine the price to be counter offered to the firm keeping in view the rate at which the maximum quantity has been covered, the delivery which the maximum quantity has been covered, the delivery schedule, capacities of lower quoting firms etc. such counter offer should be sent in standard format given in [Annexure-32](#). The Ministry of Law have opined that communication in this form is not likely to have the effect of keeping the contract alive.

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

12.17 INTIMATION OF LOWER TREND IN PRICES TO THE Quality Assurance Officer

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

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

12.18 GUIDELINES FOR DETERMINING THE LOWER TREND IN PRICES: In the light of the case law opined by the Ministry of Law from time to time the following guidelines are indicated in determining the lower trend in prices.

- (a) The quantity in the lower priced contract should be comparable with the existing contract.

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

12.19 EXTENSION OF DELIVERY PERIOD IN INSTALMENT DELILVERY CONTRACTS: According to legal advice, in case of contracts provided for delivery in instalments (severable contracts), each instalment constitutes a separate contract and the purchase officer should grant extension in delivery period as per standard format wherever there is delay in supplies against individual instalments.

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

12.20 INSPECTION OF STORES AFTER THE EXPIRY OF THE DELIVERY PERIOD OF A PARTICULAR GIVEN INSTALMENT:

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

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

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

Illustration: A contract provides instalment delivery of 10,000 nos. in March, 1999, 10,000 nos. in April, 1999 etc. and the contractor defaults to supply anything in the month of March, 1999 and tenders some quantity for inspection in the month of April, 1999.

The purchaser has the right to cancel the contract in respect of instalment due in March, 1999 in respect of which the default has already taken place and to reappropriate the stores offered towards the instalment due in April, 1999.

For this purpose, it is necessary that a letter of cancellation in respect of the defaulted instalment is issued at the time of acceptance of the part delivered stores if not already done or soon thereafter making it clear that appropriation of the stores is in respect of the April, 1999 instalment only.

12.20.4 The Quality Assurance Officer should also inform the firm in writing that the stores tendered in the month of April, 1999 are being accepted for inspection against the instalment due for that month and the acceptance of the same is without prejudice to the purchaser's right to cancel the instalment due in the month of March, 1999.

12.20.5 The Quality Assurance Officer may accept the stores after the expiry of the delivery period of a particular or given instalment but should frank the Inspection Notes with a stamp:-

“Without prejudice to the right of the purchaser under the contract and under the law”. It may be noted that the grace period (wherever there is a provision for the same in the contract) will not be available for the purpose of tendering stores for inspection”.

12.21 REFIXATION / EXTENSION OF THE DELIVERY PERIOD IN CASES WHERE THE SUPPLIES WERE TO COMMENCE AFTER APPROVAL OF THE ADVANCE SAMPLE.

12.21.1 CASES WHERE THERE IS DELAY ON THE PART OF THE FIRM IN SUBMITTING ADVANCE PILOT SAMPLE: In cases where the pilot samples are required to be submitted within the period stipulated in the Acceptance of Tender, the firm would have committed a breach of the contract if they had not supplied acceptable pilot sample within the time limit allowed to them in terms of the contract. In such cases if any extension of time limit is asked for by the firm for submission of the advance sample and if request for the same is to be accepted and it is decided not to cancel the contract on account of breach, the delivery period can be extended subject to the denial clauses. But before doing so, the firm will be addressed by a letter by adopting the format in [Annexure-33](#) with necessary changes, and based on the firm's response the delivery period may be extended, subject to the denial clauses, being agreed to by the firm.

12.21.2 CASES WHERE ADVANCE SAMPLE IS SUBMITTED IN TIME BUT REJECTED : There may arise cases where advance samples submitted by the firm within the prescribed time limit are rejected and the firm come up with the request for extension of time limit for the submission of fresh samples and extension is granted in such cases. Consequently, the delivery period would have to be refixed/extended with reference to the date of submission of fresh advance samples and their acceptance. Each case will have to be decided on its merit whether the delivery period be refixed or extended with R/R and denial clauses. Under the provisions of clause-9 of the General Conditions of Contract (Form DGS&D-68 Revised), if the Secretary is satisfied that a reasonable ground for extension of time exists, he may allow such additional time as he may consider justified for submitting the advance sample, and his decision shall be final. The aforesaid clause goes on to say that the extension of time may be granted on such conditions as Secretary deems fit.

The terms and conditions on which extension of time limit for submitting the advance sample is granted to the firms may vary depending on the working of the

delivery clause in each case and it may not perhaps be so advisable to impose in all cases R/R and denial clauses. Each case will have to be dealt with on its facts and circumstances. If terms and conditions incorporated in the letter of extension are accepted by the firm concerned within the period indicated in the letter, the firm will be bound by the same. If on the other hand, the firm does not concur, the Department should take steps to cancel the contract treating the date fixed in the Acceptance of Tender, within which a satisfactory advance sample should have been submitted, as the date of the breach of the contract.

Accordingly, whenever an extension of time is granted for the submission of fresh sample in a case where advance sample has been rejected the Purchaser should address a letter to the firm in the proforma given in [Annexure-34](#) and based on the firm's response and circumstances of the case necessary action to extend the delivery period with or without reservation will be taken.

12.22 FOLLOW UP ACTION AFTER ISSUE OF EXTENSION LETTERS:

12.22.1 An extension letter as issued in standard form i.e. (DGS&D-160) can operate only if there is an acceptance, absolute and unqualified to all the terms and conditions of extension. Such an extension can be evidenced either by correspondence or by conduct i.e. by making supplies without raising any objection. Mere acknowledgement of the letter of extension is not adequate.

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

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

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

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

- (i) Each Assistant Director/Section Officer should maintain a register showing the A/T No. name of the firm, original delivery period, extended delivery period as granted and remarks and make a note in

the Register for review on a suitable date so that each case may be reviewed after 15 days of issue of extension letter to watch the acknowledgement and the prospect of supplies.

- (ii) If as a result of review, it is found that the extension letter has neither been acknowledged unconditionally, nor acted upon by the supplier, a notice as per standard letter ([Annexure-31](#)) should be issued.
- (iii) In the event of failure of the supplier to acknowledge the acceptance of the extension letter by the date mentioned in the notice or his failure to act on the extension letter, the Purchase Officer should proceed to cancel the contract for breach and after ascertaining from the Quality Assurance Officer that no supplies have been either made or tendered for inspection after the last agreed delivery period. This, action is necessary because if the officer had already accepted the stores for inspection, by his conduct the contract has been kept alive and the cancellation letter will not be of any effect. Besides, the purchaser become liable for damage for breach of contract.

12.23 EXTENSION OF DELIVERY PERIOD FOR REPLACEMENT CONSEQUENT TO REJECTION OF STORES BY THE CONSIGNEE :

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

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

12.24 EXTENSION OF DELIVERY PERIOD NOT NECESSARY FOR REPLACEMENT IN PURSUANCE OF THE WARRANTY/GUARANTEED CLAUSE

12.24.1 In certain cases claim may be made for replacement of stores under conditions of warranty either implied or express contained in the contract after issue of the certificates by the consignee or Inspector in token of receipt of stores in good condition. There are two types of warranties, namely –

- (i) Contracts containing general warranty clause in which a time limit has been fixed within which the supplier may be called upon to rectify the goods/stores/articles or such portion or the purchaser within a reasonable period; failing which the purchaser is vested with a right to claim damages.

- (ii) Contracts containing special warranty/guarantee clause dependent upon the nature of the product incorporated either at the instance of indentors or otherwise. In such cases, claiming of replacement/rectification and or damages is governed by such warranty/guarantee clause.

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

12.24.3 For plant and machinery calling for installation and commissioning the guarantee period starts from the date of taking over the equipment. In these cases also, extension of delivery date is not necessary in so far as replacement are concerned.

12.25 EFFECT OF CORRESPONDENCE WITH THE SUPPLIER AFTER BREACH OF CONTRACT:

12.25.1 It is permissible to ask for some information regarding past supplies etc. at the same time making it clear to the party that calling of such information is not intended to keep the contract alive and it is does not to waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. For this purpose, the letter should be addressed in the proforma given in [Annexure-34](#) by the consignee to ascertain supply position and as per proforma [Annexure-35](#) by DGS&D to ascertain the supply position.

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

12.25.3 When oral enquiries are made by the Junior Field Officers, the Ministry of Law have held that there is no positive contact which can be established by documentary evidence. it would be reasonable view to take that the conduct does not amount to waiver of the right to treat time/extended time as the essence of the contract. The purchase officers may, therefore, ask the regional progress officers in the region for deputing the Junior Field Officer to follow up with the firm orally and ensure that the supplying firm takes necessary action. While following up the matter with the firm, the field officer should make it absolutely clear to them that he is making the enquiry without prejudice to the rights of the purchaser and that he will communicate the position to the purchase officer.

12.26 INSPECTION OF STORES TENDERED AT THE FAG END OR LAST DATE OF DELIVERY PERIOD: As far as possible, the inspection should be commenced and finished during the validity period of the contract and Inspection Notes issued. In such cases, there would be no question of keeping the contract alive and no occasion of franking the Inspection Notes will thereby arise.

In cases where the contractor offers stores for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should also be, made, by the Quality Assurance Officer to commence the inspection before the expiry of delivery period.

In cases where it is not possible to commence/conclude the inspection before the expiry of the delivery period, the Quality Assurance Officer should immediately on receipt of the intimation or request for inspection of the stores, bring to the notice of the contractor orally as well as in writing that the stores have been submitted for inspection at the very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.

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

The Quality Assurance Officers should invariably issue such notices to avoid the contract being kept alive before the inspection is concluded after the expiry of the delivery period. In such cases where the inspection is commenced before the expiry of the delivery period, a notice is sent to the supplier as in para 12.14 above, and the Inspection Note is issued after the expiry of the delivery period, the Inspection Note, whether accepting or rejecting the stores, should be duly franked as per the standard franking clause as an abundant precaution against keeping the contract alive.

The standard Franking clauses to be used by the Quality Assurance Officers are given below:-

(a) FRANKING CLAUSE TO BE ADOPTED IN THE CASE OF ACCEPTANCE OF STORES.

“The fact that the stores have been inspected after the delivery period and passed by the Quality Assurance Officer will not have the effect of keeping the contract alive. The stores are being passed without prejudice to the rights of the purchaser under the terms and conditions of the contract.”

(b) FRANKING CLAUSE IN THE CASE OF REJECTION OF STORES:

“The fact that the stores have been inspected after the delivery period and rejected by the Quality Assurance Officer will not bind the purchaser in any manner. The stores are being rejected without prejudice to the rights of the purchaser under the terms and conditions of the contract.”

12.27 REPLACEMENT SUPPLIES – CIRCUMSTANCES UNDER WHICH THE CLAIM FOR REPLACEMENT SUPPLIES OF ANY CORRESPONDENCE TENDS TO KEEP THE CONTRACT ALIVE: Clause 14(2) of DGS&D-68 (Revised) read with clauses 4 and 19 thereof would imply that the delivery is completed when the consignee certifies that the stores have been supplied in all respects in conformity with the terms and conditions of the contract and that these have been received in good condition.

The above consignee’s certificate is recorded on copy Nos. 2 and 5 of the Inspection Note. Thus once that consignee has formally received the stores and issued the

receipt certificate, the delivery of stores is deemed to be completed. In case of Plant & Machinery, etc. the issue of the taking over certificate by the Quality Assurance Officer as provided in Clause-17 of DGS&D-71 etc. will mean completion of delivery.

Therefore, the purchaser, the Quality Assurance Officer or the consignee should not enter into any such correspondence as would have the effect of keeping alive the contract with the supplier from the date of expiry of the agreed delivery period, till the issue of the consignee's receipt certificate or taking over certificate by the Quality Assurance Officer. Any request for effecting replacement of the stores during this period will tend to keep the contract alive and replacement supplies made after expiry of the delivery would involve extension of delivery period and inspection also.

12.28 DESPATCH OF STORES AFTER THE EXPIRY OF THE DELIVERY PERIOD :

12.28.1 In terms of Enquiry and Contract Conditions the supplier shall not despatch the stores 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 the purchaser either in respect of the cost of the stores dispatched or any other expenses which the supplier may have incurred. The purchaser shall, however, has a right to cancel the contract in terms of clause 14(7) of DGS&D-68 (Revised). It shall be no Defence that the consignee has taken delivery of stores dispatched by the supplier without getting an extension letter and therefore the contract has been kept alive.

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

12.28.3 If consignee requires the stores he may accept and inform DGS&D to extend the delivery period. Any such extension will be subject to applicability of denial clauses and rights to claim damages for delay in supply.

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

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

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

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

12.30 GENERAL INSTRUCTIONS

12.30.1 Bad performance of the registered firms should be reported to the concerned registering authorities.

12.31 PROCEDURE FOR NOTING DOWN CHANGE IN CONSTITUTION RESULTING IN CHANGE IN THE NAME :

- (i) In case the firm is unregistered the Purchase Section will ask the contractor to furnish complete list of A/Ts which are proposed to be transferred in the name of the newly constituted firm. Simultaneously, the Purchase Section will satisfy itself about the financial position of the incoming firm.
- (ii) The above action in respect of registered firms will be taken by the Registration Section for consideration of registering the incoming firms.
- (iii) In respect of both registered/unregistered firms, the Purchase Section will ask the outgoing and incoming firms to execute a tripartite agreement to be countersigned by the Additional Director General (Supplies) on behalf of the Director General of Supplies & Disposals in the prescribed form as per [Annexure-35A](#) placing on the incoming firm the onus for the proper execution of the outstanding orders. After the said agreement is properly executed, the firms would be informed that they would be treated as contractor in respect of the outstanding A/Ts (a list of which should be given) and they would, in future, duly discharge perform and observe all the liabilities, obligations and stipulations of the assignor company. A copy of this communication with a list of A/Ts against which payment and/or supplies are outstanding should be endorsed through the Authentication Officers concerned to the Chief Controller of Accounts, who will take necessary further action without waiting for formal amendments to the individual A/Ts. All other concerned should also be informed by the Supply Section through a letter individually in respect of each A/T. A tripartite deed is not required where the outgoing firm does not have any contracts pending for execution and/or payment.

CHAPTER -13

RATE CONTRACTS

13.1 DISTINCTIVE FEATURES :

13.1.1 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 firm. A legal contract would come into existence with the placement of individual order (Supply Order) and each such supply order will constitute a separate contract.

13.1.2 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.

13.1.3 The supply orders can be placed on any of the rate contract holding firm(s) either directly by the authorized officers of the indentors (known as Direct Demanding Officers) or by the DGS&D subject to such restrictions as are mentioned in the rate contract.

13.1.4 A Supply Order may be placed upto the last date of the currency of the rate contract but should not be placed after expiry of the rate contract. No extension of validity period of the rate contract itself is required when deliveries against outstanding supply orders continue even after expiry of the validity period. The Rate Contract will remain alive for purpose of delivery for all the stores ordered during the currency of the Rate Contract until deliveries have been completed.

13.1.5 Being a standing offer a rate contract can be revoked at any time during its currency by the rate contract holder. Similar rights can be exercised by the DGS&D as a purchaser i.e. DGS&D can legally cancel the rate contract at any time during the currency of the contract giving a reasonable opportunity.

13.2 STORES FOR WHICH RATE CONTRACTS TO BE CONCLUDED:

13.2.1 The items which fulfil the following criteria are considered for rate contract;

- a) Items of standard types preferably having BIS specifications.
- b) Items which are identified as common user items and are needed on recurring basis.
- c) Items for which prices are likely to be stable and not subject to considerable market fluctuations.
- d) However, there are certain items which are common and in regular demand and are material intensive prices of which 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 R/C is convenient to operate. For instance, in the case of items of low value and which are required by indentors in small quantities, rate contracts may not be convenient to operate.
- f) Items with an estimated annual drawals of Rs.25 lakhs or more.
- g) As many items as possible should be on rate contract.
- h) Rate Contract may not be concluded for the scarce/critical/short supply items.

13.3 AUTHORITY COMPETENT TO BRING/DELETE AN ITEM ON RATE CONTRACT

13.3.1 The decision to bring or delete an item on / from rate contract will be taken by the Standing Review Committee (SRC) under the Chairmanship of DG(S&D) except for those items which were earlier brought on rate contract or deleted from the rate contract on the directions of Department of Supply. In all such cases subsequent decision to delete or bring an item on rate contract will be taken by the Standing Review Committee with the approval of Department of Supply.

13.3.2 The Committee associates representatives from major indenting departments like Defence, Railways, Home Affairs, Health, Telecommunications, State Governments and Trade organizations.

13.3.3 The above Standing Review Committee will be assisted by a Sub-Committee under the Chairmanship of ADG(Supplies) with Director (CDN) as Member-Secretary. The Sub-Committee may co-opt representatives from major indentors and one representative from trade as members, if considered necessary.

13.3.4 The suggestions to bring new items on rate contract will be sent to /received by the Member-Secretary who will place them before the sub-committee for consideration. If the item is considered R/C – worthy by the Sub-Committee, it will be allotted to the Purchase Directorate.

13.3.5 The concerned Purchase Directorate will collect the data related to the suggested item for its compliance with the criteria prescribed for bringing the item on rate contract. They would interact with Quality Assurance Wing to finalize the specification for the item suggested.

13.3.6 Where it is considered necessary to consult the Industry/likely DDOs the Purchase Director concerned shall call for a meeting at the competent level with the trade/industry/likely DDOs associating the QA Wing.

13.3.7 In cases in which there exists slight divergence standard, efforts should be made to secure codification and standardization and when standardization has been effected, such stores should be recommended to be purchased on the basis of rate contracts.

13.3.8 The data so collected will be forwarded to the Member Secretary for perusal by the Sub-Committee. The Sub Committee will scrutinize the data to check whether the suggested item could be brought on rate contract and place its recommendations before the Standing Review Committee for its considerations and approval.

13.3.9 Once an item is approved by SRC, fresh approval of SRC is not required for each and every size/capacity of items to be brought on rate contract. Directorate may conclude rate contract as long as criteria are satisfied keeping in view the broad category of item already stands approved by SRC.

13.3.10 The Sub-Committee may meet once in a month to take a view on the items already projected and submit their report to DG. The Standing Review Committee may meet once in a quarter.

13.4 STATUS OF FIRMS FOR AWARD OF RATE CONTRACT

13.4.1 Rate contract shall be awarded to the firms registered with DGS&D/ NSIC. The firms getting registered within 90 days from the date of tender opening will also be considered if their offer is otherwise eligible. The guidelines given in Chapter – 9 in determining the status of a firm as registered supplier may also be referred to.

13.4.2 For the items required by Defence as per Defence Specification, firms registered with DGS&D/NSIC based on capacity verification by Defence Quality Assurance Authority will qualify for the award of the rate contract. Firms who are registered/approved for Defence Quality Assurance Authorities directly will also qualify for award of Rate Contract.

13.4.3 In respect of new items being brought on rate contract for the first time, the policy of awarding rate contract only to registered firms will be relaxed and rate contracts for such items will be awarded to unregistered firms also on the basis of favourable technical capacity and financial capability. Such relaxation will be applicable for the first rate contract only.

13.5 ALLOTMENT OF SERIAL NUMBER OF RATE CONTRACT :

13.5.1 MIS Directorate will notify in advance in the first fortnight of January each year the Rate Contract numbers to be allocated to the next rate contracts during the year. A consolidated statement of all the items shall be prepared by them and circulated to all the Purchase Officers and QA Wing officers indicating the file No. to be allocated as also the expiry date/estimated drawals of the current rate contract.

13.5.2 In respect of New Items cleared by SRC for bringing on rate contract the concerned Purchase directorate will refer the case to MIS Directorate for allotment of number for the proposed new rate contract with the following particulars :

- (i) Contract period
- (ii) Description of item
- (iii) Approximate value of drawal

13.6 CHECKING OF TECHNICAL PARTICULARS :

13.6.1 QA Wing shall communicate to the Purchase Wing the specifications to be adopted for the next rate contract prior to the date initiation of proposals are due. For this purpose, QA Wing shall obtain a copy of the last checked particulars and keep on updating as and when necessary. Where the special capacity report is required for an item, the same should be specifically stated in the checked technical particulars.

13.6.2 Where, however, the Purchase Officers by virtue of feed back from industry and the DDOs through the operation of the current R/C feel it necessary to refer to the QA Wing, they may do so. In that case, QA Wing shall arrange to normally forward the vetted specifications to the Purchase Wing within 10 days. Instances may arise where some major changes in the specifications are called for requiring references to other agencies, then the QA Wing may consider advising the Purchase Wing to proceed with the R/C based on the specifications already available and the revised specifications can be adopted for the next R/C.

13.6.3 Wherever the specifications adopted are of other organizations like Defence, then it shall be the responsibility of the Purchase Wing to take appropriate action to ensure that the specifications to be adopted are available well in time.

13.7 PLANNING NOTE :

13.7.1 A planning note should be submitted by the base officer after allotment of serial number to the rate contract and checking of technical particular. The planning note should cover following details :

(A) EVALUATION OF CURRENT RATE CONTRACT

- (i) Based on the drawal reports submitted by rate contract holders, Purchase Directorates should analyse carefully and where performance is not considered satisfactory, the difficulties faced by the firms, if any, in effecting supplies should be ascertained. In case, on such examination, it is observed that performance against Rate Contracts is not satisfactory and is primarily due to non-availability which are in short supply and are scarce/critical, the desirability of continuing the item on rate contract should be considered.
- (ii) Where the performance have been satisfactory and did not pose any problems rte contract for the item may continue.
- (iii) The items where the demand outstrips production may be taken out of the list of items for Rate Contracts.
- (iv) Items in respect of which there has been fluctuations in the price of raw-material may also be taken out of the Rate contract.
- (v) Items already available on rate contract may be considered for deletion if annual drawal of the item in the past three consecutive years fall short of Rs.25 lakhs in each year.

- (vi) In case it is decided to discontinue the R/C, the approval of SRC should be obtained.
- (vii) The DDOs against that particular rate contract are required to be informed well in advance in the event of its discontinuance.

(B) ADHERENCE TO TIME SCHEDULE

- (i) Planning note should indicate due dates for each activity as per time schedule laid down vide [Annexure – 36](#) for timely conclusion of rate contract.
- (ii) If it is felt that some adjustment of time schedule is necessary based on the experience gained in the past, the same may be adhered to with the approval of the competent authority to ensure that the Rate Contract is concluded well before it expires.

(C) SPECIFICATION

- (i) Details as vetted by the Inspection Authority should be discussed on the planning note. It should also bring out the requirement of Tender Sample/Advance Sample/ Special Capacity Reports on DGS&D/NSIC registered firms in respect of certain category of items as suggested by the Inspection Authority.
- (ii) If the stores are to be procured as per BIS specification it may also be decided at the planning stage whether stores with ISI mark only are to be procured. Depending upon the planning decision suitable clause should be incorporated in the tender enquiry/ and resultant contracts.

(D) PRICE

- (i) If it is decided to allow price variation relating to raw-material, it is required to indicate in the tender enquiry the base price on which the firm should offer their prices. The planning note should discuss the base price and the variation clause on which the tenders will be invited for consideration and approval of the competent authority.
- (ii) With the decontrol of prices in line with the liberalized economic policy of the government, price variation allowed in certain items based on government controlled prices have lost their significance. Efforts should be made to conclude rate contracts on firm price basis. In respect of such decontrolled items, however, in individual cases, where price variation is to be allowed, the approval of Department of Supply should be taken. Where, however, the base for price variation has already been approved by the department linked to prices announced by PSUs, DG(S&D) in consultation with the Finance would be competent.

(E) ANTICIPATED DRAWALS

- (i) For an item being brought on rate contract for the first time duly approved by SRC, the drawals projected to SRC are only to be taken as an indicative figure. The concerned Purchase Directorate should make a thorough assessment of the likely drawals based on all the information available .
- (ii) In respect of items already on rate contract, the estimation of the anticipated drawals shall take into consideration following factors :
 - (a) Escalation in prices;
 - (b) Likely increase/decrease in demand; and
 - (c) Slippage on account of failure to meet the demand.
- (iii) Where there is down ward trend in drawals, the estimate may be arrived at on the basis of the current R/C annual drawal plus 10% thereof. Where there is an upward trend in drawal, the estimate may be arrived at on the basis of the current R/C annual drawal plus 25% thereof.
- (iv) The downward trend may be taken where the current R/Cs annual drawals are less than the average Annual drawals of the last 3 years, and upward trend may be taken where the current R/Cs annual drawals are more than the average annual drawals of the last 3 years.

(F) EXPECTED LEVEL OF PERFORMANCE OF CURRENT RATE CONTRACT HOLDERS

- (i) The past performance of a firm will be one of the consideration in awarding fresh rate contract to the firm. The minimum level of expected performance against the current rate contract on the cut off date should be decided at the planning stage.
- (ii) In addition the firms holding the rate contract immediately preceding the current one should not have the backlog exceeding 5% of the total quantity ordered against such rate contracts on the cut off date. Further it is expected that there will be no backlog in respect of earlier rate contracts.
- (iii) The cut off date is to be indicated in the tender enquiry allowing a minimum of 21 days prior to the tender opening date. This date should be either the 15th or the last date of the month.
- (iv) The above criteria decided in the planning stage should be indicated in the enquiry so that rate contract holding firms are aware of the same to enable them to qualify for consideration of next rate contract.

(G) PAYMENT TERMS

- (i) As per DGS&D – 69 containing the conditions governing Rate Contracts, the payment terms are 98% on proof of inspection and despatch and balance 2% on receipt of stores by consignee.
- (ii) At the time of planning any change required in the standard terms of payment should be discussed for consideration and approval of the competent authority.

For example: in respect of complaint prone items to be identified by the Purchase Directorate where the quantity of rejection by the consignee is between 5% to 10% and replacement of rejected quantity is difficult, the payment terms should be 90% on proof of despatch and balance 10% on receipt of consignee's receipt certificate. In case the complaints continue to persist, question of making payment only after receipt of consignee's certificate may be considered. Approval of the Department of Supply will be required where it is decided to make payment only after receipt of consignee's receipt certificate.

- (iii) Any such change in payment terms as decided with the approval of competent authority has to be clearly indicated in the enquiry.

(H) RATE CONTRACT PERIOD

- (i) Normally the period of rate contract is limited to one year, but in special cases a shorter or longer period may be considered.
- (ii) As far as possible, termination period of rate contracts should be fixed in such a way as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts.
- (iii) The period against rate contract should be fixed in such a manner that the rate contracts being concluded by the Section are properly staggered through out the year to avoid rush of work in any one month.

(I) QUOTATIONS TO BE INVITED FOR SLAB QUANTITIES

- (i) Quotations in respect of Rate Contracts should be invited for slab quantities and contracts concluded accordingly. The slab quantities should be fixed in a realistic manner based on the size of orders generally placed by the Direct Demanding Officers and those placed by the DGS&D in excess of the monetary limits laid down for the DDOs.

(J) COMPETENT OFFICER

- (i) The level of competence to decide the case shall, be determined by the estimated drawals as at (E) above.
- (ii) Dy. Director General (S)/Finance will be the minimum level competent officers for approval of rate contract proposals for new items being brought on rate contract for the first time with drawals upto Rs.1.5 crores. For drawals exceeding Rs. 1.5 crores the competent authority shall be as per normal delegations.

13.8 TENDER ENQUIRY PREPARATION AND ISSUE OF :

13.8.1 Regarding preparation of the tender enquiry, fixation of time and date for receipt, opening of tenders, time to be allowed to tenderers to quote publicity and issue of tender enquiry etc. the instructions contained in Chapter-8 will mutatis-mutandis apply and may be referred to.

13.9 INSTRUCTIONS RELATING TO INCORPORATION OF SPECIAL CLAUSES IN THE RATE CONTRACT TENDER ENQUIRIES AND RESULTANT RATE CONTRACTS :

13.9.1 The schedule to Rate Contract Tender Enquiry DGS&D Form No. 242 should indicate:

1. Period of Proposed Rate Contract
 2. Indication of average value of purchase of item in the preceding two years.
 3. Slab quantities, if any, as per the decision at the time of planning
 4. Indication of expected level of Performance from the rate contract holders as follows:
 - (a) Firms holding the current RC will be considered for the fresh RC if otherwise eligible, against this Tender Enquiry, only if their performance against the current RC held by them, is considered satisfactory. For this purpose the purchaser expects that the contractor should have supplies on or before.....xx.... About.....* percent of the stores which were due to be supplied by him uptoxx..... as per original delivery periods agreed upon, against the current RC.
 - (b) In addition, firms who held the RC immediately preceding the current one should not have a backlog exceeding 5% of the total quantities ordered against such previous RC, on (XX)
 - (c) It is, further expected that there will be no backlog in respect of earlier contracts to the ones referred to above.
 - (d) Firms not satisfying the criteria mentioned above may not qualify for award of RC. The purchaser, however, does reserve the right to consider also those firms who have executed supplies to a lower extent.”
- * The figure to be inserted should be the one as decided at the planning stage of the fresh RC
- xx Indicate the cut off date.

Performance achieved should be supported by the certificates as required.

13.9.2 The General Conditions of Contract governing the rate contracts are contained in DGS&D Form No. 1001. The Special instructions/Conditions as applicable for an item may be stated separately.

13.10 CONSIDERATION OF TENDERS AND FORMULATION OF PROPOSAL FOR RATE CONTRACT :

13.10.1 The instructions given in Chapter – 9 regarding actions to be taken by the base officer on receipt of tenders and the initial analysis to be made are to be followed.

13.11 CONSIDERATION OF LATE TENDERS IN RATE CONTRACT ENQUIRY

13.11.1 Late tenders received against rate contract enquiry may be considered subject to following :

- (a) It must be
 - (i) an item where there is no common specification;
 - (ii) where there is no competitive bidding and hence there is no comparative ranking and
 - (iii) where the rate contracts are concluded on the basis of discount given on the Net Dealer Prices and in consideration of other factors, such as delivery period, guarantee period, quality/duration of after sales services, reduction in mark-up etc.
- (b) Rate contract with such late tendering firm would not be concluded until
 - (i) at least four months of the existing rate contract period has expired in the case of one year rate contracts, and
 - (ii) a period of at least six months has expired in the case of two years rate contracts.
 - (iii) In order to prevent deliberate under-cutting of existing rate contract holders, the prices at which rate contracts are proposed to be concluded with the late tendering firm should be intimated to all existing RC holders giving them a reasonable time to offer lower/better terms if so desired by them, and to modify the existing RCs accordingly. 13 days after such modification if any, rate contracts with the late tendering firms may be concluded.
- (c) The expiry of such rate contracts concluded with late tendering firms should be coterminous with the expiry of the existing rate contracts.

13.12 ITEMS TO BE PROCURED WITH ISI MARK – VALIDITY OF BIS LICENCE:

13.12.1 In respect of items being brought on rate contract to supply with ISI Marking and items which are to be supplied with ISI marking, under Compulsory Certification Scheme of the Bureau of Indian Standards as per list being brought out by them from time to time, it has to be checked that the responding tenderer has furnished the details of BIS licence to market their products with ISI marking and its validity. The firm who obtain the BIS licence within 90 days of tender opening date would be eligible for award of rate contract.

13.13 CONSIDERATION OF TENDERS FROM EXISTING RATE CONTRACT HOLDERS QUOTING PRICES LOWER THAN THEIR EXISTING RATE CONTRACT RATES

13.13.1 If lower rates are quoted by the existing rate contract holders themselves for the fresh rate contract, they may be asked if they are prepared to reduce the rates against the existing rate contracts.

13.13.2 In case, the existing rate contract holders do not reduce the prices against the current rate contracts and quotations have been received at lower rates from new firms, who are likely to be brought on rate contracts, the purchase officers will advise the Direct Demanding Officers of the lower trend in prices and ask them to consider whether they can postpone placement of supply order against the existing rate contracts and wait for finalization of fresh rate contracts.

13.13.3 If the requirements are urgent and cannot wait for finalization of fresh rate contracts, the Direct Demanding Officers may place orders against the existing rate contracts if they can get assurance in writing from the rate contract holders that the delivery will be completed before the expiry of the current rate contracts or they may send their indents for the urgent requirement to the DGS&D for coverage in view of the lower prices received. The choice should be left to the Direct Demanding Officers either to postpone the placement of Supply Orders or to send their indents for their urgent requirements to DGS&D for procurement action.

13.13.4 The format of the letter in which the Direct Demanding Officers should be addressed has been standardized and is given in [Annexure – 37](#).

13.13.5 The purchase officer should also examine whether the rate contract can be short-closed.

13.14 PROPOSAL FOR CONCLUSION OF RATE CONTRACT :

13.14.1 The proposal for rate contract should be prefaced with a synopsis on production, demand and supply position of stores in question bringing out clearly the minimum number of firms required to be brought on parallel rate contract based on their capacity and the estimated annual requirements.

13.14.2 The rate contract proposal/brief for TPC or TAC will essentially consist of details given in [Annexure – 38](#). It should take into consideration;

a) **Registration Status**

- (i) the proposal should consider registration status of firms as indicated in the enquiry keeping in view the guidelines given in para 13.4 above.

b) **Past performance of Current RC holders**

- (i) the proposal should clearly bring out the performance of previous rate contract holding firms with a load-chart and their level of achievement with respect to performance criteria indicated in the enquiry.
- (ii) No new rate contract should be placed with firms having backlog which is likely to continue for major portion of the year.
- (iii) In the light of the performance criteria given in the enquiry, the firm who hold the current and preceding two Rate Contracts should satisfy the performance criteria on all these counts. Firms not satisfying the criteria mentioned above may not qualify for award of RC.
- (iv) Any relaxation in the performance criteria subsequent to the initial decision may be considered at the level of DG/ADG in consultation with Finance in respect of cases upto the value of Rs. 5 crore. Such relaxation in respect of cases beyond Rs. 5 crore would call for the approval of the Department of Supply.
- (v) It is not necessary to go into the performance of the contracts earlier than three years (current and preceding three years rate contract period) as the bad performance of the firm in contracts earlier than three years, if any, would have already been taken into account in the contracts for award of fresh RCs for conclusion in next three years.
- (vi) If a contractor does not have the current RC, the performance criteria against the earlier two immediately preceding RC should be considered, e.g., if he does not have the 1998-99 RC, the performance against 1997-98 and 1996-97 RC should be considered against the criteria of 95% minimum and 100% respectively.
- (vii) A contractor not obtaining any supply order against the current RC prior to the cut off date and also the immediately previous RC should be considered to have a "Nil" performance. It is expected that since a rate contract is direct demanding officers operated, the contractor should exercise some marketing efforts and obtain supply orders. However, a contractor who is successful in obtaining order (s) within the cut off date but is not required to supply within the cut off date and hence does not supply, will be eligible for award of Rate Contract.
- (viii) If a Rate Contract holder is a defaulter in furnishing the drawal reports as required, despite reminders, this fact should be brought on the purchase proposal, if the defaulter is bidding.

c) **REASONABILITY OF PRICES PROPOSED TO BE ACCEPTED**

- i) PRICE evaluation of tenders in the purchase proposal should be on the basis of all inclusive prices i.e. basic price, duties and taxes etc. As regards the incidence of sales tax, the element of Central Sales Tax will only be considered and not State Sales Tax.
- ii) In case the current R/C prices are subject to price variation, they are to be escalated with respect to the base rate and the price variation clause, vis-à-vis the rates in the tenders so that comparison is equitable.
- iii) Parameters which are relevant to determine the reasonableness of the prices should be ascertained in advance so that at the time of opening of tenders the purchaser is in possession of all necessary information to make an appropriate evaluation of offers and thus, conclude rate contract in time at reasonable and justifiable prices.
- iv) The proposal should invariably discuss the price aspect, fully supported by market rates, unit price of rate contract, cost analysis, relevant price increases, market intelligence report, reasons for variation in prices by giving due consideration to ;
 - a) The R/C price behaviour over the last 3 R/Cs and price criteria for award of these R/Cs.
 - b) The behaviour of the Economic Indices/Price index for that item over that period.
 - c) The comparison of the quoted prices with the current R/C prices, indicating probable reasons for increase in price, e.g. material costs/ labour index, etc.
 - d) A reasoned explanation of what can be an acceptable increase in price (s) to be allowed.

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

13.15 CONCLUSION OF PARALLEL RATE CONTRACTS :

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

- (a) the capacity of the tendering firms
- (b) the quantity committed against the existing Rate Contracts.
- (c) The estimated annual requirement and

- (d) Reasonable price range so as to include products of established and reputed manufacturers as also items produced by different sectors so that Indenting Departments will have wider choice.

13.15.2 The competent purchase officer on merits of each case can decide the number of firms to be awarded Rate Contracts for an item, so that Indenting Departments will have wider choice

13.15.3 Efforts should be made to conclude rate contracts with the firms located in different parts of the country.

13.15.4 The actual drawals of the rate contract though not routed through the DGS&D rate contracts, may be much more. On the assumption that drawals by all agencies will be twice the drawals of expired R/Cs and the firms may commit 50% of the assessed capacity for production of rate contract items, the annual drawal of rate contract may be taken as four times the actual drawals of the current rate contract.

13.15.5 Since the full capacity of the firms is not always available to meet the rate contract requirement, 50% of the firm's assessed capacity/proven capacity should be counted towards rate contract supplies and rest of the capacity may be presumed to be for non-rate contract supplies. The competent purchase officer may, therefore, go down upto 50% of the capacity/proven capacity if the circumstances so warrant.

13.15.6 Price range of 5% can be considered to be reasonable. However, the competent purchase officer may take a decision on merits of each case.

13.16 NEGOTIATION/COUNTER OFFER :

13.16.1 Post Tender Negotiations should be avoided and the rate contracts may be concluded without negotiations by following the guidelines given above for conclusion of parallel rate contracts with adequate number of firms at prices within reasonable range to meet the estimated drawals.

13.16.2 In cases where the price of L1 is considered acceptable, but there are not enough firms within the reasonable price range, R/C may be concluded with L1 and its price, counter offered to all other higher quoting firms. Those who accept the counter offered prices or below may be awarded parallel rate contracts to meet the estimated drawals.

13.16.3 Where, however, the price of L1 is not acceptable, Purchase Directorate may in the first instance negotiate with L1 only for arriving at a reasonable/acceptable price. On successful conclusion of negotiations with L1, R/C may be awarded to the L1 at the agreed negotiated price and the same may be counter offered to all the other higher quoting firms and the parallel R/Cs concluded in the same manner as above.

13.16.4 If the negotiations with L1 is not successful, the price considered as reasonable may be counter offered to the higher quoting firms including L1.

13.16.5 In situations where new comers or firms with unfavourable reports happen to quote an unreasonably low price, such offers may not be ignored. However, if such offers are made, it may not be desirable to treat such offers as L1 for negotiations and the purchase

directorate may decide the technically acceptable and reasonable L1 firm with the approval of the competent authority for the purpose of above exercise.

13.17 PROPOSAL FOR EXTENSION OF RATE CONTRACTS : Rate Contracts should not normally be extended beyond a period of 3 years if however, an extension beyond 3 years becomes inescapable a fresh rate contract embodying all the terms and conditions applicable at that time should be issued.

13.18 PROPOSAL FOR INCLUSION OF NEW ITEMS IN THE EXISTING RATE CONTRACT : - More items in Rate Contracts should not be included unless such an item has already been included in the Rate Contract of one or more firms and the question is only of extending it to more firms who are already holding Rate Contracts for all other items.

13.19 INCLUSION OF NEW /MODIFIED/IMPROVED MODELS OF VEHICLES IN THE RATE CONTRACT :

13.19.1 Following procedure will be followed to consider the request of vehicle manufacturers holding the rate contracts for inclusion of new /modified/improved models of vehicles in the rate contracts.

- (a) The technical data of the model as per [Annexure – 39](#) is to be furnished for new/modified/improved models.
- (b) In cases there are minor changes in the vehicles but without change in the basic structure of the vehicles, are retaining the same engine, it may be taken as technically acceptable/suitable, but the firms have to furnish details of such changes.
- (c) In case of vehicles with new Engine or with change in basic structure, the firm has to furnish the Test Certificate for the Engine and also for the road worthiness of complete vehicle from Automative Research Association of India (ARAI), Pune/VRDE, Ahmednagar before taking it as technically suitable for inclusion in the R/C.
- (d) Testing by VRDE is necessary for introduction of vehicles in Defence. Report furnished by VRDE Ahmednagar, will be applicable for Defence as well as Civil indentors, whereas report furnished by ARAI, Pune will be applicable for Civil indentors only.
- (e) New models of the vehicles may be included in the R/c provided the firm is regd. with DGS&D for that particular model and have a valid ARAI certificate for road-worthiness for the same. Accordingly, the request for inclusion of new models in the R/C should be submitted to DGS&D along with photocopy of the Registration Certificate with DGS&D and ARAI Certificate as mentioned above.
- (f) Firm should furnish details as to how many vehicles of each model asked for introduction into the R/C have been sold so far, to whom and at what price. Firm should also intimate the basis for fixing their Net Dealer Price for these new models.

- (g) DG will have full powers to approve the proposal for bringing new models of vehicles in the rate contracts in consultation with Finance except for new models of passenger cars. Cases for inclusion of new model passenger cars will be referred to DOS. The above delegation is subject to the condition that the new models are considered for inclusion in terms of the guidelines as approved by the Government and also the NDPs of these models are kept firm for a period of one year from the date of the amendment of the rate contract but not after expiry of the Rate Contract.

13.20. RATE CONTRACT FOR SPARE PARTS USED IN VARIOUS EQUIPMENTS, PLANT AND MACHINERY ETC. :

13.20.1 While spares and accessories which are essentially required for functioning of the main equipment can be included in the rate contracts for the main equipments, rate contract will be concluded, as a policy, for following categories of spares.

- (a) OEM Indigenous Spares with Original Equipment Manufacturers
- (b) Wilfit indigenous Spares with established firms.
- (c) OEM Imported Spares with Primary Agents
- (d) OEM Imported Spares with Secondary Agents supported by proper Bank Guarantee and other safeguards.

13.20.2 PROCUREMENT OF DIFFERENT CATEGORIES OF SPARES:

The following policy will apply to the procurement of spare parts used in various equipments, plant, machinery etc.

13.20.3 Spares for indigenous engines will be purchased only from the following :-

- (a) Original Equipment Manufacturers) or OEM approved units.
- (b) Other units including NSIC registered units provided they are suppliers to OEM or alternatively produce product approval certificate from ARAI, CIRT or VRDE about the quality of the spares manufactured by them.

13.20.4 Spares for Imported Engines will be purchased from the following :

- (a) Indian firms manufacturing similar model of engines with foreign collaboration.
- (b) Other units including NSIC registered unit provided they produce product approval certificate from ARAI, CIRI or VRDE about the quality of the spares manufactured by them.

13.20.5 SPARES OTHER THAN FOR ENGINES OF IMPORTED AND INDIGENOUS MACHINERY WILL BE PURCHASED FROM :

- (a) OEM, OEM approved units or established OE suppliers.
- (b) Manufacturers of spare against wilfit categories.

13.20.6 FILTER FOR ALL TYPES OF ENGINES : Filters will be procured only from OEM or OE approved units.

13.20.7 Automobile Spares other than for the engines.

- (a) Firms who are suppliers to Original Equipment Manufacturers and should have made the supplies of finally finished stores (and not unfinished or semi finished stores) to the OEM within the past two years on the date of tender opening).
- (b) Firms which should have successfully executed /supplied against the quoted stores with Defence specification after the acceptance by the DG(QA) and the last supply made should not be more than two years old on the date of tender opening.
- (c) Firms should have valid type (Qualification) approval from C.I.V. Ahmednagar. For civil requirements type approvals from CIRT, ARAI, VRDE are also acceptable.

13.20.8 Bought out items (both indigenous and imported) shall not be procured from the wilfit category of manufacturers. Registration will not be granted to firms for bought out items. They will not be registered under wilfit category for automobile spares, engine spares and filters.

13.20.9 The feed back from user's department like CWC will be taken into account for reviewing/renewing registration report under wilfit category of the spares.

13.20.10 The DS(SSSI)/ NSIC will also follow the above guidelines while registering the firms. For capacity verification the policy for wilfit category spares would be the same as that for the registration stated above. However, the requirement regarding cross checking of the performance report with the concerned departments on selective basis may be decided by the Director of Quality Assurance concerned depending upon the merits of the case.

13.21 UNIFORM PRICING POLICY FOR INDIGENOUS WILFIT SPARE PARTS

13.21.1 WILFIT LPP ITEMS (LPP NEED NOT BE OF THE SAME FIRM):

- (i) Base price for the rate contract shall be ____+____ %age increase over the lowest LPP or the lowest rate received from a firm who is entitled to a regular rate contract (if such lowest rate is lower than the lowest LPP).

[+] This percentage increase to be decided by the TPC/TAC Competent Purchase Officer, as the case may be.

- (ii) A 10% range over the lowest basic rate arrived as above will be permitted for concluding parallel rate contract.
- (iii) The above will be subject to all wilfit rate contract prices being at least 10% lower than corresponding OEM prices (indigenous). For example, if OEM price is Rs.100/then the maximum price payable to wilfit rate contract holder shall be Rs.90/-.

13.21.2 NEW ITEMS QUOTED BY WILFIT MANUFACTURERS WHERE WILFIT LPP IS NOT AVAILABLE BUT INDIGENOUS OEM PRICES ARE AVAILABLE :

Lowest acceptable price from a registered firm entitled for rate contract plus a 10% range for parallel rate contracts subject to all wilfit prices being at least 20% lower than the indigenous OEM prices. For example, if OEM price is Rs.100/-, then no wilfit price shall exceed Rs.80/-

13.21.3 NEW ITEMS QUOTED BY WILFIT MANUFACTURERS FOR OLD MODEL SPARES WHERE NO OEM PRICES ARE AVAILABLE :

Efforts must be made to find out old LPP rates of indigenous OEM and update those OEM prices in the same manner in which other indigenous OEM prices have been arrived at in the current OEM rate contract on the basis of year to year increase allowed. After computing such notional updated OEM prices, the criteria given in para 13.21.2 is to be applied.

13.21.4 WILFIT LPP ITEMS WHERE INDIGENOUS OEM HAVE CURRENTLY DISCONTINUED MANUFACTURE OR ARE NOT CURRENTLY ON RATE CONTRACT FOR SOME OTHER REASON :

The criteria given in para above will apply without the comparison with current indigenous OEM prices because such current OEM prices are not available.

13.21.5 NEW WILFIT PARTS QUOTED WHICH CANNOT BE LOCATED IN ANY PREVIOUS INDIGENOUS OEM PRICE-LIST :

Cases to be decided on merits; the relevant consideration being whether such parts are in demand (for this purpose the tenderer might also be asked to give copies of enquiry, orders, etc. received by them). If there is demand, OEM be asked to quote for these items for the purpose of inclusion in their rate contract and then the price for wilfit category could be determined as per procedure given in para – 13.21.2.

13.21.6 OTHER POINTS FOR WILFIT SPARE PARTS RATE CONTRACT

- (a) Only such spare parts which are manufactured by the wilfit manufacturers themselves should be put on rate contract.
- (b) Such of the bought-out items which form a part of an assembly or sub-assembly for which the firm is registered and is entitled for rate contract could,

however, be considered for inclusion in the registration/rate contract as individual items also. The Quality Assurance Officer be specially cautioned in respect of such bought-out items to satisfy himself regarding the genuineness and new-ness of these items. Such of the bought-out items thus included in the registration/rate contract which carry manufacturers' guarantee/warranty, will be supplied by wilfit manufacturers along with the said manufacturers' guarantee/warranty.

13.22. PROCUREMENT OF IMPORTED SPARES :

13.22.1 The procurement of spares has many implications, viz::-

- (a) whether the spares are new and unused;
- (b) whether they have not been in stock for considerable period of time; thereby affecting their useful life. This applies to items with limited shelf-life:- like Electronic Valves/Tubes etc.
- (c) what arrangements they have made to discharge warranty obligation on behalf of the manufacturers.
- (d) Lack of Inspection facilities in foreign countries by Government of India inspector (s). Even when there are inspection facilities it will be difficult for the inspectors to certify whether the spares are genuine or not.

13.22.2 Considering that these spares are required for vital installations/equipments, the purchase of such spares from parties other than manufacturers or their regular authorized selling agents in India for the product may create avoidable problems. Only in those cases where there are genuine agents and after-sales service is required, dealing with the Indian Agent may be agreed to. In view of the scope for mal-practices, whereby after opening of the tender, some Indian agents come up saying that they are the Agents, of the Foreign principals, it has been decided that the matter should be dealt with the bona-fide Indian Agent only when

- (a) He is regular authorized selling agent of foreign manufacturer for the product in India as a Primary Agent; or
- (b) He is an agent of the authorized manufacturer's export agent abroad to be termed as Secondary Agent
- (c) The agent is registered with DGS&D under compulsory enlistment scheme as per directive of Ministry of Finance

The rate contracts issued must clearly indicate the status of the agents, i.e., primary or secondary agents.

13.22.3 SPECIAL PROVISIONS RELATING TO STOCKISTS OF IMPORTED STORES

- (a) **ORIGINAL SPARES :** In the case of original equipment spares the stockist should produce documentary evidence to the effect that he is importing original spares

either from Original Equipment Manufacturers (OEM) abroad or from OEM's authorized distributors or export agents abroad. In the case of import from authorised distributor or export agent, an authority letter from the Original Equipment Manufacturer would be required that distributor/ export agent abroad is their authorized distributor/ export agent.

- (b) **REPLACEMENT SPARES :** In the case of replacement spare parts, the stockist should indicate the source of supply abroad and furnish necessary documents from the Original Equipment Manufacturer that the foreign replacement supplier is one of their recognized replacement suppliers for the spare parts concerned.
- (c) If the stockist responded is not registered with DGS&D then following conditions should be satisfied.
- (i) The stockists should have imported during the 12 months preceding the date of quotation, spares worth Rs. 2.5 lakhs (C.I.F. Value). The stockists should produce necessary import documents, invoices, vouchers, bills of lading etc. which should include substantial value of spares for which they have quoted.
 - (ii) The inspection of the stockist's premises should be carried out by the QA Wing of DGS&D to verify the facility available with them i.e. size etc. of the stockyard(s), staff employed, quality (Visual Inspection) and approximate quantity of stocks held and details of imports.
 - (iii) The enquiry for conclusion of rate contract for imported spare parts should clearly indicate that stockists if they respond, should produce along with their quotation photostat copies of documents indicating actual imports of such stores and the invoices.

13.23 SUBMISSION OF PROPOSAL TO DEPARTMENT OF SUPPLY : The purchase proposal pertaining to conclusion of rate contracts for the approval of Department of Supply are to be sent through self-contained note as per the format at [Annexure-38](#).

13.23.1 it should be ensured that ;

- (i) the proposals being submitted to Department of Supply are complete in all respects.
- (ii) they are sent well before the expiry of R/Cs giving ample time to Department for consideration/approval.

13.23.2 Purchase Directorates must invariably furnish Action Taken Report on the decision conveyed by the Department of Supply on the proposal submitted by DGS&D within a fortnight of the communication of the decision, to Under Secretary (Purchase), Department of Supply, New Delhi.

13.24 NUMBERING OF RATE CONTRACTS : While allotting contract serial number from the A/T Register in respect of Rate Contracts at the time of issue of contracts, the Directorate and Section, code Number should also be incorporated so as to immediately

precede the contract serial number e.g. if the contract serial number to be given is 874 and the Directorate and section code number is 51 the number that should be allotted to Rate Contract would be 51/874.

13.25 STANDARD FORM OF RATE CONTRACT :

13.25.1 The standard form of Rate Contract should be adopted in respect of all Rate Contracts. The standard form of the contract ([Annexure-40](#)) consists of.

- (i) Covering letter conveying acceptance of the firms' offer
- (ii) Schedules indicating price and other terms of contract
- (iii) Details of parallel rate contracts concluded

13.25.2 It should be ensured that the complete/full postal addresses of the Paying Authority, Inspecting Authority and that of Quality Assurance Office are indicated in the formal rate contract. In the absence of their correct designation and complete postal addresses it becomes difficult for the officers authorized to operate the rate contract to forward the copies of supply orders to the authorities concerned thereby causing inconvenience both to the supplier and the purchaser.

13.25.3 The terms and conditions governing the rate contract and instructions to the R/C holders and the consignees have been brought out in a separate booklet DGS&D Form 1001.

13.26 SIGNING OF RATE CONTRACTS : Rate Contract concluded only for the Central Government Departments should be signed for and on behalf of the President of India. Rate Contract concluded for various State Governments/ other authorities should be signed as for and on behalf of the purchasers' named in the schedule.

13.27 ATTESTATION OF SCHEDULES TO RATE CONTRACTS IN ACCOUNTS OFFICE COPY : In the copies of Rate Contracts endorsed to be Accounts Officer all sheets on which prices are shown should be attested by the Supply Officers concerned. In the schedule to be roneoed, the signature of the Supply Officers should appear on the stencils so as to obviate the necessity for attesting copies separately.

13.28 ISSUE OF PARALLEL RATE CONTRACTS :

13.28.1 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. This would avoid adverse criticism from the trade against discrimination, favouritism and corruption. 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.

13.28.2 When parallel rate contracts are issued and separate files are opened for each parallel rate contract, all such part files should contain copy of the operative portion of decision in the main file.

13.29 ENDORSEMENT/DISTRIBUTION OF COPIES OF RATE CONTRACTS TO MIS DIRECTORATE :

13.29.1 In the endorsement to Director, MIS on rate contract copies, the following particulars should also be specified.

- (a) Source of manufacture
- (b) Country of Origin
- (c) Method of purchase
- (d) Specification
- (e) Price preference to SSI with percentage.
- (f) Whether procurable from SSI / Large Scale Sector

13.29.2 Required number of copies of Rate Contracts intended for the DDOs should be sent under "Certificate of Posting" except where these are to be sent under Registered Post acknowledgment due, immediately after conclusion of the same.

13.29.3 Whenever Rate Contracts are extended or terminated, intimation to that effect should also be given to the DDOs immediately.

13.29.4 A list of DDOs should also be kept in respective purchase files for reference purposes and for subsequent checking as to whether copies of Rate Contracts have been sent to all DDOs.

13.29.5 Any complaint/request for copy of Rate Contract should be attended to promptly by the concerned Supply Section and copies of Rate Contract should be supplied within four clear days from the date of receipt of complaint/request. Cases of serious delay/complaint of not receiving copy of Rate Contract will be handled by the MIS Directorate who will forward copies immediately and examine why copies could not be sent earlier.

13.29.6 MIS Directorate compiles monthly/annual booklet containing salient features of rate contracts concluded/ extended by DGS&D. The purchase sections in the Headquarters and in the regions are required to furnish details of such rate contracts to MIS Directorate.

13.30 PROVIDING INFORMATION ON RATE CONTRACTS :

13.30.1 The requests from Direct Demanding Officers regarding availability of an item on rate contract or copies of rate contracts will be entertained by a unit under the Complaints and Public Relations Cell and its functions will be as under :-

- (a) It will attend to all requests for obtaining copies of rate contracts.
- (b) Director (C&PR) will evolve a suitable method of co-ordination between C&PR and the Purchase Directorates so that such requests are attended to promptly.
- (c) Each Purchase Directorate will nominate one Assistant under the overall charge of the Deputy Director to attend to such requests for Rate Contract copies.

- (d) The unit under C&PR shall be responsible to obtain copies of the R/Cs from the concerned Purchase Directorate and forward the same to the Government Departments who had asked for these copies.

13.31 TIMELY CONCLUSION/RENEWAL OF RATE CONTRACT :

13.31.1 Once an item is approved by the Standing Review Committee, the concerned Purchase Directorate will take actions to conclude rate contract for the item within 210 days from the date of approval by SRC.

13.31.2 In respect of ongoing rate contracts, the efforts should be made to renew them sufficiently ahead of the expiry of the current rate contract and in order to ensure that timely action is taken in concluding the rate contract. Time schedule as given in [Annexure – 36](#) has been laid down for key operations in relation to the issue of rate contract.

13.31.3 All Purchase Officers must ensure that the time schedule is strictly adhered to and to monitor the same, each R/C file shall carry a broad sheet on the top of the file indicating the due dates for that R/C and the Base Officer concerned for that power case shall make necessary entries indicating the actual date the activity has taken place.

13.31.4 The case must get initiated by the Base Officer as per existing guidelines and it shall be the responsibility of the senior officers to ensure that there were no violation in this regard.

13.31.5 Director (MIS) should bring out a monthly statement pointing out the delay which has taken place for each contract. The Director concerned shall analyze the same and submit his report to DG through DDG concerned analyzing the reasons for delay and the remedial action being taken.

13.31.6 There should be continuous monitoring by the concerned Director/Dy. Director General.

13.31.7 Directors of Supplies in the Purchase Directorate shall be responsible for data entries from time to time, Director (MIS) shall bring out statement by exception pointing out the delays of each activity which statement would be given by him to the competent purchase officer and one level above.

13.31.8 All the files shall carry File Movement Card indicating the due/actual dates for each activity in terms of para 13.31.2 above

13.31.9 Keeping in mind the total time frame of 210 days, the proposals are to be submitted to the Department of Supply 30 days in advance of the date of expiry, therefore, in cases pertaining to the powers of officers in DGS&D, it should be ensured that the rate contracts are concluded at least 3 weeks before the date of expiry.

13.31.10 Wherever the queries are raised by the Department of Supply, the same shall be replied by DGS&D in 5 working days. Any delay occurring thereto may be specifically stated in the proposals submitted to DG with reasons therefore.

13.31.11 Wherever the break in the rate contract is likely to occur the DDOs should be kept informed of the action being taken by the DGS&D for renewal of the rate contract.

13.31.12 During the time-lag between the expiry of Rate contract and its renewal, the indentors would be entitled to make direct purchase upto the limit of direct purchase of non-rate contract items. The Direct Demanding Officers should be informed of the time-lag so that their urgent demands are not held up.

13.31.13 While explaining the delay in conclusion/renewal of the Rate Contract, Direct Demanding Officer should be advised not to purchase items of non-essential requirements under their delegated powers of direct purchase which could be postponed.

13.31.14 In order to advise the Direct Demanding Officers in such cases, standard letter as per the one at [Annexure – 41](#) may be issued by the purchase officers.

13.32 POST CONTRACT ISSUES RELATING TO RATE CONTRACT

13.32.1 OPERATION OF RATE CONTRACTS : The rate contracts will be operated by DGS&D or by authorized Ministries/Departments/ Organisations of Central Government. The Officers of the Central Government Ministries/ Departments/Organisations who are authorized to operate R/C will be known as Direct Demanding Officers (DDOs)

13.32.2 COVERAGE OF INDENTS FOR R/C ITEMS : The guidelines given in Chapter-7 under Planning of Indent may be referred to.

13.32.3 CONSIDERATION OF REDUCTION IN PRICES BY RATE CONTRACT HOLDING FIRMS SOON AFTER CONCLUSION UNDER THE PROVISIONS OF FALL CLAUSE :

- (a) Parallel Rate Contract holders are prone to reduce prices under the Fall Clause to undercut each other with a view to bring their prices to a level where they were lower than the lowest originally quoted rates. While the Fall Clause should not be allowed to serve as a tool for price war, at the same time, the purchaser cannot ignore such reductions as otherwise the rate contract prices may no longer remain the best prices.
- (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 through registered post by a letter as per [Annexure – 42](#) intimating the R/C holder that their reduced price is being notified to all other parallel R/C holders. Simultaneously, the reduced prices should be notified to all other parallel R/C holders by registered post as per letter in [Annexure – 43](#) giving 15 days time to intimate their revised prices in sealed covers. The responses received should be opened in public.
- (c) Formal amendment letters to the Rate Contract shall be issued immediately after the expiry of the above time limit based on the responses 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 provisions of the Fall Clause.

- (d) Severest possible action should be taken against those firms who had reduced their prices after conclusion of the rate contract but failed to make supplies against the supply orders placed on them at those rates. This fact should also be borne in mind at the time of conclusion of further rate contracts.

13.32.4 RATE CONTRACTS – REVOCATION OF :

- (a) According to legal opinion DGS&D rate contracts are in the nature of standing offers. These standing offers mature into legally binding contracts when a supply order is placed in pursuance thereof.
- (b) The Rate Contract being a standing offer only, the contract holder may revoke it any time during its currency. But supply orders, placed before revocation, have to be executed by the contractor. It may be noted that a supply order put in communication prior to the receipt of notice of revocation of rate contract (even after the date of posting of the notice of revocation by the firm) will be a binding contract because the communication of revocation will be legally complete against the accepting party i.e. the party placing the supply order, only when it comes to his knowledge.
- (c) Since the R/C is a standing offer and is merely a document embodying various terms of the standing offer made by the contractor, the purchaser i.e. DGS&D can legally cancel the R/C at any time during the currency of the rate contract giving a reasonable opportunity to the supplier to represent against such cancellation. The revocation/cancellation of the R/C shall take effect immediately, thereafter. Any order placed by the DDOs after the date of cancellation of the R/C should not be taken up by the R/C holder, for execution. The standard format of notice is given in [Annexure – 44](#) enclosed. The purchaser i.e. DGS&D may at its option negotiate with R/C holder so as to bring the R/C prices in line with market prices, whenever market fluctuations affects prices abnormally. If the negotiations fail then the R/C will be foreclosed and fresh R/C will be concluded separately.
- (d) The revocation/short-closure of rate contract during its currency can be decided by the competent purchase officer as per total estimated drawal of all rate contract i.e. including parallel rate contracts. DG/ADG will have, however, full powers in this regard. The concurrence of the Finance will not be required.

13.32.5 DRAWAL REPORTS – DEFAULT ON THE PART OF THE RATE CONTRACT HOLDERS IN ITS SUBMISSION : The rate contract holders have to submit Quarterly drawal reports. In case, drawal reports are not received from the Rate Contract holder in time, the procedure mentioned below should be followed:-

- (a) when drawal reports are not received in the Purchase Directorate from the firms regularly, such instances should be brought to the notice of the Deputy Director General (Supply) / Additional Director General (Supply) concerned

who may then personally, address the top executive of the firm, impressing upon him the necessity of submission of these returns regularly.

- (b) For ascertaining drawal reports etc. after the expiry of the validity period of Rate Contract, a standard letter as per [Annexure – 45](#) has been devised in consultation with the Ministry of Law which will not have the effect of keeping the contract alive. Communications in respect of drawal reports etc. after the expiry of validity period should be made in the standard letter.
- (c) The particular Trade Association in which unit is affiliated should also be addressed who in turn, could impress upon their constituents to abide by the general instructions regarding submission of drawal reports.
- (d) In chronic cases of delay or non-submission of drawal reports, field staff or Quality Assurance Officers could be asked to follow up.

13.32.6 DECLARATION OF DDOs AGAINST RATE CONTRACT :

- (a) **CRITERIA :** The criterion for inclusion of an indenter in the list of DDOs/Rate Contract Operating Officers is that he should have a large and recurring demand for the particular store.
- (b) **AUTHORITY:** The Director of Supplies will have full powers, irrespective of the value of the rate contract, to declare an individual indenter as DDO.
 - (i) The lists of DDOs should indicate their full designation, complete address etc. The lists should not be printed along with the contracts. A consolidated list of DDOs should be prepared Directorate-wise and be reviewed/ updated once in two years.
 - (ii) In cases where a Directorate-wise lists of DDOs is not possible due to miscellaneous nature of items dealt with and DDOs requiring them are different from Rate Contract to Rate Contract, such lists should be consolidated for items of allied nature.
 - (iii) The lists together with amendments, if any, should be forwarded to the Paying Authority concerned, the firms holding rate contracts and the Quality Assurance Officers along with the copies of the contracts. In the copy of the contract intended for the DDOs there should be clear indication that he has been declared as an authorized Officer to operate the R/C. Changes/additions to the list should be notified by means of amendments as and when necessary.
 - (iv) Authorised Officers i.e. DDOs should operate on rate contracts in respect of which they have been declared so and should not draw their requirements independent of these contracts.
 - (v) One DDO cannot place a supply order on behalf of another as the authorization is individual and not collective.

- (vi) Where there is only one DDO against the rate contract from the Department he can cover the entire requirement of all the departmental consignees who are not DDO officers.
- (vii) A Central Government DDO cannot validly place supply order on behalf of the State Government department and vice-versa.

13.33 DELAY OR NON-MATERIALISATION OF SUPPLIES AGAINST SUPPLY ORDERS PLACED BY DDOs : If the supplies against orders placed by DDOs are not made by the R/C holder, DDOs have following options :

- (a) To extend the delivery date with the denial clause regarding increases on account of price variation, enhancement/fresh imposition of taxes/duties. Extensions in delivery period will be given as per the standard format.
- (b) To withdraw the supply order placed after expiry of the stipulated date and cover the demand against any other parallel rate contracts concluded by DGS&D.
- (c) DDOs will also apprise DGS&D about the non-materialisation of supplies against the orders placed by them so that the same can be kept in view while awarding fresh rate contracts.

13.34 FINALISATION OF PRICES, REGULARISATION OF DELIVERY PERIOD

13.34.1 Finalisation of the prices in the case of rate contracts 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 Controller of Accounts will make a reference to DGS&D in individual cases and the purchase officers 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 the delivery period, the purchase officer will have to advise the Controller of Accounts concerned whether or not the DGS&D have any claim on the firm as a result of downward trend of rates of taxes/duties etc.

A D D E N D U M

Para 13.16.2 at page 190 will read as under : -

13.16.2 In cases where the price of L1 is considered acceptable, but there are not enough firms within the reasonable price range, R/C may be concluded with L1 and its price, counter offered to all other higher quoting firms. L1 may be informed of the action and be told that an opportunity is also being given to them to reduce the rate at which R/C has been awarded. All firms will be asked to send their response in sealed covers to be opened in public as per the target date and time fixed for reply. Those who accept the counter offered prices or below may be awarded parallel rate contracts to meet the estimated drawals.

Paras 13.32.4, 13.32.4 (b) and Para 13.32.4 (c) at page – 203 will read as under :-

13.32.4 RATE CONTRACTS - REVOCATION/CANCELLATION OF:

13.32.4 (b) The Rate Contract being a standing offer can be revoked by the contractor as well as short-closed by the purchaser at any time during the currency of the rate contract through prescribed notice. The standard formats of notices are given in pages 206B and 206C. Since, the R/C is a standing offer and is merely a document embodying various terms of the standing offer made by the contractor for acceptance by the purchaser, either party namely; R/C holder/purchaser can legally revoke/cancel the rate contract at any time during the currency of the rate contract giving a notice of 45 days. The revocation of the rate contract on the part of the R/C holder shall take effect 45 days from the date of communication of revocation is received by the purchaser. The cancellation of the R/C by the purchaser shall take effect 45 days from the date of issue of letter notifying short-closure. The competent purchase officer has also an option to re-negotiate with the R/C holder to bring the R/C prices in line with the market prices whenever market fluctuations affect the price abnormally.

13.32.4 (c) The R/C holders shall not accept any supply orders placed by the Direct Demanding Officers after the cancellation of the rate contract. A copy of the cancellation letter should be immediately sent to the inspecting officer concerned by Speed Post/FAX so that he does not undertake inspection of such orders.

CHAPTER - 14

INSPECTION OF STORES

14.1 **Quality Assurance Wing** provides the Quality Assurance Services against DGS&D Contracts and other Purchase Agencies where so requested with a view to ensure that the stores supplied by a Contractor against the Contract are of the required Quality and conform to the specifications given in the Contract. The interface between the Purchase Wing and the Quality Assurance Wing is through the HQ set up of QA wing and the field Directorates of QA Wing. The contracts concluded by DGS&D provide the necessary clauses of Inspection Authority aids Inspecting Officer in favour of ADDL. DIRECTOR GENERAL (QA) and DQA of the area concerned respectively. The supplies are subjected to physical inspection by the Inspection authority at pre-despatch stage of supplies. The stores thus accepted by the Inspection Authority can only be dispatched by the Contractor for delivery to the Indentor/Consignee(s). Proof of such Inspection and Acceptance is an element of the Contract except when it is specifically waived by the competent authority. For certain items like Cement, Bulk Petroleum Products, Asphalt, etc. the contracts provide for only periodical inspection of stocks at the manufacturers' premises for monitoring quality only.

The Additional Director General (QA) is the head of the QA Wing and has the overall responsibility and appellate authority on all aspects of policies and procedures, functions and technical issues. The delegation to various levels of functionaries is given in Schedule to the Chapter 19, "Delegation of Powers".

The functions and the organizational set up of Quality Assurance Wing and its Directorates have been detailed in Chapter – 1 and its [Annexure – 1](#) respectively. While Inspection Authority functions are performed by the HQ set up of QA Wing, the field Directorates carry out their functions in their respective jurisdictions. However, by a general or special order by the ADG (QA) a Directorate may be allocated the field work not covered in its jurisdiction.

14.2 INSPECTION AUTHORITIES :

14.2.1 Additional Director General (QA) in DGS&D is the Inspection Authority for all stores procured against Civil requirements excepting for items given in [Annexure – 46](#) for which the Inspection Authority will be as indicated in the indent.

14.2.1 Director General of Quality Assurance, Ministry of Defence is the Inspection Authority for stores procured against the Defence and DGBR as per Defence specifications.

14.3 INSPECTING OFFICERS :

14.3.1 Inspecting Officers are nominated by the concerned Inspection authority. In this arrangement of inspection it is permissible that the inspecting officer may not belong to the organization of the inspection authority. For instance, the inspection authority may be the Director General of Quality Assurance of the Ministry of Defence while the inspection officer is the officer of the Quality Assurance Wing of the DGS&D.

14.3.2 The Quality Assurance Wing of the DGS&D shall be the sole purchasing agency for inspection of stores procured under the rate contract. For stores required by Defence, as an exception, DG(QA), Ministry of Defence will be the agency for inspection except for the items for which, DG(QA) authorizes DGS&D to carry out bulk inspection. A list of such items is given in [Annexure – 47](#).

14.3.3 ADG(Q) may consider the request from user departments other than Defence to have their own inspection agency on merits. Request from suppliers to have their own inspection agency cannot be acceded at all.

14.4 WAIVER OF INSPECTION AND ACCEPTANCE OF STORE UNDER FIRM'S GUARANTEE/WARRANTY :

14.4.1 Certain stores in respect of which manufacturers could be relied upon for quality products may not be subjected to physical inspection and the stores may be accepted under firm's guarantee/warranty. The current list of stores and the corresponding manufacturers which are accepted under firm's guarantee/warranty in DGS&D purchases is given in [Annexure – 48](#). Physical inspection clause stipulating inspection authority and the inspecting officer in such cases will not be included in the contracts entered into by the DGS&D.

14.4.2 The list of stores aforesaid will be reviewed every year. The QA Directorates are advised to recommend such stores for inclusion in the exempted category in respect of which there have been no rejections during the last three years. Purchase officers would also endeavor to bring to the notice of Quality Assurance Wing, cases of such firms and items of stores where stores could be accepted under firm's guarantee/warranty. The periodical review would be by a Committee under the chairmanship of Additional D.G.(Supply). The final decision on the recommendations made by the committee will be taken by the Department of Supply.

14.4.3 Waiver of pre-despatch Inspection and acceptance of stores under firms Guarantee/warranty may be considered :

- (i) Where indentors indicate in their indent that physical inspection is not necessary and that the stores can be accepted on firms' warranty/guarantee.
- (ii) Where the indenter requests for waiver of inspection to meet his urgent requirement and where the firm is agreeable for 100% payment against consignee's receipt and acceptance. In such cases, the indentors themselves will be responsible for ensuring quality of goods supplied.

- (iii) For pre-despatch inspection of imported stores, where the stores are normally accepted under firm's warranty/guarantee and only in exceptional cases, it is necessary to depute inspection team from India for pre-despatch inspection.

14.4.4 In respect of items included in the Exemption List referred to in [Annexure – 47](#) the physical inspection can be waived straightway by the purchase officers. In other cases the waiver of the inspection either at the pre-a/T or the post-A/T stage can be done with the prior approval of the competent authority.

14.5 FUNCTIONS OF INSPECTION AUTHORITY : The functions of inspection authority are to manage contracts from technical angle. These may be at pre contract stage or post contract stage.

14.5.1 PRE-CONTRACT FUNCTIONS : The Q.A. Wing of DGS&D or the field Directorates of QA Wing assigned with the INSPECTION AUTHORITY functions, on receipt of the indent from the Purchase Directorate would :

- (i) Check whether the technical particulars are detailed, correct and complete in all respects, broadbased and unambiguous in respect of scope of supply, quality parameters etc. for contracting purposes.
- (ii) Ensure that the scope of inspection, the criteria of conformity, test methods etc. are well defined. Any clause which inhibits the scope of inspection or which may have a bearing on the inspection function should be included in the Tender Enquiry or in the contract only after such clause has been vetted by the Inspection Authority.
- (iii) Advise the indenter of the standard specifications and the latest modifications or improvements thereto if the indenter has indented either to non-standard or obsolete specifications. The Indian Standard Specifications (ISS) shall be the minimum specifications where ISS are available for a product.
- (iv) Where it is unavoidable to incorporate the requirements with reference to a Standard Sample or a Tender Sample or an Advance Sample, the scope of reference to such samples shall be clearly defined in the Technical Particulars and limited to such parameters like feel, finish, shade, workmanship, pattern etc. which cannot be quantified in the standard specifications.
- (v) Inspection of Tender samples where required

14.5.2 POST CONTRACT FUNCTIONS : The Inspection Authority's functions at post contract stage are :

- (i) Administrative arrangements for inspection of stores
- (ii) Advice on technical issues that may crop up during execution of the contract
- (iii) Advice on waiver of physical inspection

- (iv) Recommendations for amendments to contract in respect of technical specifications, Price reduction etc.
- (v) Inspection of Advance samples, received through the DQAs, jointly with Indentors when contracts so provide for

14.6 INSPECTION OF STORES WHERE INDENTING DEPARTMENTS DESIRE TO ASSOCIATE : Where the indenting departments desire to be associated with the inspection at the pre-despatch stage, they shall specifically give a clear indication to this effect in the indents itself. Such requirement, if agreed to is incorporated in the Rate Contract itself.

After providing this into the contract, the representatives of the indenting departments may be associated at the time of pre-despatch inspection for the stores to be inspected by the Quality Assurance Officers of DGS&D as per the following procedure :

- (i) The inspecting officers will intimate the indenter/consignee the proposed date of inspection allowing 7 clear days. The representatives of the indenting departments shall respond quickly to the request for such inspection as and when made by the inspecting officer.
- (ii) In case the indenter/consignee fails to turn up on the scheduled notified date(s) the inspection will be taken up by the DGS&D Quality Assurance Officer independently and completed in the normal course.
- (iii) The supplier firms will be instructed in the contracts itself, where pre-despatch inspection in association with the indenter is envisaged, that whenever the inspection call is given by them to the Quality Assurance Officer, a copy of the inspection call will be sent also to the indenter without fail. The Indenter shall, in case of inspection calls given at the fag end of the delivery period, act upon such inspection call only in consultation with the Quality Assurance Officer, so as to avoid keeping the contract alive after the expiry of the delivery period.
- (iv) The Quality Assurance Officer shall be final authority for acceptance of the stores. The Inspection Note will also be issued by him and the accepted stores shall be stamped/sealed by the Quality Assurance Officer as per the laid down procedure. The representative of the indenter shall also affix a stamp on the accepted stores in token of his having seen them at the time of inspection. The facsimile of both the stamps will appear on the Inspection Note.
- (v) Advance samples are inspected and approved by DQA concerned/Inspection Authority jointly with the Indenter's representative as stipulated in the contract.
- (vi) Forward one reference sample to each of the consignees along with the first lot of dispatches of accepted supplies for their guidance where so provided for in the contract.

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

14.7.1 DGS&D places contracts in the form of Acceptance of Tenders, Rate Contracts or Supply Orders against Rate Contracts. Rate Contracts permit operation/drawal by Direct Demanding Officers. In such cases, the supply orders are placed by the indentors themselves who are so authorized to draw their requirements against such rate contracts. Rate contracts for items like Cement (Grade 33 & Grade 43), Gases, Bulk Petroleum Products, Asphalt provide for dispatch by the contractors on their guarantee and Warranty itself and only periodical inspection by QA Wing at the works of the manufacturer. In such cases, no consignment wise inspection is carried out.

14.7.2 The copy of Acceptance of Tender or Supply Order endorsed to the Quality Assurance Officer is the sole authority on which consignment wise inspection is carried out and Inspection Note issued. In respect of Rate Contracts where only periodical inspection is to be carried out by the QA Wing, such visits/inspection is carried out on the basis of the Rate Contracts endorsed to the concerned QA Directorate and in line with the instructions contained in Inspection Process Schedules (IPS) where applicable the contract specifications and other requirements given in the respective contracts as applicable and reports thereon are forwarded to all concerned as per rate contract/extant instructions.

14.7.3 The inspection work would be commended even if orders are placed by a telegram (i.e. Advance Acceptance of Tenders), by DGS&D if all the necessary details are available therein. However, Inspection Notes shall be released only after receipt of the copy of the formal Acceptance of Tender (A/T) or Rate Contract and after checking that all the requirements therein are complied with.

14.7.4 On receipt of the copy of the Acceptance of Tender or Supply Order, the Quality Assurance Officer concerned will check the particulars governing the stores and also the endorsed drawings and sketches, if any, to satisfy himself that these are complete in all respects, so that effective inspection is carried out. In case, the particulars furnished are not complete or discrepancies are observed an immediate reference will be made to the concerned Purchase Officer for clarification. The Quality Assurance Officer will undertake the inspection after all the discrepancies or ambiguities have been removed and all the lacking particulars are made available to him.

14.7.5 The Quality Assurance Officer will satisfy himself that he is in a position to undertake inspection and that :-

- (i) He has all the necessary particulars, drawings, specifications, samples, etc. which govern the supply
- (ii) He is able to make arrangements for such tests, as may be necessary
- (iii) His staff have sufficient knowledge of the materials required to be inspected, and
- (iv) In the case of small scale units which may not have their own arrangements for some of the acceptance tests, requiring costly test equipment, the help of

the fully equipped laboratory where such tests can be witnessed may be taken. In case of doubt the advice of Supervisory Officers or the Headquarters office may be sought.

- (v) Inspection visits are arranged by combining tours to the extent possible to achieve economy.

14.7.6 The preliminaries to actual inspection should be completed at the earliest so that there is no delay in undertaking inspection after the call is received from the Supplier that the stores are ready for inspection. Inspection process schedules for certain items issued by the Headquarters should be adhered to.

14.8 INSPECTION PROCEDURE : The inspection will be guided by the provisions contained in the governing specifications and contract as regards to the scope of inspection to be carried out at the pre-despatch stage and/or final inspection as the case may be. Whether every unit of the supply is to be inspected or inspection is done on the basis of random sampling is governed by the governing specification and/or the departmental orders issued in this regard from time to time.

When material being supplied is in bulk quantities and it is difficult to examine each and every piece, the procedures as given in relevant Inspection Process Schedule (IPS) and other departmental instructions issued from time to time shall be followed. Where no instructions exist, the guidance of the supervisory officer shall be taken. The material actually inspected shall be double stamped/sealed and balance single stamped. The Inspection Note will be endorsed to this effect. However, the Quality Assurance Officer is responsible for the whole consignment.

14.9 SIZE OF SAMPLES TO BE TAKEN FOR INSPECTION AND TESTS :

14.9.1 The quantum/number of samples to be drawn from a particular lot or batch of stores for inspection and tests shall be as laid down in the governing specifications, departmental instructions, Inspection Process Schedule (IPS) or inspection protocol decided as the case may be. Where these are silent on this aspect, the size of sample to be drawn may be ascertained from the supervisory officer or the testing authority as may be required.

14.9.2 When a size is laid down in a specification for test or examination, this size is to be considered the normal. If the Officer-in-charge opines that this size can be safely reduced or increased for any particular order or lot/consignment he is authorized to do so with the approval of DDQA/DQA. Where no size is laid down, the Officer-in-charge will use his own discretion in determining the size for test or examination but he will be careful that the size is not below that which is likely to be fairly representative. In cases of failure in a test or examination, the Officer-in-charge may order a further size for test or examination as per sampling procedure or extant instructions before pronouncing rejection.

14.9.3 If the defects or deviations observed are of rectifiable nature, such rectification may be permitted to be completed within a reasonable time frame and stores resubmitted for inspection within the stipulated delivery period for making further sampling examination, or making re-test of the samples, as may be permissible under the governing specifications/departmental orders before making a complete rejection of the stores.

14.10 INSPECTION TO ‘SAMPLE’ : Where inspection is to be carried out as per a specification along with an approved sample, the requirements of the specification must be carefully followed. The scope of the sample shall generally be in respect of aspects like feel, finish, shade, workmanship, pattern etc. which are not quantifiable in the governing specifications and as given in the contract.

14.11 EXAMINATION FOR WEIGHT/CONTENTS :Where weights are given in the order of specification a sufficient quantity of material should be weighed to ensure that the average weight is within the limits laid down.

14.12 CHECK OF CONTENTS OF BUNDLES : When stores are supplied in boxes, bundles or coils as in the case of tools, rope, canvas, barbed wire, etc. each of which is required to contain a specified quantity, reasonable number should be opened up and checked, particular attention being paid to the purpose for which it is required.

14.13 ACCEPTANCE/REJECTION OF STORES : After satisfactory inspection and tests the Acceptable materials shall be stamped, labeled, marked, or sealed according to the circumstances in such a way as to make subsequent identification of accepted lot easy. Detailed instructions given in Para 15 shall be followed.

- (i) The Quality Assurance Officer shall ensure that the lots which are under inspection, accepted, or rejected are properly segregated and identified.
- (ii) There shall not be any initial provisional acceptance at a lower level. Inspection Reports shall be prepared detailing the inspection done, samples examined, the requirements as per the relevant specification/contract and the observations jointly with the representative of the firm. Where an inspection report format is prescribed in the IPS the same shall be followed.
- (iii) After acceptance of the inspection by the competent authority, as given in the Delegation of Authority, the Inspection Notes will be prepared and issued within the time limits prescribed in the Management by Objectives. The procedures and instructions as per Para 16 shall be followed.
- (iv) In respect of stores which have been finally rejected by the Quality Assurance Officer, the rejection Inspection Notes will be issued immediately following the completion of the inspection with the approval of the competent authority as given in the Delegation of Authority. The rejection shall not be in piecemeal. All the reasons of rejection and deviations found from the governing specifications, drawings or other particulars should be noted in detail in the “Remarks” column of the Rejection Inspection Note.

14.14 APPELLATE AUTHORITY : The appellate authority for any grievance of the contractor against such rejections shall be one level above that of the officer who approved the rejection. Such requests for grievance redressal may be processed on merits provided the Delivery Period is valid for supply. The comments/recommendations in cases which have a bearing on the contract shall be advised to the Purchase Directorate concerned. The processing fee for such requests shall be Rs.1000/- which is not refundable.

14.15 INSPECTION OF STOCKS AGAINST RATE CONTRACTS

14.15.1 Where the Rate Contract provide for maintenance of inspected stocks by the contractors for expeditious supplies against Supply Orders the same are to be inspected and accepted as in the normal course. The accepted stores duly stamped will be maintained as inspected stocks by the contractor. Inspection Notes would be released against such inspected stocks as and when a request for the same is received from the contractor giving the relevant details of Supply Order, Consignee, Qty., Batch No./ Lot No., S.Nos. if any, date of inspection of the stocks etc. to release the Inspection Notes giving date of inspection of the stocks against Col 7 of the Inspection Note.

14.15.2 Where the stores are of such nature which may deteriorate in storage of the Quality Assurance Officer would be at liberty to inspect the same for their condition as may be necessary before release of the Inspection Notes.

14.15.3 In case the contractor has to maintain the inspected stocks at places/branch offices other than the one where inspection is carried out, he will give details of the transfers of accepted stocks to their Branch Offices which would be advised to the QA Directorate concerned who are authorized to release the Inspection Notes.

14.15.4 In case of Rate Contracts for items like cement, gases, Asphalt, Bulk Petroleum Products etc. which provide for only periodical inspection of stocks at the manufacturers' works for quality, no consignment inspection is required to be made and Inspection Notes issued. Periodical inspection is to be carried out as per extant instructions in the respective contracts and IPS if any issued from time to time.

14.16 INSPECTION PROCEDURE FOR PLANT AND MACHINERY : In all cases of inspection of plant and machinery at manufacturers' works, and at site after erection and commissioning, the following procedure shall be followed :

- (a) The Quality Assurance officer would prepare an inspection protocol on the basis of the manufacturer's Quality Control facilities and obtain approval of the supervisory officer concerned and advise the same to the contractor. The Inspection Protocol may cover the inspection of sub assemblies, bought out components, stage inspection and final inspection as necessary.
- (b) On inspection and tests of the plant as per the inspection protocol, inspection reports will be prepared and signed jointly by the Quality Assurance Officer and the manufacturer's representative. The report on inspection of plant and machinery at site would be made jointly with the Consignee and manufacturer's representative, and signed. Copies of the same would be forwarded to the Purchaser, Indentor, and machinery of value Rs.10 lakhs or more, copies of such reports are to be endorsed to ADG(QA) also.
- (c) In case defects are observed in the inspection a performance Notice shall be issued by the Inspecting Officer as per DGS&D 71 giving suitable time required for rectification of the defects, not exceeding 45 days from the date of notice, failing which Rejection Inspection Notes shall be issued to enable the Purchase Directorate concerned to proceed with further contractual action.

14.17 SANCTION TO MODIFICATIONS BY INSPECTING OFFICERS :

14.17.1 Quality Assurance Officers have no authority to sanction any modification to the governing specifications, approved drawings or samples against any contract.

14.17.2 Deviations from the contract specifications/requirements not affecting price, quality, performance and other terms of contract may be allowed at the level of DQA with or without consultation with the Indentor/Consignee on merits/nature of deviations. In all other cases, the stores shall be rejected giving full reasons by issuing a rejection Inspection Note. Rejections shall not be made in a piecemeal basis. Rejection Inspection Notes shall be issued with the approval of the Supervisory level officer or the officer in charge of the centre.

14.17.3 The Quality Wing Officer may, in the absence of instructions to the contrary from the Purchase Authority, inspect and accept (if of acceptable quality) stores offered in replacement within the delivery period.

14.18 STAMPING/SEALING OF ACCEPTED STORES :

14.18.1 All accepted articles should be sealed, labeled or stamped according to their nature in a conspicuous manner. Articles too small or inconvenient to be sealed or stamped should be bundled/packed and stamped/sealed. The bundling/packing should be done in such a way that the material cannot be interfered with after sealing.

14.18.2 The stamp/seal should be impressed in a uniform position on each article according to its nature. All precautions should be taken to see that the impression of the Seal, or stencil appears legibly on all the pieces. In case of items of bulk quantities, stores sampled shall be double stamped and balance single stamped.

14.18.3 Facsimile of the Inspection stamps and their position should be put on the Inspection Notes to help identifying the stores at the consignee's end.

14.18.4 Method of stamping of accepted stores shall be as given in the Inspection Process Schedule (IPS) for the same or similar item where available. Otherwise guidance of the supervisory officer may be taken.

14.19 INSPECTION DOCUMENTS :

14.19.1 Inspection Notes in Form No.DGS&D(S)-84 are issued in significance of the acceptance of the stores against which payments are made by the Chief Controller of Accounts, Department of Supply as per the conditions of the contract. The Inspection Notes contains two parts viz., Inspection Certificate and Consignee Receipt Certificate. The Inspection Certificate portion is completed, authenticated and issued by the competent inspecting officer. Consignee's receipt certificate portion is to be filled by the consignee after receipt of the stores at destination, verification of the quantity, inspection marks on the accepted stores and taking the supplies in their stocks signifying their acceptance.

14.19.2 In the case of DGS&D Rate Contracts, Inspection Notes in form No. DGS&D(S)-84 are issued in all cases irrespective of whether the payment against a Supply order is to be made by the Chief Controller of Accounts, Department of Supply or by the Accounts Office of the DDG.

14.19.3 Quality Assurance Certificate in form No.DGS&D-24A is to be used to signify acceptance of stores against DGS&D orders for Jute bags used for foodgrain.

14.20 PREPARATION OF INSPECTION NOTES :

- (a) A separate set of Inspection Notes must be made out for each consignment under the Acceptance of Tender or Supply Order.
- (b) In the case of large consignments the issue of Inspection Notes may not be held up until the inspection is completed but these must be issued for the quantity inspected and accepted during not more than 48 hours. Accounting Unit is in terms of 'Sets' or 'Number' and the stores are such that they comprise of a number of components or accessories Inspection Notes may be issued when all the parts, components and accessories forming a set are inspected and accepted. Where the "Accounting Unit" is on "Tonnage" basis, Part-Inspection Notes can be issued when the details of weight and dispatch particulars are available from the Suppliers.
- (c) When Plant and Equipment are ordered with spares, Inspection Notes for spares should not be issued before acceptance of main equipment.
- (d) In the case of contracts for imported stores which involve initial inspection in the country of origin and final inspection in India, final Inspection Note will be issued giving reference to the certificate issued abroad.

14.21 ISSUE/DISTRIBUTION OF INSPECTION NOTES WHEN SUPPLIES ARE ACCEPTED : Inspection Notes are printed in sets of eight leaves each having a unique number. On the top of each leaf the details for whom the copy is meant is printed. The copies of Inspection Notes to be made out and distributed by the Quality Assurance Officer when the supplies are accepted with or without some rejections shall be as under :

COPY	ISSUED TO	REMARKS
1. Advance Payment copy	Contractor	To be submitted along with bill to CCOA for 90/95/98% advance payment
2. Balance Payment copy	-do-	To be sent by the contractor along with the R.R. to the consignee who is to return the same duly completing the CRC portion after receipt and his acceptance of stores. Contractor to submit this copy along with His bill for balance payment
3. Contractor's copy	-do-	
4. Consinee's copy	-do-	To be sent by the contractor along with R.R to the consignee.
5. Accounts copy	-do-	-do- who would in turn send this to the CCOA after completing the CRC. CCOA

Will send this copy alongwith duplicate Copy of the bill to the consignee's Accounts Officer after making balance payment and Raising the debits in the outward account.

- | | | |
|--|---------------|---|
| 6. Purchaser/
Consignee
Advance copy | Director(MIS) | If the A/T or S.O. is placed by DGS&D Director(MIS) would send this to Purchase Directorate after noting the Progress |
| | Consignee | If DDO placed the S.O. |

7. Quality Assurance
Office copy

8. Indentor's/DDO's Indentor/DDO
copy

- (a) The Inspection Note copies meant for payments shall be attested with full signature in ink by the Quality Assurance Officer. CCOA would make payments against copies so attested only.
- (b) Corrections if any in the Inspection Note shall be attested by the officer issuing the same. Similarly each Continuation Sheet if attached to the Inspection Note should be signed by the Quality Assurance Officer as well as by the consignee at the relevant places and any correction attested.
- (c) Each Inspection Note copy issued shall invariably bear the name stamp with Designation and Code No. of the officer authoris3d to sign and issue Inspection Documents.
- (d) In case of total rejections no copies meant for payments/Accounts Office will be issued. Such copies will be cancelled across by the Inspecting Officer with his signature and retained in the inspection file along with the office copy of rejection Inspection Note. In respect of initial or final inspections only appropriate copies of Inspection Notes shall be signed and released as per the relevant payment terms of the contract.
- (e) Each Directorate shall arrange to send three specimen signatures of the officers of the Directorate with the Name, Designation and Code No. details as and when they are authorized to inspect independently and sign the Inspection Notes, duly countersigned by the Director(QA) to CCOA, New Delhi, Calcutta, Mumbai and Chennai.
- (f) No 'Certified true copy' of the lost original payment copies will be issued until a 'Non Payment Certificate' has been received from the Accounts Officer concerned that payment has not been made and will not be made against the original Inspection Notes even if received subsequently. This copy must be endorsed as "Certified Copy" and this endorsement will be attested in full in indelible ink by the officer giving cross reference to the Accounts

Officer's Non Payment Certificate with the name stamp with designation and Code No. of the officer issuing the duplicate copy.

- (g) Copies of Inspection Notes other than payment copies may be issued by Quality Assurance Officer without reference to the Accounts Officer. These copies will be prepared on separate Inspection Note set canceling the payment copies and scoring out the printed Inspection Note No. by red ink and incorporating the No. of the original printed Inspection Note No. boldly and attested by the officer issuing the duplicate copies with his name stamp with designation and code no.
- (h) In all cases only appropriate copies of Inspection Notes would be issued.

14.22 INSPECTION NOTES FOR REPLACEMENT SUPPLIES : In cases where stores are rejected by consignees and replacement supplies are inspected, full set of Inspection Notes are to be issued, endorsing the same as "Inspection Notes for Replacement of Supplies" . References of consignee's rejection advice and original Inspection Notes should also be included under the 'Remarks' column.

14.23 VALIDITY OF INSPECTION NOTE :

14.23.1 Inspection Note would be valid for the period as under from the date of issue for purpose of dispatch of the accepted stores by the contractor. The Inspection Note shall be endorsed clearly as under.

"This I/Note is valid till
for the purpose of dispatch only."

(A) SHELF LIFE ITEMS :

SHELF LIFE VALIDITY		VALIDITY OF I/NOTE
(i)	30 days	4 days
(ii)	6 months	14 days
(iii)	1 year	30 days

(B) All other items 30 days

14.23.2 The stores shall be dispatched within the validity period of the Inspection Note. If the contractor is not able to dispatch the stores within the validity period, an extension not exceeding a total period of 60 days from the date of the Inspection Notes can be given in respect of items other than of 'SHELF LIFE'. This extension is to be permitted by DDQA or the Officer in charge of the centre on written request from the contractor giving valid reasons. The Officer concerned shall make an endorsement of the fact of extension of validity on the Inspection Notes.

14.23.3 If the stores are not dispatched within the total period of 60 days, the contractor will have to get the goods re-inspected and obtain fresh inspection notes subject to availability of delivery period etc. as if the request for inspection is a fresh one. The fresh inspection notes shall contain a note that these have been issued in lieu of the earlier inspection notes, clearly indicating the printed serial no., date of issue of the earlier Inspection Notes.

14.23.4 Even in the cases where only a part quantity under a particular Inspection Note could be dispatched within the validity period fresh inspection shall be sought for by the contractor for the undespached balance quantity subject to satisfying the conditions of contract for delivery period etc. The request letter will be in duplicate indicating the original Inspection Note number and explaining the circumstances under which the contractor failed to dispatch the entire inspected lot Inspection Note amended by the Quality Assurance Officer before dispatch of the part quantity of the inspected lot. On inspection of the outstanding quantity afresh, the Quality Assurance Officer will issue the fresh Inspection Note. One copy of the request letter of the firm attested by the Quality Assurance officer shall accompany Advance payment copy of the new Inspection Note. The Quality Assurance Officer will also indicate the new Inspection Note No. on this copy of the firm's request letter. In such a case there would be no necessity of obtaining a "Non-payment certificate" for the outstanding quantity which have been dispatched against the earlier Inspection Note.

14.23.5 PREPARATION OF QUALITY ASSURANCE CERTIFICATE (JUTE BAGS) : Quality Assurance Certificate (Jute Bags) in form DGS&D-24A where applicable, shall be issued in sets of 8 copies as under :-

1. Advance Payment copy
2. Contractor's copy
3. Copy to be forwarded by the contractors to the consignee alongwith dispatch documents
4. Copy for paying authority to be forwarded directly by QA Office
5. QA Office copy
6. DS&D, Calcutta copy
7. Indentor's copy
8. Consignee copy to be sent directly by QA office.

14.24 DESPATCHES MADE BEYOND THE VALIDITY DATE OF INSPECTION NOTES : The Inspecting Officer is not authorized to extend the validity period of Inspection Note beyond 60 days of the original date of Inspection Note in any case. Where any contractor dispatches the goods beyond the validity period of the Inspection Note without an extension of validity of Inspection Note/reinspection by the Inspecting Officer either in full or in part, the contractor has to approach the Purchase authority for a

decision/authorization on the merits of the case/circumstances. Authorisation for such cases can be given only at the level of DG/ADG of Supply Wing.

14.25 INSPECTIONS ON ASPECTS RELEVANT TO CONTRACT MANAGEMENT :

(1) INSPECTION OF STORES OFFERED AT THE FAG END OF DELIVERY PERIOD/AFTER EXPIRY OF DELIVERY PERIOD.

Instructions in this regard are set out in the Chapter No.14 on "Delay in Supplies - Extension of Delivery period and inspection of stores after the expiry of the Delivery Period"

(2) INSPECTION WORK AT CONTRACTOR'S PREMISES.

The Quality Assurance Officer is entitled to inspect work during the course of manufacture. He will arrange to visit the contractor's premises while the work is in progress to ensure that the contract is being properly executed. The Contractor should be notified in writing of any faulty process or materials he is using, which cannot be accepted. If suspension of supplies is considered necessary, the Quality Assurance Officer must immediately report the matter with full reasons to the Purchase Officer concerned.

The Quality Assurance Officer should take advance of such visit to offer advice and explain any points on which the contractor may be in doubt.

(3) INSPECTION OF ADVANCE SAMPLES

The following provisions will apply where the contract provides for submission of samples for approval/test wither by DGS&D(Quality Assurance Wing) or Defence Quality Assurance Officerate or any other agency before bulk supply is taken up for manufacture by the contractor.

- (i) to ensure that the advance sample submitted for inspection is within the definite date given in the contract for the purpose.
- (ii) Wherever samples are forwarded to the National Test House or any other outside lab the Inspecting Officer, shall impress upon the laboratory and follow up for expeditious testing and report.
- (iii) The Director (Quality Assurance) has the option to arrange to get the material tested in other approved laboratories where it is not possible for National Test House to furnish Test Reports in time, although the material was tendered on due date for this purpose.

The acceptability or rejection of the Advance Sample shall be communicated to the Contractor, the Purchase Officer and all others concerned expeditiously.

(4) CONTRACTOR'S PERFORMANCE RECORDS :

All Quality Assurance Directorates have to vett the performance reports of the contractors in the prescribed format against Rate Contracts and forward copy to the Purchase Directorate concerned. They shall also report bad performance of a supplier on quality of supplies in all cases of complaints justified in joint investigation. If any instance has come to the notice of the Quality Assurance Officer wherein the firm had not dispatched the earlier inspected lot

for along time without any valid reason, the same should be reported to the competent Purchase Authority.

14.26 UTILISATION OF SERVICES OF NATIONAL TEST HOUSE, METALLURGICAL QUALITY ASSURANCE OFFICERATE LABORATORY OR OTHER APPROVED TESTING LABORATORIES :

14.26.1 National Test House is the organization under the Department of Supply having facilities for testing a large variety of products. Quality Assurance Wing and NTH should have synergy in their working relationship, Customer interface and training. QA Wing should encourage Industry and user departments to avail the facilities at NTH laboratories extensively to meet their testing requirements. Similarly NTH should assist in training QA Wing officers/staff in testing methodology etc. The synergy is to be developed by Quarterly meetings between the DDG(QA) of the Zone and the NTH lab in the area for

- (a) full exploitation of the testing potential available at NTH and Metallurgical Quality Assurance Officerate laboratories,
- (b) expeditious testing and issue of test certificates by the laboratory,
- (c) training of QA Wing Officers/Staff
- (d) arranging payment to NTH for testing work done at DGS&D's request and test charges payable by parties other than DGS&D, and
- (e) all other matters of mutual interest.

14.26.2 NTH shall be holding atleast one meeting annually with the DGS&D Rate Contract holders in that region associating DDG(QA), DQAs and DDG(S) of the area for interaction with this clientele as NTH core customers. This forum should be utilized not only to redress grievances/difficulties but also to help NTH in broadening its service base and range of activities.

14.26.3 As part of the inspection of stores it becomes necessary to conduct periodical/confirmatory tests before accepting the stores. Samples drawn from the lot offered may be sent for test to the National Test House, Metallurgical Quality Assurance Officerate Laboratory or other approved laboratory having the facilities for the type(s) of test required. Facilities at National Test House and Metallurgical Quality Assurance Officerate Laboratory would be utilized to the maximum extent and sending samples to other laboratories will be resorted to only when it is expedient to do so. When the samples are sent for confirmatory tests at an independent laboratory, the corresponding lot can be accepted and inspection documents released only after receipt of satisfactory test report. However, in case of periodical type tests, the inspected lots can be released on the basis of acceptance tests carried out.

14.26.4 Samples failed in test undertaken at the NTH laboratories should be re-tested at the NTH laboratories, wherever re-test is required in the presence of the DDQA of QA Wing. However, DDG(QA) of the concerned zone has been authorized, depending on the merits of each case, to permit such retesting at other accredited/recognized laboratories or tested in firms' laboratory/spot laboratory in the presence of senior officers of the Quality

Assurance Officerate. Samples failing in test in other laboratories should be re-tested at NTH laboratory when such facilities exist.

14.26.5 The liability for cost of samples expended in tests, transportation costs, test charges etc. shall be as given in the Liability Statement at [Annexure – 49](#). So far as test charges payable to NTH by DGS&D are concerned, the same shall be by Proforma Adjustment.

14.27 PROCEDURE FOR SENDING SAMPLES TO THE NATIONAL TEST HOUSE, TEST LABORATORIES, VERDICT ON REPORTS ETC. :

14.27.1 In cases where the samples are to be tested at firm's cost on account of non-availability of their own testing arrangements, the responsibility of depositing the testing fee would rest with the contractor. The Quality Assurance Officer will intimate to the firm the amount of test fees to be deposited and will also keep a watch that the same has been deposited by the contractor in time.

14.27.2 Samples for acceptance test will be sent to the Testing Laboratory by the Quality Assurance Officerates under their own arrangements as far as possible. Assistance required for packing etc. may be taken from the contractor.

14.27.3 All Quality Assurance Officerates should ensure that the complete description of the stores, full specification particulars are incorporated in the test request. The quantity of samples sent for test should be adequate so that if any firm challenges the test results given by the laboratory, re-testing can be undertaken on sample identical to originally tested samples in contractor's presence.

14.27.4 The representative sample will be drawn, labeled and dispatched in accordance with the instructions given in the contract specifications and procedure of inspection for that item.

14.27.5 When samples are to be tested at non-government laboratories, tests will be categorized as short duration tests and long duration tests, with the approval of the Director of Quality Assurance. Short duration test shall invariably be witnessed by the Quality Assurance Officers while long duration test will be witnessed, if so warranted and to the extent as may be decided by the Director. Quality Assurance officers should carry with them samples to be tested in the laboratories to the extent possible. They should also sign the test reports after witnessing the test and obtain a copy thereof for taking further action on the test report.

14.27.6 Verdicting of test certificates furnished by the testing laboratories will be done by quality Assurance Officerates on the basis of the relevant contract specification requirements.

14.28 SUPPLY OF COPIES OF TEST CERTIFICATES :

TO INDENTORS : Against specific requests from Indentors, copies of test reports can be supplied by the Directorates.

TO FIRMS : Copies of test certificates adverse or satisfactory, may be supplied to the firms by the Quality Assurance Officerates in respect of samples tested at the instance of Quality Assurance Officerates when cost of such testing was borne by the contractor or he pays for the same at the rates applicable for the industry.

Standard or Tender samples against DGS&D tenders are tested at the expense of tendering firms. On completion of test, the original copy of the test certificate is to be forwarded by the testing laboratory to the relevant Purchase Directorate of DGS&D. Copies of such test reports can be provided to the firms against their specific request.

14.29 SAMPLES

Different types of samples dealt with are :

- 1) Sealed Sample
- 2) Standard Sample
- 3) Tender Sample
- 4) Advance Sample
- 5) Bulk Supply Sample
- 6) Complaint Sample
- 7) Quality Audit Sample
- 8) Reference Sample

Samples of value Rs.1000 or more are classified as valuable samples. The Assistant Director (Quality Assurance) in charge of the Sample Room will be responsible for all activities in the Sample Room. A Register of Samples shall be maintained. The instructions in respect of different types of samples are as given in [Annexure – 50](#).

14.30 INSTRUCTIONS REGARDING SAMPLES :

- (a) When a contract is concluded on the basis of an approved sample the same shall bear seals/signatures of the approval of the different agencies as appropriate. The Samples thus bearing the seals/signatures shall serve as guide for inspection against the particular contract as given in its scope.
- (b) Sealed samples intended to guide supplies against orders placed should not as a rule be sent to firms. They may be sent to the Directorate concerned keeping duplicate copies or duly sealed serviceable portions in the sample room as feasible. Where it is necessary to show a sealed sample to a firm it shall be done through the Directorate concerned.
- (c) The examination of the condition and correctness of seals of samples is of great importance. If a sample bears a seal of doubtful character or otherwise

open to question the same shall be immediately brought to the notice of all concerned failing which the responsibility for the defect shall lie on the person in charge of the samples at the time when the defect is noticed.

- (d) Unless otherwise directed samples sealed at Headquarters and issued shall be returned after the order is completed.
- (e) Sample shall be issued for departmental use only. The Sample Room incharge shall be responsible for maintenance and accounting for the samples registered and issued for departmental use. The samples sent by post shall be sent duly insured.
- (g) The value of samples which are lost shall be made good by the person responsible for the loss. If the responsibility for the loss cannot be fixed on any person in any individual cast, or the value is irrecoverable due to any other cause, the orders of the DG (Supplies & Disposals), shall be obtained through the Administrative shall be obtained through the Administrative Branch for the writing off of the amount involved. If the sample has been paid for by the department or a claim for compensation has been preferred by the firm for its value, the loss and the orders of write off shall be communicated to the Accounts Officer. The fact of the loss and reference to the Director General of Supplies & Disposals's orders of write off shall be noted in the disposal column of the samples register in every case under the initial of a responsible officer.
- (h) Physical verification of 'Valuable samples' in the Sample Room (i.e. Samples, the value of which is Rs.1000/- or more each) will be done by a Gazetted Technical Officer of the Quality Assurance Wing other than Assistant Director in charge of the Sample Room. This will be done annually and a certificate regarding the physical check will be recorded in the Sample Register. Physical verification of only valuable samples i.e the samples of the value of Rs.1000 or more each will be carried out.
- (i) A report shall also be made by the verification officer if any sample is missing and if he notices any discrepancy in the procedure as laid down in this Chapter. The report shall be submitted to the Additional Director General (Quality Assurance).
- (j) Samples which have completed the retention period and no longer required shall be set aside for public auction periodically. The record of the samples set aside for auction should be kept in the sample room and entered in the sample register. The samples so set aside for auction shall be got auctioned as per extant instructions regarding disposal of unserviceable government property.

14.31 HANDLING OF INSPECTION STAMPS/INSPECTION DOCUMENTS :

14.31.1 Each quality Assurance Officer will be supplied with Acceptance stamps, Lead Seals, Pliers, rubber Stamps, Stencils, Lables, etc. according to the requirements.

These are used to signify that articles marked or sealed, have been accepted by the Quality Assurance Officer. Each circle will have its own set of seals, stamps, stencils, pliers with definite identification mark. However, Metallurgical Quality Assurance Officers will have identification mark of 'M' for inspection of items like Rauls, Steel Plates etc. at Major Steel Plants.

14.31.2 The Quality Assurance Officers will be responsible for the use of stamps, seals, stencils, etc. in their charge and they should ensure that they are not used by unauthorized persons or in any other irregular manner.

14.31.3 Unserviceable Seals, Pliers, Stamps etc. shall be returned to the Officer Incharge of the Quality Assurance Officerate who will have them repaired, replaced, if necessary.

14.31.4 When a Stamp, Seal or similar item of Inspection has been issued to an Quality Assurance Officer, he must retain the same as long as he remains in that Circle. If he is transferred from one Sub-centre of the Circle to another or from Headquarters Office of a Circle, he will take his Stamps etc. with him.

14.31.5 When a Quality Assurance Officer is transferred to another Circle, he must handover his Stamp etc. to the Officer Incharge of the Circle, he is leaving, and be issued with new stamp etc. at the Circle he joins.

14.31.6 When a Stamp or Seal etc. has been handed over by one quality Assurance Officer, the same should not be re-issued to another Quality Assurance Officer until after some considerable lapse of time, so as to avoid any doubts whether any particular material was passed by the first Quality Assurance Officer who had the stamp or the second.

14.32 CUSTODY OF INSPECTION EQUIPMENT : All acceptance stamps, Sealing Apparatus, Stencils, Labels, Guages, Testing Instruments etc. not in use, should be kept in a Locked Box or Cupboard in the Circle Head Office.

A Gazetted Officer should be responsible for the correctness of all Receipts and Issue of such Appliances which should be noted down in a Register. The Custodian officer should also be responsible to keep the Appliances in serviceable condition. Worn-out or Broken Stamps, Sealing Pliers and Stencils should not be destroyed/disposed of without the approval of Headquarters. Annual inspection and stock-taking of stamps, seals, etc. should be carried out by the quality Assurance Officerate.

14.33 CUSTODY OF INSPECTION NOTES DGS&D(S)-84 AND MILITARY CREDIT NOTES (FROM NO. IAFT 1711) :

- (i) These must be kept under lock and key in the custody of the individual to whom they are issued.
- (ii) Books of these forms are machine numbered, so that it is possible to trace from which book an irregular or incorrect issue of any of these forms has been made. These books will be signed for by individual responsible for their safe custody.

- (iii) In order to ensure a proper check being maintained on the issue of Inspection Notes, the Quality Assurance Officer/consignee will record a certificate on the book cover :-

Certified that this book contains sets from S.No..... to

Station Signature.....

Date Designation.....

- (iv) He will also keep, S.No wise, an account of the Inspection Notes issued with details in the format on the cover page.

NOTE : Inspection Notes issued for bulk rejections and those used for preparing certified copies will be entered in red ink.

14.34 JOINT INVESTIGATION AGAINST COMPLAINTS RELATING TO QUALITY OF STORES : Following procedure has been laid down for investigation into complaints received from indentors/ consignees or other wise pertaining to the quality of stores supplied by the contractors. Investigations may also be taken up suo moto as part of the quality audit programme.

- (a) When a complaint pertaining to quality is received, it should be put up to DDQA/DQA and entered in the complaint register. Cases involving defects due to transit damage or short supply do not call for any investigation. These need not be entered in the register. The progress of the complaint should be reviewed by DDQA regularly till it is disposed off. Register should be examined by DQA once a month.
- (b) The Quality Assurance Officer who receive the complaint should refer it to DQA/DDG(QA) who will decide whether investigation is necessary and whether the complaint is simple/routine or carried out as a matter of routine but arranged in a given case with the approved of DQA/DDG(QA), when it is considered necessary or expedient in government interest. For difficult and complicate cases DDG(QA) will decide whether the officer from the circle who had accepted the stores initially has to be associated in investigation.

If it is decided to conduct the investigation, the Quality Assurance Officerate, where the consignee is located shall carry out the investigation. In case investigation is not considered necessary the matter should be reported to all concerned for taking further action as per the contract and the Purchase Officer to be informed to follow the drill laid down in [Annexure – 48](#).

- (c) In cases when investigation is to be done the original Quality Assurance Officerate will furnish details of case with comments, to the circle who is to

investigate the complaint, indicating the designation of officer, facsimile of acceptance stamp used and its location on the accepted stores etc.

A copy of this letter will be endorsed to consignee requesting him to be ready for the investigation of complaint. By another copy the firm will be informed about the intention to conduct the investigation.

Similarly, the Investigating Circle should call for details necessary for investigation of the complaint, including the basis on which the stores were accepted if the same are not received from the original Directorate alongwith the request for investigation. Fifteen days time should be given for this purpose, failing which the investigation should be conducted on the basis of information/particulars available with the consignee.

- (d) DQA/DDG(QA) will decide the level of the officer to be deputed for investigation keeping in view the exigency and nature of the case. For difficult and complicated complaint cases, the investigation should preferably be done by an officer not below the rank of DDQA or by a team headed by DDQA/DQA as decided by DDG(QA). DQA/DDG(QA) will decide whether or not samples should be drawn and sent for further testing, if the stores are found defective on visual inspection and spot testing.
- (e) The officer detailed for the investigation should be conversant with the stores under investigation. Whenever necessary he should consult senior officers/regional circle before proceeding in the matter.
- (f) On receipt of details, the investigating officer/team should study the governing specifications, drawings, special instructions, if any, sampling plans and Acceptable Quality Level wherever available and applicable, nature of deviations involved, the requirement of the testing instruments, gauges etc. meticulously and carry out the investigation and complete the details as per proforma enclosed at [Annexure – 52](#).
- (g) Before undertaking investigation, officers should satisfy themselves that the subject stores have the seal/stamp mark of the quality Assurance Officer as mentioned in remarks column of Inspection Notes or Quality Assurance Certificates and as reported to them. (The Inspection Notes and Quality Assurance Certificates must contain clear facsimile of stamp and its location on the stores).

It is the first and foremost duty of investigating officer/team to identify stores before proceeding with the investigation. Any failure in this regard on the part of the Investigating Officer may call for disciplinary action. Cases where stores rejected at consignees' end are found not bearing the Quality Assurance Officer's stamp mark should be reported to Purchase Directorate and Quality Assurance Wing for taking action as per standing instructions.

Investigating Officer/team should, however carry out visual/physical inspection and dimensional check up and other tests which are possible at consignees' place, for such unidentified stores. Normally no samples should

be drawn from such stores for tests at outside laboratories. Report of investigation in such cases should be sent to DQA/DDG(QA) for further direction.

- (h) During investigation, visual and physical examination should be carried out to the extent possible with duly calibrated instruments available with inspection team/consignee. For stores which involve only physical check up of parameters such as weight, thickness, finish, etc. and where the quantity under complaint is not large, preferably all pieces should be examined. While conducting inspection the testing facilities of consignee (if found proper) should be utilized fully and all the tests which can be conducted at consignee's place should be carried out in the presence of the investigation team. Investigation finding should not be ambiguous and the concluding remarks should be spelt out clearly. In cases of minor deviation/defects it should be stated whether the stores are serviceable and can be accepted with the deviations, with or without price reduction. The price reduction to be imposed, if any, will be recommended by the Investigating team, wherever possible.
- (i) In cases where the complaint can be decided only by confirmatory tests on samples, adequate quantity needed for a fair evaluation of quality shall be drawn. The amount of sample to be drawn will be decided by the investigating team depending upon the type/nature stores involved and the nature of defects reported. Counter sample must also be drawn and retained at consignee's place.

In case of stores whose shelf-life has expired no sample is to be drawn. However, where limited shelf life is available DQA/DDG(QA) on receipt of complaint will decide whether samples are to be drawn or not taking into account the tests involved and usual time required by the laboratories for testing.

Samples drawn during investigation should be sent to government/approved laboratories. DQA/DDG(QA) shall decide the laboratories where the samples have to be sent for testing taking into account the aspect whether the testing could be witnessed by Quality Assurance Officer and representative of consignee, if required. The samples could also be tested in consignee's laboratories/Quality Assurance Officer's laboratories in the presence of Quality Assurance Officer and consignee if proper testing facilities are available. The testing in Government/approved laboratories may be witnessed by Quality Assurance Officer and consignee if felt necessary. The test request to outside labs should be made only for properties under complaint and should be issued on the spot by investigating officer/team to avoid delay.

When sample is sent to Government/approved laboratories for test and the testing is not witnessed by the investigating team, the investigating officer should monitor the progress of testing. Wherever necessary, on receipt of Test Report, the Investigating Team should re-assemble to complete the concluding remarks of Investigation Report.

- (j) The suppliers are not to be invited to participate in investigation. However, while intimating the firms regarding intention of undertaking investigation, time, date and place of investigation will be mentioned with a note that no request for change in the date of investigation will be entertained. (It may also be mentioned that the non-participation of firms representative will into give them any reason for representation against administrative action, if taken against them).
- (k) The investigation report will be prepared in prescribed proforma given in [Annexure – 51](#) and should be signed by all concerned who participate in the investigation. In case Investigating Officer does not agree with consignee regarding findings of investigation, he would give his dissenting note in the investigation report with reasons in brief adding that the case should be put up to higher authorities for final decision.
- (l) The investigation report in prescribed proforma should be submitted to the original Quality Assurance Officerate, purchase officer and Quality Assurance Wing Headquarters within a weeks of receipt of request from the original Quality Assurance Officerate/relevant papers duly approved by DQA/DDG(QA).

Results of investigation shall be communicated to Purchase Officer to enable him to proceed further in the contract. In cases where complaints are upheld after investigation, DQA/DDG(QA) will initiate suitable action.

- (m) In complaint cases of metallurgical items received in the Engineering Quality Assurance Officerates, wherever considered necessary the assistance of Metallurgical Quality Assurance Officer including their association at the time of investigation, may be availed.
- (n) All records relating to complaints should be kept under safe custody either by Superintendent of by DDQA and movement of these files should be personally watched by them. They shall be held responsible for any loss of complaint case. These files should not be destroyed as per the normal schedule of weeding and should be kept in the safe custody till the complaint is finally disposed of.

14.35 QUALITY ASSURANCE MONITORING PROGRAMME : This programme was launched during the 7th Plan period. Under this programme test checks are carried out of the stores offered by the suppliers at the manufacturer's premises before dispatch of the stores and at the consignee's end after their receipt, with the following objectives :-

- (a) Audit of the inspection work done by the various Quality Assurance Officers/Quality Assurance Offices
- (b) Determining the effectiveness of the measures taken for conformance of the quality of goods inspected to comply with the contracted specification.

- (c) Verification of correctness of the sampling methods and procedures adopted by the Quality Assurance Officers and their effect on the ultimate quality.

Quality audit Cells have been established under each of the zonal Dy. Director Generals of Quality Assurance. Complaint prone areas are identified and test checks/audit checks are carried out by the Quality Audit Cell under the directions of the DDG(QA). Detailed instructions in this regard have been issued departmentally and these should be followed.

If during the test checks made at the consignee's end after receipt of stores accepted by the Quality Assurance Officer it is found that the stores supplied were substandard, the inspection officers will inform the consignee, purchase officer and the supplier of the defects noticed in the supply made giving complete details. It will be left to the consignee to decide not to consume the stores or not to release the balance copies of the Inspection Notes.

PART II

14.36 INSPECTION BY QUALITY ASSURANCE WING IN RESPECT OF NON-DEPARTMENTAL ORDERS :

14.36.1 The Quality Assurance Wing is authorized to undertake inspection against non-departmental orders placed by all departments of the Central Government, State Governments and Public Undertakings. They will determine quantum of Inspection fee to be charged for inspection services rendered against non-departmental orders within a range of 0.25% to 2% of the value of stores, depending upon complexity and nature of inspection involved.

14.36.2 DGS&D may enter into Inspection Agreement/contracts with the departments of Central Government, State Governments and Public Sector Undertakings for undertaking inspection against their non-departmental orders with stipulation for payment of the inspection fee in advance. However, if it is considered necessary on merits of the case not to insist on advance Inspection Fee, decision to enter into such agreement/contract may be taken in consultation with Finance. However, advance Inspection Fee is not insisted upon in respect of Railways, Defence and Communication Departments with the inspection charges receivable. Where it is necessary to enter into agreements/contracts for inspection services, DG/ADG(QA) are authorized to enter into such agreements/contracts. This power would be exercised by DG/ADG(QA) and will not be delegated further.

14.36.3 The normal terms and conditions for providing the inspection services are as under. However, where there is a mutual agreement for a different terms and conditions, the same would be applicable.

- (a) Pre-delivery inspection of stores and equipment will be carried out at the manufacturers' premises only. The contract specification shall be complete in all respects. The inspection protocol can be mutually discussed with the purchaser, if so desired by him.

- (b) The contracts shall incorporate inspection clause in favour of the QA Wing. The technical manpower for inspection at the manufacturer's premises including their TA and DA would only be provided for. The manufacturers shall bear the cost of all material, labour and charges for laboratory testing. The manufacturer shall carry out his internal pre- inspection and offer the contract specifications. In case of infructuous visits like stores not ready, pre-inspection not carried out by him or repeated rejection of stores, the contractor is liable to compensate DGS&D all costs of such visits.
- (c) The inspection charges shall normally be payable @ 0.5% of the total value of the contract. The minimum charges payable per order is Rs.125/-. The QA Wing is authorized to charge inspection fee from 0.25% to 2% depending upon complexity and nature of inspection involved. The inspection charges are payable in advance directly to the Directorate of Quality Assurance. In case the purchaser would not be able to make advance payment, he may advise the suppliers to remit the Inspection Fee in advance and reimburse the same to the Contractor on receipt of stores at the consignee's end while making the payment for the stores.
- (d) The inspection function is carried out in a decentralized fashion. All correspondence can be made direct to the Directorate concerned at the level of Director (QA).
- (e) The inspection would be carried out in accordance with the contract provisions and inspection protocol agreed therefore. The inspection would be done to the best of our knowledge and abilities. Such inspection would not relieve the sellers or buyers their contractual obligations. The certificate issued after inspection would reflect the findings at the time and place of inspection.
- (f) The Quality Assurance Wing can also provide services and guidance on pre-contract work like formulation of procurement specifications, evaluation of vendors' technical capabilities and technical evaluation of the offers vis-à-vis the Tender Enquiry where so requested for, provided inspection work is entrusted to us.

The Directorates are authorized to refund the inspection charges received in advance in case no service has been rendered on account of cancellation of the order, failure of the contractor in not making supplies, etc.

14.37 INSPECTION REQUESTS AGAINST NON-DEPARTMENTAL ORDERS :

14.37.1 Inspection of Stores against non-departmental orders can be undertaken by QA Wing Directorates on receipt of the contracts with inspection clause in favour of QA Wing with stipulations in line with the normal terms and conditions under which such services are provided or as per specific inspection agreement/contract if any with the purchase organization concerned.

14.37.2 The Quality Assurance Officer thereafter shall carry out the inspection on receipt of intimation regarding the readiness of the stores for inspection, from the suppliers.

The inspection shall be carried out as per the general instructions and contract specifications. If there is any specific agreed inspection protocol the same shall be followed.

14.38 QUALITY ASSURANCE CERTIFICATES : The Quality Assurance Certificates in Form No. DGS&D (QA) – 24 is issued against non-departmental orders i.e. contracts placed by Departments/Organizations other than DGS&D and entrusted inspection work to the QA Wing. This does not contain any receipt certificate portion. Payments against these certificates are made by the respective organizations themselves either by the Indentor/Consignee or their Accounts Officer as the case may be.

14.39 ISSUE OF QUALITY ASSURANCE CERTIFICATES AGAINST NON-DEPARTMENTAL ORDERS :

14.39.1 Five copies of Quality Assurance Certificates are prepared and issued as under :

- (i) Original/Payment copy
- (ii) Contractor's copy
- (iii) Purchaser/Indentor's copy
- (iv) Consignee copy
- (v) Quality Assurance office copy

14.39.2 In case additional copies are to be issued at the request of an Indentor, photo copies of the Quality Assurance copy may be made and issued.

14.39.3 However, in case of para military organizations and other Government Departments who adopted DGS&D procedures and terms and conditions, Inspection Notes in Form No.DGS&D(S) – 84 can be issued in lieu of Inspection Certificate even though payment is to be made by the Accounts Officer of the purchase authority concerned.

14.39.4 Where any organization prescribes a separate format of Inspection Report to meet their specific needs of Quality System Documentation and procedures, the inspection reports in their formats would also be issued in addition to the Quality Assurance Certificate in DGS&D(QA) – 24 form against their contracts.

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CHAPTER - 15

FINALISATION OF PURCHASE CASES AND SETTLEMENT OF CLAIMS

15.1 NEED FOR FINALISATION OF CASES:

15.1.1 A contract, unless otherwise cancelled or discharged, is completed when supplies against the contract have been received in full and accepted by the consignee(s) and full payment therefore 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”.

15.1.1 The finalization 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 price in contracts having price variation clause,
- (iii) Settlement of claims on account of the excise duty, customs duty, sales Tax, freight, insurance etc. and
- (iv) Settlement of claims on account of delay & other claims if any.

15.1.2 It needs no emphasis that purchase cases should be finalized by the purchase Directorates without delay so that the payments due to the suppliers are not held up thereby affecting the purchaser supplier relationship.

15.2 TREATMENT OF CASES WHERE DELIVERIES ARE EITHER marginally IN EXCESS OR marginally DEFICIENT OF THE CONTRACTED QUANTITY, ON COMPLETION OF CONTRACTS: The marginal excesses or deficiencies in supplies may result from any one of the following reasons.

- (a) When the total quantity ordered differs from the scope of normal trade packing;
- (b) Small rejections in normal quotas;
- (c) The manufacture of insufficient numbers;
- (d) The manufacture of small additional quantities to cover possible rejections etc.

15.2.1 In such cases/instances to make the contractor supply the exact quantity is likely to involve all concerned in avoidable correspondence for small quantities of small value.

15.2.2 The following procedure has been laid down for dealing such cases:-

- a) **Excess Supply:** Provided there is no downward trend in prices:
- (i) Excess supply may be accepted upto a limit of 5% of the total quantity on order or Rs. 25000 whichever is less without reference to the indenter:
 - (ii) Excess supply upto a limit of 5% quantity on order but exceeding Rs. 25000 may be accepted with the concurrence of the indenter.
 - (iii) The purchase directorate will be kept informed.
- b) **Short Supply:** Short supply upto a limit of 5% quantity on order or Rs. 25000 whichever is less without reference to the indenter may be accepted.

15.2.3. Formal amendment to the Acceptance of Tender or supply Order would also not be necessary when the excess or short-supply is within these limits.

15.2.4. Amendments to the contracts would not be necessary in cases where the value of the excess or short-supply is within Rs. 1000 irrespective of the percentage of excess or shortage on the total value of the orders.

15.2.5 Payments will be made only for quantities actually supplied.

15.3 **PRELIMINARY STEPS:** The purchase units, while issuing contracts, are required invariably to incorporate in the Schedule to the Acceptance of Tender itself a specific clause to the effect that the contractor must furnish an intimation about the completion of the supplies in the prescribed form (DGS&D 200) in duplicate along with their bills for advance payment against the last installment of the contract, to the Controller of Accounts, Department of Supply concerned and that non-compliance of these instructions by the contractor might result in delay in payment of their bills. Form DGS&D-200 is given in [Annexure-52](#). The Controller of Accounts, Department of Supply will forward one copy of the intimation, duly certified to the concerned purchase section.

15.3.2 On receipt of form DGS&D-200 duly certified by the Controller of Accounts, the concerned purchase sections will initiate action for finalization of the purchase case.

15.3.4 A copy of the form DGS&D-200 will be forward by the purchase section to the MIS Directorate to enable them to compile statistical data in respect of progress of payments made to the suppliers and contracts completed.

15.3.5. MIS Directorate will send an intimation slip regarding completion of supplies for each case wherever final inspection Notes have been received by them, to the Director of Supplies concerned, who will pass on the slips to the section concerned. Each case will be reviewed on the basis of the slip and action initiated for finalization. The slip would itself be a receipt for action to be taken by the Section.

15.3.6 Before initiating the finalization action, a letter will be addressed to the contractor calling for dispatch particulars and reasons for delay in supplies etc. and the letter to the indentor/consignee for furnishing the 'No Lose Certificate'.

15.4 **PRICE FINALISATION:**

15.4.1 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.

15.4.2 In such cases 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 finalised under intimation to the concerned Controller of Accounts. Department of Supply concerned.

15.4.3 Para-39 of the Instructions to Tenderers (Form DGS&D-230) provides that the contractor shall make the claim, if any, for adjustment of prices under the contract and submit complete supporting documents in support thereof, not later than six months after the completion of the supplies i.e. date of dispatch of the last consignment under the contract.

15.4.4 The contractors have also to furnish the required documents within the period aforesaid. If he fails to do so, he will be deemed to have no further documents and the purchase unit will proceed to finalise the price on the basis of the documents/information, if any, furnished by the contractor within the period aforesaid, or ascertain from the concerned government agencies and allow payment of such price. Such cases would be closed on the basis of the findings of the purchase unit but these should be reported to the Registration Branch for suitable action against the firms who avoid production of documents called for.

15.4.5 What usually happens is that in a case like this the firms readily put forward their claim for an increase in price whenever there is a rise in the cost of raw materials or other elements on which variation has been agreed to but fail to notify Government of the corresponding decreases. In order to avoid any loss to Government it is necessary, therefore, that all contracts embodied should be carefully watched.

15.4.6 All supplies sections in the Headquarters office as well as Regional Supplies organizations should maintain a register giving full details (as per headings, shown below) of contracts in which an 'escape' or 'price variation' clause has been incorporated.

1. Serial Number
2. Number and date of contract
3. Name of firm
4. Name of stores for which contract placed.
5. Name of the component item or element on which an 'escape' or 'price variation' has been agreed.
6. Unit
7. Rate per unit as stipulated in the contract
8. Total quantity
9. Rate actually paid by firm
10. Reference to Amendment letter with contract re-adjusting price.
11. Remarks.

15.4.7 Steps should be taken to examine regularly all contracts entered in the register with a view to ascertain whether there has been any reduction in prices of raw materials or in other elements on which escape/variation has been agreed, before final payment is made to the firm. For this purpose, a certificate should be called for from the firm concerned, soon after the completion of contract but before final payment is made to the firm, in the following form:-

"We certify that the purchase price of.....
obtained by us for contract No.....date.....
was Rs.....per unit.....There has accordingly been a
Decrease/or change/increase of Rs.....per.....during
The period of the contract.

Signature of the Contractor/
Contractor's Auditor.

Name of the material.

15.5 PROCEDURE FOR FINALISATION OF CLAIMS FOR PAYMENTS OF SALES TAX, EXCISE DUTY, CUSTOMS DUTY, RAILWAY FREIGHT ETC.

15.5.1 FIRM PRICED CONTRACTS WHERE SUPPLIES HAVE BEEN COMPLETED WITHIN THE ORIGINAL/REFIXED DELIVERY PERIOD.

The claims for sales tax, excise duty, customs duty, railway freight etc. if payable extra at actuals, will be admitted by the Controller of Accounts, Department of Supply without a formal amendment letter from DGS&D.

15.5.2 FIRM PRICED CONTRACTS WHERE SUPPLIES HAVE BEEN DELAYED BEYOND THE ORIGINAL/REFIXED DELIVERY DATE:

- a) Claims for sales tax, excise duty, customs duty, railway freight etc. will be matted by the Controller of Accounts provided no variation has taken place in these elements of extra charges between the contract delivery dates and the provisionally extended delivery date.
- b) Extension in delivery period is normally granted with the denial clause i.e. no claim for increase on account of customs/excise duty, sales tax etc. 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.
- c) If the firm do not mention anything above their claim for increase customs duty/excise duty or sales tax, where there had been such increase, a declaration should be obtained from them to the effect that they have no Claim on this account lest they should come forward with the claims after Finalization of the case. It is very necessary that such claims, if any, including price increase etc. should be considered at the time of finalization of the case.

15.6 CONTRACTS HAVING PRICE VARIATION CLAUSE:

15.6.1 The payment on account of increase in the rate of sales tax will be made by the Controller of Accounts automatically, without formal amendment letter where the Supplies are made within the original/refixed delivery date. Purchase Officers should ensure that the amendment letter by which the prices of variable priced contracts are finalised should contain the rates of sales tax (upward/downward) which took place during the currency of the contract to enable the Controller of Accounts to verify the correctness of payment already made and to make adjustments, if any.

15.6.2 In all other cases the claims will be settled after due examination regarding admissibility of such claims in terms of contract provisions and on the basis of the amendment letter.

15.63 Inspections for regulating the claims in respect of aforesaid elements and the documents to be submitted by the suppliers in support thereof are given in Chapter-II and in “Drafting of Contracts”.

15.7.1 PRE-ESTIMATED LIQUIDATED DAMAGE FOR DELAY IN SUPPLIES:

15.7.1 Since all adhoc contracts will be concluded with the provision of pre-estimated damages clause, damages at a specified rate arrived at independently and with the express consent of the suppliers, are to be recovered for delay for each month or part of the month.

15.8. LOCAL PURCHASE NOT TO BE TREATED AS LOSS: Where the indentors make local purchases to meet their immediate requirements without canceling identical quantity from the A/T placed by DGS&D, the extra expenditure incurred by them on such local purchase cannot be treated as loss against the contract placed by DGS&D.

15.9 REFUND OF PERFORMANCE SECURITY: The instructions on the subject are contained in the Chapter-6, “Earnest Money and Performance Security” which may be referred to.

15.10.1 CLAIMS FOR COMPENSATION BY THE SUPPLIERS WHERE CONTRACTS ARE CANCELLED BY THE PURCHASER BEFORE COMPLETION:

(a) Cancellation of contracts placed by DGS&D becomes necessary sometimes on account of receipt of reduction/cancellation of demand from the indentors on the ground that demand for the stores in question no longer exists or has since been reduced. In dealing with such requests, Supply Officer and Sections 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 Directorate should not, therefore, proceed to cancel a contract in whole or in Part straightway 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 supply Officer within whose powers of purchase the contract falls and where necessary, legal opinion should be obtained. If the legal opinion confirms that the purchaser is within his rights with reference to the terms and conditions of the contract to cancel it, as for example, where the delivery period has expired, action should Should be taken to give effect to cancellation/reductions 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 firms should be approached and persuaded to agree to cancellation/reduction without any financial repercussions. If the firm agrees, the formal amendment or cancellation will be issued by the Supply Officer concerned making it clear that the reduction/ cancellation is with mutual consent.
- (iii) Where the firm do not agree to cancellations without financial repercussions, the contractor should be asked not to make further supply 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 is any should be. The indenter/consignee should also be advised of the Position. Simultaneously, arrangements made for independent inspection of the stores in an unfinished state of supply with a view to ascertaining the correct position of the supply of stores contracted for and the reasonableness or otherwise of the compensation claimed by the contractor/ After the supply officer, in consultation with Finance, is satisfied that the amount of compensation claimed by the contractor is reasonable, the indenting officer will be addressee explaining the issues involved and the amount of compensation that will have to be paid to the contractor and asked whether he wants the compensation the cancellation the cancellation/reduction will be effected by the Purchase Organization with the approval of the competent authority.
- (b) It needs no emphasis that such cases involving financial repercussion are disposed Of expeditiously as any delay is prone to lead to dispute, arbitration claims and payment of higher amount of compensation in the long run. Further as the contractors may not be willing to hold manufacture in abeyance for a long time and on the spot decision in each case will be of advantage to government, it will be the responsibility of the Director General of Supplies & Disposals to ensure that all these cases are disposed of expeditiously under his personal supervision.
- © The Director General (Supplies & Disposals) is delegated power to sanction Payment of compensation upto Rs. 25,000 with the concurrence of the Finance. All Department of Supply for sanction.

15.10.2 CLAIMS BY THE PURCHASER/INDENTOR/CONSIGNEES AGAINST DAMAGES/LOSSES OCCURING IN RAILWAY TRANSIT.

(i) The consignee is responsible for verifying at the time of taking delivery from the Railway Authorities that the stores have been received intact without loss or damages. When the stores are dispatched in full wagon loads, consignee should verify that the seals on the wagons are intact. If there is evidence of loss or damage, the consignee should arrange to secure necessary certificates from the appropriate railway officials before taking delivery.

(ii) The loss or damage should in every case, be promptly reported to the contractor, Supply Officer who placed order, as well as the concerned Controller of Accounts responsible for payment for the stores as otherwise the consignee will be deemed to have accepted the stores. In any event, the consignee should not, before checking and verifying the stores give Receipt certificate to the contractor.

(iii) The consignee should invariably incorporate a certificate on the Receipt Certificates on the following lines:-

“Consignment/s was/were despatched under clear/said to contain Railway receipt/s at Railway/Owner’s risk”.

15.11 RESPONSIBILITY FOR LOSS AND PROCEDURE REGARDING DESTINATION

Responsibility: In such cases, the contractor is responsible to tender the required number of quantity of articles ordered, complete and 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

Procurement for settling claims: The consignee will merely lodge the claims with the carriers and report the fact to the suppliers/as soon as possible but not later than 45 days of the date of arrival of stores at destination. Thereafter, it will be for the supplier to pursue the claims with the railways and settle the matter

15.11.2. CONTRACTS STIPULATING DELIVERY F.O.R. STATION OF DESPATCH WITHOUT TRANSIT INSURANCE.

Responsibility:

(a) 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 in transit will be of the contractor as in sub para above.

(b) In cases where the suppliers do not agree to take 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 for carriage, the Railway acting as a bailee. Thereafter, the contractor is ordinarily not responsible for any loss or damage to goods that may occur in transit, if he has been able to book the goods in railworthy condition under a clear receipt without any adverse remarks as to the condition of the goods on the packing.

(c) In cases, however, where goods are sent under “said to contain” receipt, the supplier should not be absolved of his responsibility for loss/damage in transit. For consignments despatched under R/R on “said to contain” basis, payment shall be made only with the consignee’s receipt certificate. The Controller of Accounts will make necessary recoveries from the bill of the supplier on the basis of remarks incorporated by the consignee on the receipt certificate.

Where the stores have been despatched under clear R/R, the consignee will take up the matter with the Railways for direct settlement within six months. If such claims are rejected by the Railways, the consignee/indentor shall bear the losses.

Full details in respect of deficiencies and breakages etc. which are clearly attributable to the carrier should be shown against paragraphs 3(a) of the Railway Certificate portion of DGS&D-84 and the consignee should prefer a formal claim against the carrier for the loss or damage. The Controller of Accounts would send a copy of the consignee’s report to the purchase officer.

15.12. PROCEDURE FOR EFFECTING RECOVERY OF GOVERNMENT CLAIMS:

15.12.1 While the pre-estimated damages for delay in supply is automatically recovered by the Controller of Accounts, in respect of other government claims, they have to be preferred separately on the firm by issue of notice.

15.12.2 The Government cannot recover or appropriate any sum when the claim of the government is disputed by the firm unless the same has not been finally determined or adjudicated upon by arbitration or the court in terms of the contract. 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.

15.12.3 In the light of the position stated above, when a decision is taken with the approval of the competent authority to claim damages from a contractor a demand notice as in form given in [Annexure-53](#) may be issued to the firm by which the contractor is called upon to deposit the amount stated by the dates stipulated therein.

15.12.4 If any loss is reported by the indenter/consignee directly to the Pay & Accounts Officer the latter is instructed to report the same to the concerned Purchase Officer who on receipt of the information will process the case further.

15.12.5 It may be noted specifically that copy of the demand notice issued to the contractor should not be endorsed to the Pay & Accounts Officer, instead, the same may be sent him by a separate letter with the request to withhold the amount mentioned in the notice from any of the pending bills of the firm after expiry of the target date till receipt of further instructions from the DGS&D. The PA&O should also be instructed to advise DGS&D immediately of the amount so withheld.

15.12.6 If the amount claimed is not deposited by the contractor by the target date, steps should be taken to have the claim finally determined the arbitrator or the court, as the case may be, in terms of the contract. Simultaneously, the court may be moved under Section 41 of the Arbitration Act for an interim injunction restraining the firm from claiming the withheld amount pending final determination of the dispute by the arbitrator.

In case the court is not inclined to grant such an injunction, a further prayer should be made that the firm be asked to give a guarantee, preferably bank guarantee to protect the interest of the Government.

15.13 WITHHOLDING OF AMOUNT IN RESPECT OF CLAIMS OF OTHER GOVERNMENT DEPARTMENTS FROM THE BILLS OF CONTRACTORS AGAINST DGS&D CONTRACTS:

15.13.1 In terms of the provisions of clause-18 and 18-A of the conditions of Contract DGS&D-68 (Revised) the Government can only withhold the payment of amount due to a contractor or retain lien on such sums due till the Government claims are either admitted by the firms or finally adjudicated by the arbitrator or the court as the case may be. Even otherwise where the debtor (i.e.the contractor) and the creditor (i.e. the President of Union of India) being the same person, the Government has the right of withholding the sums payable to the debtor under any contract against the sums due to it under any of its other contractors with any Ministry/Department of Government of India.

15.13.2 In view of this, if any Central Government Department desires that payments due to a supplier against DGS&D contracts be withheld in case if there is any claim pending against the firm in respect of direct transactions conducted by them the following procedure should be followed.

- (a) Necessary intimation should be sent to the DGS&D for withholding the payments after indicating the details of the claims.
- (b) The Central Government Department which desires that the payment due to a supplier firm be withheld in connection with the amounts claimed by that Department will also give an undertaking to the DGS&D that the said Department undertake to bear all costs, expenses or losses etc, caused due to the withholding of the amounts by the DGS&D at the request of that Department. That Department also undertakes to bear all the liabilities of any kind of whatsoever incurred due to the said withholding of any amount due to the supplier firm.

15.13.3 That Department will also be responsible for getting their claims in respect of which the said Department has requested the withholding of the amount payable in the DGS&D contract, adjudicated by the arbitrator/court, as the case may be. The Department will also take all necessary steps to defend the proceedings, if any, initiated by the supplier firm to object to the said withholding of the amounts due to them in the DGS&D contract. That Department will also bear all the costs and expenses incurred by DGS&D in any proceeding initiated by the supplier firm to object to the withholding of the amount due in DGS&D contract.

- (c) That Department will give the undertaking on the lines indicated in para (b) above, along with the request made to the DGS&D for withholding the amount from the DGS&D contract in respect of the claims of that department.
- (d) The Department concerned should also indicate the result of the legal proceedings initiated by them to get their claims adjudicated at the earliest.

15.13.4 Thereafter instructions may be issued to the Controller of Accounts with the request to withhold the payment of the firm to the extent mentioned till further instructions. Simultaneously, the Department concerned should also be addressed to indicate the result of legal proceedings initiated by them to get their claims adjudicated at the earliest. After issue of these instructions the firm concerned may simply be informed about the withholding of the said sums under the revised clause 18 and 18A of the General Conditions of Contract.

15.13.5 Sums due to State Government, Semi-Government Institutions in respect of contracts entered into by them directly cannot be withheld from sums due to the contractor under contracts entered into by the Government of India. Such Governments or Institutions should, when they approach this Directorate General of Supplies & Disposals with a request to recover moneys due to them, be advised to take action in a court of Law and to obtain garnish orders, which, when received should be complied with.

15.3.6 The above procedure does not, however, apply to recoveries directed to be made by the Income Tax Officer under Section 226(3) of the Income Tax Act, 1961. Orders under Section 226 (3) of the Income Tax Act are in the nature of garnishee orders which have to be complied with without question.

15.14.1 In cases where bills are not forthcoming from the contractors and recovery has to be made of Government dues, the following procedure should be followed.

15.14.2 The Purchase Officer will furnish the following particulars to the Controller of Accounts with a request to carry out necessary adjustments in accounts:-

- (i) Number and date of Acceptance of Tender or Supply Order.
- (2) Particulars of Inspection Note i.e. Book Number, Serial Number etc.
- (3) Total quantity accepted by the Inspecting Officer.
- (4) Total quantity accepted by the consignee.

15.14.3 It will not be necessary to submit a bill for the amount. For the purpose of payment of the balance amount if any, due after adjustment has been carried out, the contractor would be entitled to a fresh period of limitation from the date of this adjustment.

15.15 PAYMENTS OF AMOUNTS BY ATTACHED TO COURTS IN CASES WHERE FIRMS DO NOT SUBMIT BILLS.

15.15.1 Where attachment Orders directing the Controller of Accounts, Department of Supply to deposit in court the amounts due to a contractor against orders placed by the Directorate General of Supplies and Disposals are received from the Court, the Controller of Accounts, in absence of contractors' bills, is not a position to comply with court's orders even when consignees advise the receipt of stores in respect of those A/Ts and such money is available with the Government to the credit of the firm.

15.15.2 In such cases, immediately on receipt of court Attachment orders, the Controller of Accounts concerned will keep a note of the Attachment asked for by the Court against the relevant A/Ts and forward a copy of attachment orders to the supply officer to enable him to ask the firm to submit the bill/bills to him within one month of the receipt of his letter.

15.15.3 In case the firm fails to submit the bills as asked for the Purchase Officer will ask the Inspecting Officer to issue a duplicate set of Inspection Notes and the consignee to issue a fresh Receipt Certificate on duplicate copies of Inspection Notes in the manner prescribed by the Department of Supply.

15.15.4 The bill need not be prepared in the prescribed form but on some blank paper and the form prescribed for the purpose (specimen at [Annexure-54](#)) in duplicate and signed on behalf of the firm directing Controller of Accounts concerned to send the cheque to Director General of Supplies and Disposals for deposit in court., The bill should contain full particulars of the transaction and be supported by duplicate copies of Inspection and receipt certificates. The Original copy of the bill will be recorded as voucher in his office and the duplicate copy will be utilised for raising debit against the Accounts Office of the consignee. This will also serve as a voucher for record in the office of the Controller of Accounts concerned for the cheque issued as well as for raising debit against the consignee concerned.

15.16. RESPONSIBILITY FOR LOSSES:

15.16.1 The Directorate General of Supplies & Disposals acts in respect of the Purchase and Inspection of stores as the agent of the authorities utilizing its services, and the latter should be called upon to bear losses in cases in which (a) they are not lawfully and equitably borne by the suppliers, or carriers or (b) they are not due to any unauthorised or negligent act on the part of the Directorate General of Supplies and Disposals.

15.17 WRITE OFF LOSSES:

15.17.2 The powers of subordinate authorities to write off of losses as delegated under the Delegation of Financial Power Rules, 1978 will apply in DGS&D contracts in respect of

- (i) Value of stores lost and or damaged in transit, and
- (ii) Extra freight charges incurred in the transportation of stores.

15.18 It must be ensured that necessary budget provisions has been made by the indenter for the amount of loss before any proposal is put up for write off of losses and the fact stated in such proposals. The formal write off sanctions, which must indicate the grant number against which the loss is to be adjusted in the accounts, in respect of other indenting Ministries will be issued by the Department of Supply as losses relating to their transaction find a place in the Appropriate Accounts and Audit Report of that Ministry.

15.18.1 A self contained Memorandum with the comments of Finance and the opinion of the Ministry of Law in respect of all write-off cases relating to the Ministries of Defence and Railways should be sent to the Department of Supply in duplicate in order to enable them to pass on to the Ministry of Defence or Railways (as case may be) a copy of the same alongwith comments of the Department of Supply.

15.18.2 The certificate of availability of funds is necessary in those cases only where separate payments are to be made by the Controller of Accounts and debits raised against the consignee for which no budget provision has been made by him at the time of sanction.

15.18.3 All letters sanctioning write-off should invariably contain suitable remarks relating to budget provision. In cases in which it is considered that the availability of funds need not be ascertained from the indenter the reasons therefore, should be indicated in the letter in order to avoid any omission in this respect when communicating the decision to the Controller of Accounts.

15.18.4 Irregularities relating to purchase of stores and materials on behalf of other Ministries should be dealt with as below. The irregularities will come under the following four types viz:-

- (i) Where the fault is entirely of the indenting departments,
- (ii) Where both the indenting and the purchasing departments are responsible in differences of degrees.
- (iii) Where the fault entirely lies with the purchasing organisation.
- (iv) Where neither the Purchasing Organisation nor the Indenting Department can be held responsible.

15.18.5 In cases falling under (i), (ii) and (iv) as the Central Purchase Organisation (Directorate General of Supplies and Disposals) acts as the agent of the authorities utilizing its services, the indenting Ministries should bear the losses involved and issue write off sanction themselves. Audit comments in respect of such losses will accordingly appear in the Appropriation Accounts of the Ministries concerned.

15.18.6 In cases falling under category (iii) the Audit paragraphs will be brought together in the Central Civil Audit Report and any notes below the grants will also figure in the Appropriation Accounts pertaining to purchase organization (namely) Grant No.....(Department of Supply). The amounts to be written off in all cases will be accounted for by the indenting department but the write off sanction will be issued by the Department of Supply/DGS&D except in the case of Railways and Defence where the procedure outlined in the above para will apply.

15.19 DISPUTE REGARDING FINALISATION

15.19.1 Representations received from the firms against the decisions of the Directorate General of Supplies and Disposals in the finalization of their claims will be examined thoroughly, in consultation with the Ministry of Law/Finance, where necessary at the initial stage itself before a representation is rejected or admitted.

15.19.2 In case of rejection, while sending reply to the firm the point of view of the purchaser should be explained so as to satisfy the firms making it clear that the matter had been given due consideration and the decision conveyed should be treated as final and that no further representation would be entertained in the matter.

15.20 TIME LIMITS

15.20.1 Time limits currently prescribed for action at various stages should be strictly enforced by the Director concerned, so that he may be able to exercise a proper control over the Finalisation work in his Directorate. The dealing officers should have charts before them indicating the latest position of Finalisation.

15.20.2 Category of cases and time limits currently prescribed for disposal thereof are as under:-

Time fixed

(i) Simple cases of Finalisation where no reference to indenter consignee/firm is required to be made.

7 days

Cases where a reference to indenter and/or to firm for certain documents is necessary.

(a) Reference to be made within	7 days
(b) Target period given for reply	30 days
(c) Finalisation of the case on receipt of the reply	10 days
	<hr/>
	54 days

(ii) Cases involving 'Price Finalisation'	
(a) Reference to be made to the firm calling for relevant documents	7 days
(b) Target period given to the firm for furnishing the documents	15 days
(c) On receipt of documents case to be examined by S.O./A.D. concerned within	19 days
(d) Time for taking final decision	7 days

	48 days

15.20.3 **CONTROL MEASURES:** Following instructions are laid down and which should be followed by all concerned.

- (a) Purchase Sections should maintain a register in the proforma as per [Annexure-55](#) indicating the progress of the work done by them. One Sheet for one case should be used.
- (b) The register should be reviewed every month by the Deputy Director and shown to Director once in two months.
- (c) The monthly progress report on finalization of cases would be sent to the IWSU in the form given in [Annexure-56](#). These reports will be Consolidated by the IWSU and submitted to Director General/Department Of Supply.
- (d) A certificate that each of the base officers has certified to the effect that no purchase case where supplies have been completed is pending for inclusion in the statement of the Directorate to be furnished along with the Progress Report.
- (e) The age of finalization will be counted from the date of issue of Inspection Note but on receipt of information from the firm regarding despatch Particulars. In the case of F.O.R. destination contracts, the age will be Counted from the date on which the goods have been put on rail, while in the case of F.O.B. contract, the date on which the goods have been put on board. The age of pendency of cases awaiting finalization may be suitably changed depending on the receipt of essential information required for is loss or damage in transit or short supply which may be reported after the case has been taken up for finalization may be reverted to get these aspects cleared in terms of the contract. If there is delay in

finalization of these aspects or receipt of necessary documents etc. from the firm where price variation is involved, the effective date of pendency of such cases may be suitably revised.

- (f) Every Director should regularly make a physical check of all cases pending finalization and prepare an A/Twise and year-wise list of the pending case. The following proforma is to be adopted for preparing the list.

Year of completion of Supply

- (i) A/T No. and date.
- (ii) Name of the firm.
- (iii) Date on which case was ready for Finalisation stage.
- (iv) Action taken for finalization in chronological order (with dates), e.g. reference to indentors for confirmation regarding receipt of full quantity, loss suffered, if any, reference to the firm regarding documents in case of contracts providing for escalation and customs duty, excise duty, exchange variation etc. and release of final inspection note by consignee in case of erection contracts etc.
- (v) Any other remarks which the Directorate would like to incorporate which has a bearing on the finalization of cases.
- (vi) An index indicating the age-wise pendency of cases should be maintained by each purchase Section (the serial number of the case will be indicated under the respective year group to facilitate identification).
- (vii) As amount held up is equally important, in respect of each case, an entry should be kept as to the likely amount, that would be released as a result of finalization. On the basis of this a firm-wise index cases would be maintained by each Purchase Section. This information should also help in finalization of cases involving larger stakes on priority over others.
- (viii) The cases of finalization pending in respect of Rate Contracts are also to be included in the Monthly Report submitted to the IWSU. It is to be ensured that all Rate Contracts which are pending finalization regarding delivery period regularisation, settlement of escalation etc. have been included. In cases the Directorate issues

amendments against Supply Orders, the Supply Orders pending finalization, may be included under the number of cases pending finalization. If however, amendment is issued against R/C only, Rate Contract pending finalization may be included under the number of cases pending finalization and not supply orders by the amendment.

- (ix) Two months in a year, i.e. February and August should be observed as Arrear Clearance Months for finalization cases. To ensure that cases are not lost sight of and that all cases are taken up for finalization, all suppliers may be requested to send lists of cases pending finalization to the Director concerned. A notice in this regard will be published once in a quarter in the weekly Bulletin of Tender Enquires issued by the CDN Directorate. The notice will also be exhibited in Offices including Inspection Circles.

15.21 REVIEW OF PENDING FINALISATION CASES BY DDGs

DDGs should undertake a review of finalization cases pending for over three months in the Directorate under their charge at quarterly intervals and the review note furnished to the IWSU, for submission to the Department of Supply. To facilitate their review, the Directorate should send a list of finalization cases pending for over three months to the Deputy Director General concerned every quarter with details such as reasons for delay comments/suggestions for early disposals etc., in the proforma given in [Annexure-57](#).

CHAPTER – 16

PAYMENT OF COST OF STORES SUPPLIES AGAINST DGS&D CONTRACTS

16.1 **PAYING AUTHORITIES:** The paying authorities in respect of contracts placed by the DGS&D are the following Controllers of Accounts of the Office of the Chief Controller of Accounts, Department of Supply:

	Jurisdiction
(1) Chief Controller of Accounts Department of Supply 16, Akbar Road Hutements, New Delhi – 110 011.	(Northern Region) Punjab, Rajasthan, Haryana, U.P., M.P., H.P. , J&K, Delhi And Chandigarh.
(2) Controller of Accounts Department of Supply 15, R.N. Mukherjee Road, Calcutta – 700 001.	(Eastern Region) West Bengal, Assam, Bihar, Orissa, Manipur, Tripura, Nagaland, Arunachal Pradesh, Sikkim, Mizoram & A. & N. Islands.
(3) Dy. Controller of Accounts, Department of Supply, Exchange Building, Sprott Road, Ballard Estate, Mumbai – 4009 001.	(Western Region) Maharashtra, Gujarat, Goa, Daman Diu, Nagar Haveli.
(4) Dy. Controller of Accounts, Department of Supply Shastri Bhavan, 35, Haddows Road Chennai – 600 006.	(Southern Region) Andhra Pradesh, Tamil Nadu, Kerala, Karnataka, Lakhsadeep, Pondicherry.

16.1.1 Subject to the exceptions mentioned below, payments in respect of contracts placed by the Purchase Directorates in the Headquarters Office and the Regional Offices of the DGS&D are made by the Controller of Accounts/Deputy Controller of Accounts of the region according to the location of the suppliers mentioned in the contracts:

16.1.2 Payments in respect of contracts placed by the Purchase Directorates in the Headquarters Office and Regional Offices of the DGS&D or made by the Controller of Accounts/Dy. Controller of Accounts of the Regio according to the location of the suppliers mentioned in the contracts. However, in respect of Pre-deposit parties, Pre-deposit of funds would be in favour of the Chief Controller of Accounts, New Delhi. After the placement of the contracts/coverage of supply orders the Purchase Officer will indicate the details of the funds received and deposited with the CCA, New Delhi so as to enable the concerned paying authority to make payments after ascertaining the fund position from the CCA.

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16.1.3 There are certain exceptions to the above normal rule of payment by the CCA/DCOA of the region according to the location of the suppliers which are mentioned below:-

- (a) In respect of ad-hoc A/Ts on Forest Departments for purchase of timber, the paying authority is the Controller of Accounts, New Delhi excepting the purchase made from the Chief Conservator of Forest, Chennai. Paying authority in respect of purchases made from CCF, Chennai is the Dy. Controller of Accounts, Chennai.
- (b) In respect of ad-hoc A/Ts, rate contracts placed on the Indian Oil Corporation and other Government owned oil companies, the paying authority is the Controller of Accounts, New Delhi.
- (c) In respect of rate contracts placed on firms located in the Eastern region (except for those placed on Indian Oil Corporation and other Government owned oil companies) the paying authority is the Controller of Accounts, Calcutta irrespective of the Purchase Directorates issuing the contract.
- (d) In respect of rate contracts for timber, for firms situated in the Eastern Region the paying authority is the Controller of Accounts, Calcutta and for the rest of India the paying authority is the Controller of Accounts, New Delhi.

16.1.4 AS REGARDS FOREIGN SUPPLIERS ;

- (a) For all contracts involving payment to foreign principals, the paying authority is the Controller of Accounts New Delhi. The payment will include besides the cost

of stores, Indian Agent's commission (where payable), charges for indigenous stores, reimbursement of shipping freight bills.

- (b) For contracts placed on foreign suppliers elsewhere than in USA, UK, Europe, the paying authority is:-
- (i) For contracts involving payment of agency commission to the Indian Agents of the foreign suppliers, the paying authority is the Controller/Dy. Controller of Accounts of the region in which the Indian Agent is located.
- (ii) For contracts placed directly on foreign suppliers, who have no Indian Agents, paying authority is the Controller /Dy. Controller of Accounts according to the Purchase Directorates placing the contracts.

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16.1.5 It needs no emphasis that the correct designation and the postal address of the Accounts Officer concerned should be indicated in all contracts. It is to be noted that not more than one paying authority should be stipulated in the contract.

16.1.6 With a view of facilitate the work in the office of the paying authority, the number allocated to the contract should also indicate the paying authority in the following abbreviated forms:-

- | | | | |
|-----|---|---|------|
| (a) | For Controller of Accounts, New Delhi | – | COAD |
| (b) | For Controller of Accounts, Calcutta | - | COAC |
| (c) | For Dy. Controller of Accounts, Mumbai | – | COAB |
| (d) | For Dy. Controller of Accounts, Chennai | - | COAM |

16.1.7 The number of the contracts having provisional prices should be suffixed with the work "PRO" so as to distinguish them readily from other contracts. For example, if in A/T No. AM- 7/87/29/152/COAD the prices are provisional, it will be numbered as "AM-7/87/29/152/COAD.PRO".

16.2 CHANGE IN THE PAYING AUTHORITY:

16.2.1 Where a change becomes unavoidable this will be allowed only with the prior approval of the Department of Supply, in consultation with the Chief Controller of Accounts, Department of Supply.

16.2.2 In case where change in paying authority has been allowed subsequent to the placement of a contract, it should first be ascertained, whether any part supplies and payments against them have been made from the Accounts Officer originally stipulated in the contract. In case, no payment has been made, the Accounts Officer should be asked to return the Acceptance of Tender/contract to the office of issue for onward transmission to the concerned Accounts Officer. If, on the other hand, any part payment is reported to have already been direct to the new Accounts Officer, for making payment. In the latter case, the Accounts Officer, originally mentioned in the contract should be asked to send the already made by him against the contract to the new Accounts Officer.

16.2.3 Where the change in the paying authority becomes necessary consequent to a change in the address of the supplier in the contract approval of the Department of Supply & CCA will not be required for correspondingly amending the entry relating to the paying authority. However, before allowing the change in the contractor's address, the purchase officer will observe the instructions regarding transfer of documents from one Accounts Officer to another and he will also, no doubt,

take into account all consequential aspects, financial or otherwise which may follow as result of acceptance of such a request.

16.3 TERMS OF PAYMENT AGAINST VARIOUS TYPES OF CONTRACTS PLACED BY DGS&D.

16.3.1 FIXED QUANTITY (AD-HOC CONTRACTS) GOVERNED BY THE GENERAL CONDITIONS OF CONTRACT CONTAINED IN FORM DGS&D – 68 (REVISED) :

The terms of payment for ad-hoc contracts governed by the General Conditions of Contract contained in Form DGS&D – 68 (Revised) are stated in Clause- 19 thereof, which may be referred to.

A. TERMS FOR CONTRACTS FOR PLANT AND MACHINERY:

The terms of payment for this category of contracts are laid down in Clause –24 of the Form DGS&D –71, which may be referred.

The final 5 % can be paid without consignee's receipt certificate if so asked for by the contractor against an authorisation letter ([Annexure-58](#)) after eight months from the date of arrival of the last consignment at site provided that no defect or shortage (proved or unproved) has come to notice within that period. The Purchase Officer (within whose powers of the value of A/T falls not below the rank of a Dy. Director will consider the case on merits, if necessary in consultation with the Indentor/Consignee and if he is satisfied that the delay is due to reasons for which the Purchaser is responsible, issue the authorisation letter in the prescribed form. If the firm agrees to receive payment on the conditions stipulated therein, they will submit the bill to the concerned Accounts Officer quoting the number and date of the authorisation letter intended for the Accounts Officer which will be routed through authentication.

Final payment as envisaged above cannot be allowed unless:-

- (i) delay in supplies, if any, has been regularised and
- (ii) the contract price, where it is subject to variation, has been finalised.

B. PAYMENT TERMS FOR CONTRACTS FOR SUPPLY OF TIMBER : The payment terms in respect of contracts to be concluded with State Forest Departments will be as per payment terms of General Conditions of Contract DGS&D – 68(Revised) or to be negotiated and settled

while entering into Memorandum of Understanding keeping in view the guidelines issued by Ministry of Environment and Forest from time to time.

C. PAYMENT TERMS FOR CONTRACTS FOR JUTE: The payment terms are 100 % payment on proof of inspection and despatch.

In respect of contracts for jute for lots despatched beyond the original delivery period, 100 % payment will be made after withholding an amount of 2 % per month or part thereof of the period of delay subject to a maximum of 5 %. To this end the following clause will be incorporated in the endorsement on the delivery period extension letter authorising the Controller of Accounts to release the payment:

“For the despatches made beyond the original/refixed date of delivery, the supplier will receive full payment reduced by 2 % (of the price being paid) for every month or part thereof of delay beyond the due date of delivery subject to a maximum of 5 %. The amount so reduced will be withheld till regularisation of the delivery period”.

D. PAYMENT TERMS FOR RATE CONTRACTS

- (i) **RATE CONTRACTS FOR STORES OTHER THAN POL, CEMENT, PAPER AND PAPER BOARD:** The payment terms as contained in clause 6 of Form DGS&D 69 for Rate Contracts are applicable and may be referred to. In cases where the contractor is not in a position to submit bills for the balance 2 % for want of the receipted copies of Inspection Notes from the consignee and the consignee has not complained about non-receipt, shortage or defects in the supplies made, the balance amount of 2 % may be paid by the Pay and Accounts Officers without consignee's receipt certificate after 90 days from the date of advance payment subject to the following conditions.
- (a) The contractor will make good any defect or deficiency that the consignee may report within six months from the date of despatch of stores.
 - (b) Delay in supplies, if any, has been regularised.
 - (c) The contract price where it is subject to variation has been finalised.
 - (d) The contractor furnishes the following undertaking:-

“I/We _____ certify that I/We have not Received back the Inspection Note duly receipted by the consignee nor I/We been intimated by the consignee of nonreceipt, shortage or defects in the stores supplied.

I/We..... agree to make good any defect or deficiency that the consignee ma report within three months from the date of their final balance payment.

I/We Further agree that all rights of the purchaser under the general and special conditions of the contract shall remain entirely unaffected thereby.”

(Authority office order no. 80 dated 8.9.1989)

(ii) **PAYMENT TERMS FOR COMPLAINT PRONE ITEMS:** In respect of complaint prone items, to be identified by the purchase directorate where quantity of rejection by the consignee is between 5 % to 10 % and replacement of the rejected quantity is difficult, the payment terms should be 90 % on proof of despatch and balance 10 % on receipt of consignee’s receipt certificate. In case the complaint continue to persist, the question of making payment only after receipt of consignee’s certificate ma be considered with the approval of Department of Supply.

(iii) **RATE CONTRACTS FOR POL PRODUCTS:** The payment terms are 100 % payments on proof of despatch along with relevant copies of Inspection Note for despatches by rail etc. and receipt certificate in a special form prescribed for the purpose in the case of local deliveries.

(iv) **RATE CONTRACTS FOR CEMENT:** Payment terms are:-

(i) 98 % on proof of despatch and balance 2 % after receipt in good condition by the consignee.

(ii) 100 % payment against consignee’s receipt certificate for local deliveries.

(iii) In respect of item No. (i), payment without consignee’s receipt certificate may be made if the same is not received within 2 months from the date of despatch.

RATE CONTRACTS FOR PAPER AND PAPER BOARD : Payment terms are:-

(i) 95 % on proof of despatch and balance 5 % after receipt in good condition by the consignee.

(ii) 100% against consignee’s receipt certificate for local deliveries.

- (iii) Payment of balance 5 % in respect of item No. (i) may be made without consignee's receipt certificate if the same is not received within 120 days from the date of supply in the case of reeled paper and 75 days in the case of sheet paper.

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

(i)	Commercial invoices	4 copies
(ii)	Packing list	1 copy
(iii)	Non-negotiable Bill of Lading	1 copy
(iv)	Certificate of Inspection (if applicable)	4 copies
(v)	Manufactures' Test Certificate	4 copies
(vi)	Certificate from the supplier confirming that the original shipping documents have been despatched to the port consignee in accordance with the requirements of the contract (Acceptance of Tender)	1 copy
(vii)	Certificate regarding Country of Origin.	1 copy

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

16.4.2 CASES WHERE INSTALLATION ERECTION AND COMMISSIONING IS THE RESPONSIBILITY OF THE SUPPLIERS: 90 % net F.O.B./F.A.S. price will be paid against inspection certificate (where applicable) and shipping documents and balance 10 % within 30 days of the successful completion of

proving test in which the machine's performance would have been demonstrated by the supplier or his agent, after the commissioning at the consignee's premises and submission of bank guarantee for 10% of the value of the contract indemnifying the

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purchaser against all losses incurred by the purchaser during the guarantee period stipulated in the warranty clause.

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

16.4.4 The bank guarantee would be required to be furnished by the supplier as in the form in [Annexure – 59](#). Where the bank guarantee is obtained from a foreign bank, it shall be got confirmed by a scheduled Indian Bank and shall be governed by Indian Laws and be subject to the jurisdiction of courts of the place of issue of the Acceptance of Tender.

16.5 AGENCY COMMISSION PAYMENT TERMS AGAINST F.O.B./F.A.S.

CONTRACTS:

16.5.1 The terms of payment of agency commission in respect of the under mentioned categories of F.O.B./F.A.S. contracts are as indicated against each.

- (a) Contracts for Plant and Machinery requiring installation erection t site which is the responsibility of the Indian agent. 50 % commission may be paid to the Indian agent on installation/erection, commissioning etc. or on the expiry of six months from the receipt of supply and balance 50 % on taking over of the plant/machinery by the consignee.
- (b) Contracts for plant and machinery supplied against firm's warranty/guarantee and where erection/installation is to be done by the -do-

indentor/consignee himself but the Indian agent is to render after sales service.

- (c) Contracts for Spares placed on Indian Agents not requiring the rendering of any after sale service. 100 % commission to be paid on proof of payment to the supplier principals abroad.
- (d) Contracts for stores other than spares placed on Indian Agents not requiring the rendering of any after sale service. -do-

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16.5.2 Visual inspection at the port of entry in India against F.O.B./F.A.S. contracts is not necessary. The payment of certain portion of the Indian Agent's Commission will, therefore, have to be made in some cases on the basis of the consignee's certificate. For the purpose of payment of this agency commission in cases where the inspection note is not issued by the inspectorate, the consignee should issue a certificate. A copy of the form of certificate is attached as [Annexure – 60](#).

16.6 PAYMENT OF AIR FREIGHT CHARGES :

16.6.1 Stores which are required to be air lifted from USA/UK/Continent of Europe are despatched through Air India on a `Charge forward basis'. All air freight charges, which are shown on the relative consignment note as chargeable to the consignees are paid to Air India in Rupees and adjusted against the consignees/indentor in the same manner as other clearance charges etc.

16.6.2 The payment of air freight charges (in respect of consignments air lifted through Air India against DGS&D contracts) will cleared by the Port offices of the DGS&D will be made through the Regional Officers of the DGS&D located at Mumbai, Calcutta and Chennai, who are handling clearance work. In this connection, the steps to be taken are indicated below:-

- (i) Two attested copies of the air consignments note may be sent to the concerned Controller/ Dy. Controller of Accounts, along with the bill claiming air freight charges.
- (ii) While furnishing the airway bill to the Controller of Accounts, DGS&D's bill should also contain information against the following columns:-
 - a) Description of material.
 - b) Imported from:

- c) Indentor:
- d) Consignee:
- e) Indent No. and date
- f) Contract No. and date.
- g) Accounts Officer.
- h) Head of Account.
- i) Amount in words and figures.
- j) The amount of the bill should be passed for payment under the signatures of the concerned Asstt. Director (Shipping) of the Regional Offices at ports.

16.6.6 In the case of Public Sector Undertakings and other non-Central/ State Government indentors, advance deposits should invariably be obtained before paying the air freight charges.

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- (i) Air Shipment of stores through Air India should be preferred to shipments through other flights even if there is saving to the Government by the latter method.
- (ii) The procedure outlined above in respect of payment to Air India will also apply where air freighting is done through carriers other than Air India and payment is to be made to other Airlines Companies/Cargo agents.

16.7 SYSTEM OF PAYMENT IN CASES WHERE STORES ARE ACCEPTED UNDER FIRMS' WARRANTY/GUARANTEE. : In cases where physical inspection of stores has been waived of and stores are accepted under firm's warranty/guarantee, the Accounts Officer will pay 95 % of the cost of stores (98 % in case of rate contracts) on proof of despatch i.e. R/R No. and date etc. and the balance 5 % (2 % in the case of rate contracts) on the authority of the special consignee's receipt certificate devised for the purpose. The form of consignee's receipt certificate is given in [Annexure-60](#).

16.8 AUTHORISATION OF BALANCE 5 % PAYMENT IN CASES WHERE THE AUTOMATIC SYSTEM OF PAYMENT AFTER 3 MONTHS FROM THE DATE OF ADVANCE PAYMENT (VIDE CLAUSE – 19(iii) OF FORM DGS&D REVISED) IS NOT APPLICABLE:

16.8.1 If a consignee fails to furnish the receipt certificate within 60 days of despatch of Inspection Note and Railway Receipt or Inland Steamer Company Receipt, the Contractor, will address the consignee under registered cover A/D for expediting the release of the Receipts Certificates and will simultaneously endorse copies of the letter to the Supplies Officer as well as the indenter.

16.8.2 In case the Supply Officer has not received any communication from the consignee or the indenter giving satisfactory reasons for delaying the issue of the receipt certificate, he will on the 10th day of receipt of the letter, issue a letter to the next higher officer of the consignee under registered cover A/D in the form indicated in [Annexure-61](#), asking him to arrange for the return of the Inspection Note or reply with reasons for delay within 15 days. It should be impressed upon the indenter/consignee that failure to reply to the Supply Officer will lead to automatic payment of firm's 5 % bills on/after 90 days. The contractor shall also be sent an acknowledgement in the form as indicated in [Annexure-62](#).

16.8.3 On the 91st day from the date of despatch of Inspection Note and Railway Receipt or the Inland Steamer Company receipt Supply Officer will, if satisfactory reasons are not furnished by the consignee, authorise payment of 5 % bills of the firm by issuing a standard authorisation letter prescribed for the purpose ([Annexure-63](#) to the contractor. If the firm agrees to receive payment of their 5 % bill on the conditions stipulated in

the letter, they will submit their bills to the Controller of Accounts, Department of Supply concerned quoting the number and date of the authorisation letter in the body of the bill. The copy of the authorisation letter intended for the Accounts Officer will be routed through the Authentication Section like amendments to Acceptance of Tender.

N.B. The term Supply Officer mentioned above means the officer within whose purchase powers the value of the Acceptance of Tender or the Supply Order falls in the case of open tenders, provided that no officer lower in rank than a Dy. Director of Supplies would take a decision in such cases and sign communications addressed to the consignee's higher officer/contractor.

16.8.4 It is to be noted that authorisation of balance payment under this procedure is subject to the conditions that if consignee within a period of 90 days from the date of payment of the balance 5 % bill by the Accounts Officer on the basis of this authorisation letter certifies a short receipt of the stores or lawfully rejects the stores or a part contract, the

contractor shall refund forthwith on demand the full price of such stores. These conditions allow the consignee a fresh period of 90 days from the date of payment for reporting losses etc. and his interest are protected for such a period as for as the payment without his receipt certificate is concerned. A copy of the authorisation letter is also required to be endorsed to the consignee's Head of Department by name with the request to investigate reasons for the delay in the release of the consignee's receipt certificate and with the caution that if no report is received in time (i.e. within the period of 90 days mentioned in the sanction letter) it will not be possible to enforce recovery of losses, damages, etc.

16.9 PREPARATION AND SUBMISSION OF BILLS:

16.9.1 Bill for payment are required to be submitted by the suppliers in the standard bill form DGS&D-135 in quadruplicate. The original, duplicate and triplicate copies along with the supporting documents are to be submitted to the Accounts Officer specified in the contract. The triplicate copy should bear the following additional marking :

“Not for payment to be used as DI Memo.”

16.9.2 In case of bills for advance 100 % payment in respect of consignments inspected and despatched the quadruplicate copy will be sent to the consignee along with copy No. 2 and 4 of the Inspection Note, for DGS&D-84 and Railway Receipt etc. to enable the consignee to prepare the necessary Receipt Certificate. In all other cases the quadruplicate copy of the bill will serve as contractor's office copy.

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Note: Contractors are permitted to use their own cyclostyled or printed copies of DGS&D –135 proved these are the exact copy of DGS&D –135.

16.9.3 Each item in a bill will be calculated to the nearest paise and the total of each bill rounded off to the nearest rupee, fraction below half rupee being ignored, half a rupee and over being taken as rupee one. Separate bills for specific charges should be rounded off in the same manner.

16.10 SUPPORTING DOCUMENTS TO ACCOMPANY BILLS :

16.10.1 The documents, which are to accompany advance 90 %, 95 %, 98 % bills are mentioned below:

- (a) Advance Payment Copy of the Inspection Note form No. DGS&D-S 84 duly signed by the Inspector.

Note: In the case of consignments despatched piecemeal for want of transport facilities Advance Payment Copy of Inspection Note for the full quantity inspected will be attached to the advance 90 %, 95 %, 98 % payment bills relating to the first consignment. These will also be accompanied by a letter written by the contractor and addressed to the Chief Controller of Accounts, Department of Supply, intimating that bills for subsequent supplies giving reference to number and date of the bills with which the Inspection Note was forwarded will be submitted as each consignment is despatched.

- (b) Counterfoil of the Military credit Note (by those firms only which are authorised by the competent authority to the Central Government to sign them), if any, in connection with the stores for which payment is claimed.
- (c) The cash receipt, if any, from the Railway or the Inland Steamer Co. when freight payable by the purchaser under the terms of the contract has been paid by the contractor.
- (d) The provisional certificate from the consignee in the case of Local Delivery or despatch by road.

Note: The cash receipt, if any, from the Railway/Inland steamer Co. is only required to support the contractor's claim for refund of freight paid by him and not as evidence of despatch of stores.

- (e) In the case of stores inspected abroad, the copy of inspection certificate received by the contractor from abroad.

- (f) A Photostat copy of R/R or "Inland Way Bill" of Container Corporation of India Ltd. as proof of despatch of material attested by themselves. However, in case where that facility of furnishing Photostat copy is not available, there is no objection in furnishing a

true copy of the R/R duly attested by a Gazetted Officer, M.P., M.L.A., Notary Public and/or Magistrate.

- (g) The supplying firm are required to furnish a certificate on the bill form No. DGS&D –135 about the genuineness and correctness of the R/R number and Date etc. quoted in their bill for advance payment, in the following form:-

“I/We have personally examined and verified and do hereby certify that the goods in respect of which the payment is being claimed have been actually despatched by me/us under R.R. No./Bill No./Air Consignment Note No. _____ dated _____ duly drawn in favour of consignee which is genuine and mentioned in the bill and that I/We held myself/ourselves personally responsible for the correctness of tis statement.”

“I/We further certify that the above mentioned R/R No./Bill No./Air consignment Note No. _____ dated _____ has been forwarded to the consignee mentioned in the contract under registered post acknowledgement due on _____.

- Note: (i) The certificate is to be signed by duly authorised person of the firm and he should be the same as one signing the bill. His designation and name of the firm on whose behalf he has signed the bill is required to be indicated below his dated signature.
- (ii) The above certificate has to be incorporated by the supplier in all bills for advance payment.
- (iii) As the certificate is essential as a safeguard regarding the genuineness and correctness of the R/R No. and date quoted on the advance bills, no requests from suppliers for modification in the form of the certificate or its total withdrawal should be entertained.
- (iv) The words “acknowledgement due” appearing in the second para of the certificate mentioned above is important and purchase officers/sections should ensure that this is correctly stipulated in the contracts placed.

16.10.2 The documents to accompany balance 10 %, 5 %, 2 % bill are (a) The Balance Payment Copy and (b) Accounts Copy.

16.10.3 The above documents are to be sent by the Contractor with both the documents and receipt portion duly completed and signed by the Inspector and the consignee respectively.

16.10.4 The documents to accompany final 100 % bills are mentioned below. Where the bills are preferred for 100 % payment, they should be supported with the Advance Payment Copy, Balance Payment Copy and Accounts Coy of the Inspection Notes along with other documents applicable.

- (a) The counterfoil of the Military Credit Note (by those firms only which are authorised by the competent authority of the Central Government to sign them) if any, used in connection with the stores for which payment is claimed.
- (b) The cash receipt from the Railway or the Inland Steamer Co. when freight payable by the Purchaser under the terms of the contract has been paid by the contractor.
- (c) In the case of stores inspected abroad, the copy of the Inspection Certificate, if any, received by the contractor from abroad.

16.11 PAYMENT OF INTERMEDIATE/FINAL BILLS IN CASE OF DELAY IN SUPPLIES :

16.11.1 Absence of amendments to contracts extending contract delivery date:-

- a) Bills relating to contracts for which no extension of delivery date has been granted will be returned to the contractor by Registered Post. It will be for the contractors to get extension of time and to re-submit the bills. Copy of the letter to the contractor returning the bill should be endorsed to the Supplies Sections concerned to furnish reference to the sanction relating to extension of time, if already sanctioned.
- b) The balance 10 %/ 5 % bill will be admitted for payment when the delivery period has been duly regularised by the competent authority.

16.11.2 In the case of supply orders against Rate Contracts, 98 % and 2 % bills will be paid by the Accounts Officer unless specific instructions to the contrary have been issued by the DGS&D which would be in case where the delivery dates stipulated in the Supply Orders have been expressly agreed to by the supplier in writing before placement of the orders on reference from DGS&D/DDOs and where special clauses have been incorporated in the Tender Enquiries for Rate Contracts and the resultant rate contracts provide for firm and agreed delivery period in Supply Orders.

16.11.3 In contracts involving price finalisation including contracts providing for variation in freight, insurance etc. the balance 5 % bills will be paid only after the final amendment indicating the accepted price has been issued by the DGS&D, unless otherwise permitted by the DGS&D in special cases.

16.11.4 In the case of contracts placed on government undertakings, after the delivery date has been extended by the purchase officer, all the 95 % and 5 % bills of the undertaking will be paid by the Accounts Officer concerned who will hold up only the last 5 % bill payment against the relevant contract irrespective of the fact whether the amount of that last 5 % bill is sufficient to recover the amount of the liquidated damages or not. The Government have a controlling financial interest in such undertakings and there would be no difficulty in effecting recoveries if it is eventually decided to levy liquidated damages exceeding the amount of the last 5 % bill against a particular contract.

16.12 **PROCEDURE TO BE FOLLOWED FOR DEALING WITH SUPPLIER'S BILLS IN CASES WHERE COPIES OF A/TS, A/LS HAVE NOT BEEN RECEIVED BY; THE CONTROLLER OF ACCOUNTS :**

16.12.1 **The procedure to be followed is given below:-**

- (a) **The Accounts Officer will call for the required documents from the purchase officer within 4 days of the receipt of bill in his office.**
- (b) **If the documents are not received within 7/10 days of the request, the Accounts Officer will take up the matter demi-officially with the Director of Supplies concerned, who will ensure that the required documents are forwarded to the Accounts Officer within 10 days of the receipt of the D.O. letter.**
- (c) **If the D.O. letter also does not elicit any response, the Accounts Office should report the matter to the Chief Controller of Accounts.**

16.12.2 **The bills will not be returned to the suppliers but will be retained by the Accounts Officer till receipt of the documents from the Purchase Officer.**

16.13 **MODE OF PAYMENT TO SUPPLIERS IN INDIA :**

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

16.13.2 The payment to contractors against their bills for supplies against contracts can also be paid to their bank if the bills are endorsed in favour of the Bank with a pre-receipt embossed on the bills with the words, "Received payment" and both the endorsement and pre-receipt are authenticated by the signatures of the

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contractor. In addition, a irrevocable power of attorney is to be granted by the supplier in favour of the Bank. The detailed procedure and the standard form in which the power of attorney should be executed are contained in the pamphlet entitled "Instructions to Contractors for preparation and submission of Bills" in the form DGS&D – 204.

16.14 MODE OF PAYMENT TO OVERSEAS SUPPLIERS :

16.14.1 Payments to overseas suppliers will be made by letters of credit opened by the State Bank of India. The detailed procedure for opening the letter of credit and its operation is given in Appendix-I.

16.14.2 Where opening of letter of credit is not possible due to certain constraints (such as material having been shipped prior to opening of letter of credit), payment may be made through form A-1, when following procedure should be adopted:

- (i) A letter should be addressed to the Controller of Accounts, Department of Supply enclosing there with form A-1 in duplicate duly filled in and signed by the Director of Supplies along with a copy of A/T requesting him to authorise the Manager, Reserve Bank of India to raise debit against appropriate account and to remit the amount to the Embassy of India in the country concerned to enable them to made payment to the overseas suppliers.
- (ii) The Controller of Accounts will authorise Reserve Bank of India for remitting the said amount endorsing a copy to the Foreign Exchange Division of the State Bank of India.

- (iii) Reserve Bank of India will authorise the State Bank of India, who will in turn advise their Branch in the foreign country concerned for further payment to the overseas suppliers and payment will be made by the Embassy of India in the foreign country through a cheque in favour of the overseas suppliers. In such cases the function of the Embassy of India is just to deliver the cheque to the correct person.

16.15 PAYMENT AGAINST TIME BAR CLAIMS :

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

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action in a civil court is barred under the Law of Limitation re not ordinarily to be rejected on the ground of limitation alone.

16.15.2 The drill outlined below will be followed while dealing with time barred claims :-

If the bills are presented by the contractor within 3 years from the date when become due (i.e. the date of despatch of stores in the case of initial payment of 95 %, 98 %, 90 % claims or the date of delivery or receipt certificate, whichever is later, in the case of balance 5 %, 2 %, 10 % or 100 % claims, the Accounts Officer will not refer the bills to the supply officer because such bills are not time barred. In such cases, he will proceed to effect payment, if the bills are otherwise in order. The limitation for balance 5 %, 2 %, 10 %, 100 % is also to be counted from the date of issue of Finalisation amendment letter, if required.

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

16.15.4 If the bills are presented after the expiry of the limitation of 3 years, from the date when the payment becomes due as stated in sub para 1 and 2 above, the Accounts Officer will refer the matter to the Supply Officers to ascertain whether the limitation has been saved by acknowledgement and if not for obtaining sanction of the Government for admitting and payment of the time barred claim. While referring the bills to the Supply Officer, the Accounts Officer, will conduct a preliminary investigation and certify that the payments claimed in the bills referred by him are due to the firms concerned and that they have not been paid previously. Copies of the Inter-departmental correspondence shall not be endorsed to the contractors, nor any reference made to him.

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

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

16.15.7 In respect of time-barred claims/bills which are proposed to be admitted, the following procedure would be followed:-

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- (a) The Purchase Officer should ensure that a confirmation from the Accounts Office concerned is available to the effect that no payment has been made in the past in respect of the subject claim/bill. It should further be ascertained that the stores for which payment has been claimed have been actually received by the consignee that there is no contractual claim of the Government against the contractor on account of shortage, damage, etc and/or on account of delay in supply, price escalation escalation clauses in the contracts.
- (b) The firm should be asked to certify that the claim was overlooked in spite of their own internal auditor's check and annual audit by external audit. The firm should be asked to send the confirmation to the above effect duly certified by their internal audit or by the proprietor of the firm if they have no internal auditor. While making a reference to the firm in this regard, it should be clearly mentioned that the information called for is purely on ex-gratia basis without prejudice to the legal rights of the Government.

- (c) A draft sanction letter for the purpose of payment of time barred claims may be seen at [Annexure-64](#). Before putting up the sanction letter, it should be ensured that the indenter has certified about the availability of funds or has obtained an advance from the Contingency Funds of India to meet the payment. The draft sanction letter should contain a certificate to this effect.
- (d) Payments arising out of the time-barred claims should not be made without the consent of the Finance Wing.

16.15.8 All time barred bills where payment is to be authorised, should be routed through the channel of Authentication to the Accounts Officer concerned with a copy to the Finance Wing.

16.16. PAYMENT OF BILLS AGAINST SANCTIONS ISSUED BY THE DGS&D.

16.16.1 Bills submitted by contractors on the basis of special sanction issued by the DG or the Department of Supply will be counter signed by the Supply Officers and forwarded to the Accounts Officer concerned for payment.

16.16.2 The firms should be asked to send their bills to the purchase Directorate concerned, which after scrutiny and counter signature by the Supply Officers or other Departmental Officers concerned will be forwarded to the respective Accounts Officer for payment.

16.17 DEDUCTION OF INCOME TAX AT SOURCE FROM PAYMENTS TO CONTRACTORS AND SUB-CONTRACTORS :

16.17.1 Section 194(C) of the Income Tax Act, 1961 provides for deduction of Income Tax at source at the rate of 2 % of the payment to contractors by Government, local authorities, statutory corporations etc. The provisions contained in this Section apply only in relation to works contracts, labour contracts and composite contracts and do not cover the contracts for Sale of Goods.

16.17.2 Accordingly, DGS&D contracts governed by the Conditions of Contract contained in forms Nos. DGS&D-68, 69 and 70 being for Sale of Goods do not attract the provisions of Section 194(C) of the Income Tax Act.

16.17.3 Contracts governed by the conditions of contract contained in form Nos. DGS&D- 71, 72 and 73 will attract the provisions of Section 194 (C) of the Income Tax Act where an element of “Works” is involved. It is difficult to formulate rigid general guidelines for the purpose of determining whether the contract has an element of “Works” for the purpose of deducting Income Tax in terms of Section 194 (C) ibid the following clarifications are given for the guidance of the purchase officers :

- (a) Supply of plants and machinery contracts, which are governed by, form DGS&D-71 and no erection or commissioning by the contractor is involved. Deduction of Income Tax not necessary.
- (b) Contracts pertaining to supply of machinery where only supervision of commissioning is done by the firm at the consignee’s place and the contract is governed by conditions of contract on form DGS&D-71. The supervision of commissioning can be either free or at extra cost. But in these types of cases generally the contract provides for services of one or two engineers for supervising the commissioning, whereas erection etc. is done by the consignee. This should be examined on merits with reference to the terms and conditions governing each case.
- (c) Contract pertaining to supply of machinery and plant where the erection and commissioning is also done by the firm and the Deduction of 2 % Income Tax under section 194 (c) of the Income Tax Act 1961 should be made

Contract is governed by conditions of contract on form DGS&D-71, the charges for erection and commissioning are mentioned separately.

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| (d) | Contracts for supply of plant and machinery governed by form DGS&D-71, and the erection and commissioning is done free by the firm i.e. the charges are included in the contract price and are not quoted separately. | Deduction of 2 % Income Tax under Section 194 (c) of Income Tax Act, 1961 should be made. |
| (e) | Contracts for Supply of imported machinery governed by form DGS&D-71 where although the contract is on Indian Agents, the supervision of Commissioning is done by the engineers of the foreign principals. | Contract of this nature will have to be examined on merits with reference to the terms and conditions governing each case. |
| (f) | Where the orders are placed on overseas supplier and installation, if any, has to be done by those foreign suppliers and ht Indian Agents have no contribution towards installation/commissioning for such works contracts. | No deduction of Income Tax is to be made from the Indian Agents at source of payment against the contractor. |
| (g) | Contracts for Plants and machinery governed by DGS&D-71, where the procurement of spares forms part of the contract. | 2 % Income Tax shall be deducted at source on the total value of the contract including the value of the spares. |

16.17.4 It may be further clarified that where the charges for installation and commissioning are shown separately in the contact 2 % Income Tax will be deducted on the latter portion of the contact. But in case of a contract where in addition to supply there is some works portion for which no separate provision is made, 2 % Income Tax will be deducted on the entire value of the contract.

16.17.5 In cases where there is a semblance of doubt regarding recovery of Income Tax at source in contracts governed by the conditions of contract on form DGS&D-71 it would be advisable to err on the right side and to recover the Income Tax from the payment to be made. The supplier can, on the basis of the Income Tax recovery certificate issued to him by the Chief Controller of

Accounts can move the Income Tax Authority for refund or adjustment of the deducted amount of Income Tax as the case may be.

16.17.6 A specific endorsement will be made in all such contracts where deduction of Income Tax at source is necessary. The endorsement will be made against copy meant for the Account Officer as under :

16.17.7 “The Controller of Accounts, Department of Supply, New Delhi/Calcutta/Mumbai/Chennai (thought Authentication Cell). This contract does/does not fall within the purview of the Section 194 (c) of the Income Tax Act, 1961.”

16.17.8 Clearing Agency contract where reimbursement is allowed by the Accounts Officer, charges like port dues, railway freight, insurance and Customs Duty etc. will not attract provision of section 194 (c) of the Income Tax Act. On the other hand service charges like loading and unloading charges including stacking, destacking, sorting, crantage and handling charges, transport charges, if claimed separately, will come under the purview of ‘Labour’ Contract and will entail deduction of Income Tax by Account Officer while paying the firm’s bills.

16.17.9 The deduction of Income Tax will be made at the time of credit of the sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier and rate of deduction of Income Tax will be at 2 %. No deduction will be required to be made of the consideration for the contract does not exceed Rs. 5,000/-.

16.17.10 Deduction of Tax at source has to be made to the time of payment to the contractor. If the payment has already been made without deducting tax at source, the authority or person responsible for making payment renders himself/himself liable to the penal provisions contained in Section 201 and 276 (b) of the Income Tax Act. The Accounts Officer will credit the Income Tax under head of Account as indicated in the Ministry of Finance Letter No. 380/72-IT (B) dated 22.1.73 (Copy as per Appendix-II).

16.17.11 If any refund of tax is claimed by a contractor, on account of any excess recovery made by the Accounts Officer in course of payment the refund will be made by the Income Tax Department only on the basis of a certificate to be issued by the concerned Accounts Officer.

16.18 GENERAL : It is mandatory to have payment terms in contracts expressed in Indian currency in respect of transactions originating within the country relating to

outright sale or hire/lease by foreign companies operating in India. The payment terms may, however, be

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expressed in a foreign currency if quotations are received and payment insisted on in their currency by the foreign suppliers in respect of “Off Shore” transactions.

16.19 **REMISSION OF REVENUE AND ABANDONMENT OF CLAIMS TO REVENUE :**

16.19.1 **The sanction of the competent authority is necessary for the remission of and abandonment of claim to revenue.**

Note:- **The powers of subordinate authorities to sanction the write off of loss of revenue are related by rule 13 of Delegation of Financial Powers Rules, 1978.**

16.19.2 **The following categories of receipts in the Directorate General of Supplies and Disposals are classified as `Revenue` for the purpose of submission of the annual statement referred to hereinafter.**

- (1) Departmental charges to be recovered by the Directorate General of Supplies and Disposals (i.e. fees realised for services rendered from Indentors who have to pay these.**
- (2) Tender fees from firms in respect of the sale of advertised tenders.**
- (3) Miscellaneous Receipts of the Directorate General of Supplies and Disposals such as:-**
 - (a) Sale proceeds of priced specifications and drawings etc.**
 - (b) Proceeds from the auction sale of old and obsolete samples from the sample room of organization.**
 - (c) Sale proceeds of condemned furniture, waste paper etc.**
 - (d) Fees for application Forms for registration of firms.**

16.19.3 **Annual statements concerning remission of revenue and abandonment of claims to revenue based on paragraphs above should be sent to the Coordination Supplies Section of the Headquarters office by the first week of April every year by all supply sections, Regional Supplies Organizations etc. for submission to Accountant General, Revenues. `NIL` statements must also be submitted where there is nothing to report.**

16.19.4 **Subject to any general or special order issued by Government individual remissions below Rs. 100/- need not be included in this statement.**

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CHAPTER – 17

Department charges for services rendered by DGS&D

17.1 Departments/ agencies from whom departmental charges are recoverable for services rendered by DGS&D : **According to Rule 126 of the General Financial Rules, 1963, departmental charges at the rates prescribed by government from time to time shall be levied, for the services rendered by the Directorate General of Supplies and Disposal, in regard to Purchase, Inspection, Shipping, Clearing and handling of stores. The rates currently applicable for departmental charges in regard to purchase and inspection of stores are as follows:-**

17.1.1 PURCHASE:-

- a) **Departmental Charges will be levied @ 0.5 % of the value of the contract or supply order placed against the DGS&D rate contract.**

- b) **DGS&D will have freedom and flexibility in determining the departmental fees to be charged in the range of 0.25 % to 2 % for the service to be rendered against the ad-hoc procurement depending on the value, nature of item etc. to be procured.**

17.1.2 INSPECTION :

- a) **Departmental Charges will be levied @ 0.5 % of the value of the contract or supply order placed against the DGS&D rate contract.**

- b) The uniform rate of 0.5 % of the value of the order represents consolidated inspection fee inclusive of TA/DA of officers and test charges for confirmatory tests.**

- c) Where inspection of stores is entrusted to the Quality Assurance Wing of the DGS&D against supply orders/contracts placed directly by the Departments/Agencies i.e. otherwise than through the DGS&D, the fee for inspection services rendered will be charged at the uniform rate of 0.5 %.**

- d) Quality Assurance Wing will have freedom, flexibility in determining fee to be charged for inspection services rendered against non-departmental orders within a range of 0.25 % to 2 % of the value of stores depending on complexity and nature of inspection involved.**

17.1.3 Departmental charges are levied separately for service rendered for purchase of stores and for inspection of stores. Thus, in a case where a purchase contract is entered into by the DGS&D for the procurement

of stores required by any of the departments/ agencies but the inspection of the stores is the responsibility of the indenter, departmental charges for purchase of stores will only be levied and no charges will be levied for inspection of stores.

17.1.4 As regards the departmental charges in regard to shipping, clearing and handling of stores reference may be made to the Shipping Manual.

17.1.5 No departmental charges are leviable for services rendered e.g. carrying out the tests, purchase and inspection of stores etc. by one branch or office of the Department of Supply/ Directorate General of Supplies and Disposals for another branch or office.

17.2 CALCULATION OF DEPARTMENTAL CHARGES :

17.2.1 The departmental charges are calculated on the total contract value of the stores purchased. The elements to be excluded/included in the total contract value for the purpose of calculation of departmental charges are stated item-wise in the following paragraphs.

17.2.2 Packing, postage or shipping charges, if included in the bill, are to be excluded for the purpose of calculation of fees.

17.2.3 If the order is on F.O.R. station of despatch basis, the departmental charges should be calculated on the value of the stores excluding freight. In the case of orders providing for “Free delivery at destination” in which the freight to destination is not separately shown in the order, the departmental charges are calculated on the total inclusive price. In some cases, although, delivery terms are “Free delivery at destination”, the supplier sends the stores booked “Freight to pay” and deducts the amount of railway freight from the bill. In such cases, the departmental charges should be levied on the gross amount of the bill inclusive of freight charges.

17.2.4 In the case of C.I.F. contract, the terms “Total inclusive price” includes only, the cost, insurance, freight paid up to the port of the destination while the stores are yet on board. It does not include such charges as discharge, lighterage, landing at the port of discharging, import and customs duty or wharfage charges. These are generally paid by the departmental agents e.g. the Embarkation Commandant, the Ordinance Officer stationed at the Port etc. These charges are, therefore, to be excluded for the purpose of calculation of departmental charges. If, however, under the terms of the contract these charges are paid in advance by the firm or by their agent at the port of

entry for clearing the consignment and onward transmission to the ultimate destination, these are separately billed for by the firm

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which are paid by the Controller of Accounts of the Department of Supply and the usual departmental charges are levied.

17.2.5 In the case of orders involving erection at site, the departmental charges for purchase are calculated on the total inclusive price.

17.2.6 In the case of sales tax whether the price stipulated in the contract is inclusive of sales tax or sales tax is shown as a separate element of cost in the bill, it will be included in the total value of the order for the purpose of calculation of departmental charges.

17.2.7 In case excise duty is paid as a separate item and is payable on supplies to government this will form part of the total value of the contract for the purpose of calculation of departmental charges for purchase and inspection of stores procured for consignee situated in India. No departmental charges are to be levied on excise duty in respect of supplies to consignee outside India because the same is subject to rebate at a later stage.

17.2.8 Elements of local duties and taxes form part of the price of the stores and as such these are to be included in the total value of the contract for the purpose of calculation of departmental charges.

Charges for insurance, wherever provided in the contract, will form part of the price of the stores and should be included for the purpose of calculation of departmental charges.

17.3 DEPARTMENTAL CHARGES FOR INSPECTION ON ELEMENTS OF SIDING CHARGES AND LAYING OUT CHARGES AGAINST NON-DEPARTMENTAL ORDERS.

17.3.1 Laying out charges : **These are levied by the firms as the cost of spreading the material on the inspection benches to facilitate through inspection of each individual piece by the Inspecting Officer. The extra work is done by the firms purely to facilitate levied on this element of cost also if it is included in the total value of the order.**

17.3.2 Siding Charges : **These extra charges are claimed by the firm for transshipment of the wagons from the Railways station at destination to the consignee's siding and are charged as separate item in supplier's bills as "Siding charges". No Sales Tax is levied on this item. As such Inspection Fees should also not be charged on this element of cost.**

17.3.3 **Rounding off of fees for services rendered by; the DGS&D Organization :**
The fees for services rendered by the DGS&D Organization are rounded off to the nearest multiple of rupee.

17.4 EXTRA CHARGES ON SAMPLES OF VARIOUS NATURE AND
CHARGES FOR SPECIAL TESTS:

17.4.1 **Departmental Orders (R/Cs, / ATs etc.)**

- (a) **Testing of `Routine' nature as per the contract specification, will be done at the firm's premises by their Testing Machines and with their labour. The entire cost thereof will be borne by the firm, irrespective of the test results.**

For SSI units who are not adequately equipped with the necessary Testing facilities, a slight relaxation has been granted. Such firms can take the help of approved laboratories in the nearby areas for carrying out the necessary tests over there. The entire cost of such Tests, however, including the to and fro transportation charges and the labour charges will have to be borne by the firm regardless of the results.

- (b) **Confirmatory and Periodical Tests will be done at NTH on the basis that DGS&D bears the Test Charges if the results are satisfactory and firm bears the test charges if the results are unsatisfactory and the stores are rejected and their acceptance is discontinued on that ground.**
- (c) **Special tests like Radiographic and ultrasonic ones. These will either be arranged by the firms themselves at their premises with their own machines or, will be done by the help of the Mobile Unit of the National Test House/ approved laboratory. Where the firm themselves carry out the test, the entire cost related thereof will be borne by them irrespective of the test result unless there are some contrary instructions in the order itself. But when the tests are carried out by the NTH laboratory, at the request of the Inspectorate, the test charges would be governed by the following: -**

‘The indenter will bear the test charges if the test results are satisfactory and the firm sold bear the test charges if the results are found to be otherwise.’

A special note generally appears on the body of the Departmental Orders I such cases mentioning the name of the party who required to bear the charges.

- (i) **Routine Tests and Confirmatory Tests on Samples will be governed by the Instructions a laid down at (a) and (b) of above Para.**

- (ii) **Regarding Radiographic and Ultrasonic Tests, Special Loan Tests for Bridge bearing etc:-**

The test charges for such tests will any way be either borne by the Indentor or the Supplier in accordance with the provision mentioned in the order. In the absence of any such provisions the indentor should be asked specifically before the Inspection and Testing work is undertaken.

17.4.3 For routine/acceptance test, if carried out in firm's laboratory, the cost of the stores expended in tests is to be borne by the Contractor while for special and

independent check tests, if they prove satisfactory the cost of stores shall be borne by the purchaser.

17.4.4 Notwithstanding, what has been stated above, it should be clearly borne in mind that if there are any other instructions on the body of the order itself, on the subject which tends to run contrary to the Instructions laid down hereunder the former would get preference over the latter.

17.4.5 Peculiar cases not covered by above should be referred to the DGS&D for necessary instructions.

17.5 BILLS FOR FEES FOR INSPECTION OR TESTING OF STORES : Bills for inspection or testing fees once made out on the basis of the material accepted or tests carried out may be revised only to correct prima-facie errors or omissions which may be discovered or brought to notice, but no bill can be cancelled or reduced in amount nor a refund of fees realised should be allowed, by the organization which prepared the bill on the ground that the inspection or tests proved later to have been unsatisfactory. If the payment of a bill for fees for any portion thereof is withheld by the Department by whom it is payable on such grounds, a

detailed report of the case should be submitted at once to the Director General of Supplies and Disposals for orders by the organization concerned. If the Director General of Supplies and Disposals is satisfied that the Inspection or Tests carried out has been really defective or unsatisfactory, he will authorise the revision or cancellation of the disputed bill or admit the claim to refund and may take such disciplinary action against the party responsible for defective work as may be considered suitable. A copy of the order passed in such cases should be sent to the Controller of Accounts, Department of Supply concerned and it will be open to him to bring any important case, in which he is not satisfied, to the notice of Government.

17.6 LEVY OF FEES IN THE CASE OF REJECTION AND NON-ACCEPTANCE OF SUPPLIES BY CONSIGNEES AGAINST ORDERS PLACED BY THE DGS&D ORGANIZATION OR LOSSES IN TRANSIT :

Such cases will fall in one or other of the following categories and should be dealt with as indicated against each :-

- | | |
|--|--|
| (i) Stores not in accordance with the terms of the order but accepted by the Quality Assurance Officer. | The Directorate General cannot levy charge for the inspection of the replacements. If such stores are not replaced no charge can be made for the original inspection nor can any charge be levied for purchase in |
|--|--|

respect of the rejected stores.

(ii) Stores accepted in accordance with the terms of order, but wrong supply made by the firm and replaced. No charge can be made to the consignee for the inspection of the replacements.

(iii) Stores accepted and supplied in accordance with the terms of the order, but rejected by the consignee and replaced. Fees can be legitimately claimed for both inspections i.e. of the original supplies and also of the replacements. If replacements involved 'a fresh purchase' i.e if it entailed the issue of a fresh Acceptance of Tender for supply a fee for the purchase of the replacement would also be leviable. The inspection officer should furnish the Accounts Officer, with the necessary information to enable him to levy the fee for a second inspection in a case coming under this category.

(iv) Stores accepted and supplies in accordance with the terms of the order but rejected by the consignee and not replaced. **The Directorate General can claim fees both for the charges on purchase and inspection of the rejected supplies.**

(v) Losses in transit. **Usual fees should be claimed on the value of stores lot in transit where the loss is attributable to the carrier.**

17.7 levy of departmental charges on indents where demands are placed but subsequently cancelled :

17.7.1 **If an indent is cancelled prior to the issue of advance acceptance or Acceptance of Tender, no departmental charges should be levied on account of purchase. If, however, an indent is withdrawn after issue of advance or regular Acceptance of Tender on the pleas that stores are no longer required, full departmental charges on account of purchase should be levied and debited to the indenting officer.**

17.7.2 Such charges will be in addition to contractual liabilities that may have to be incurred consequent on cancellation of contract, which would have also to be debited to the indenting department.

17.7.3 No departmental charges should be levied in respect of indents which are withdrawn in full or in part by the indenter for making his own arrangements on account of default on the part of the contractor provided the indenter simultaneously requests the DGS&D to cancel the contract if contractually possible.

17.7.4 Departmental charges should also be levied in respect of quantities where the indenter wants reduction after contract has been concluded in respect of orders placed by this office including orders placed against Rate Contracts, against indents placed on this office as some work including cancellation with or without financial compensation is involved. In cases, however, where Direct Demanding Officers want reduction in respect of Supply Orders placed by them against Rate Contracts directly on the Rate Contract holding firm and the firm accepts the same without financial repercussions, without bringing this office into the picture, departmental charges for such quantities need not be levied.

17.7.5

In cases where an Acceptance of Tender or a Supply Order placed by this office is cancelled or the quantity ordered therein is reduced, the reasons therefore should be indicated in an endorsement on the copy of the relevant amendment letter intended for the Accounts Officer so that he may take necessary action to recover departmental charges, wherever leviable straightway in accordance with the decision contained in the foregoing paragraphs.

17.7.6 **Where after placement of an A/T the indenter revised the specification and the original A/T is cancelled without financial repercussions on either side, and fresh arrangements are made to procure the stores to the revised specification, no departmental charges are to be levied in respect of the previous A/T cancelled as the indenter has not withdrawn his demand.**

17.7.7 **In the case of Overseas Purchases, however, when the quantity contracted for is subsequently reduced at the request of the indenter, departmental charges will be limited to the quantity ultimately supplied i.e. no departmental charges should be charged on the part of quantity cancelled.**

17.7.8 **In the case of repurchase of stores necessitated by default on the part of contractor, neither the indenter nor the contractor should be held responsible for payment of the departmental fees on the extra cost involved in repurchase and that the departmental fees in such cases should be calculated on the value of the original order. The departmental fees may, therefore, be levied and a rebate allowed subsequently to the respective consignees on the extra cost involved in repurchase, when it is recovered from the contractor. A suitable note should be kept on relevant records to prevent admission of rebate for a second time.**

17.7.9 **The above instructions are meant to be applicable only to cases where the extra cost on repurchase of stores is recoverable and is actually recovered in full from their defaulting contractor. These do not apply to cases where the extra cost, though recoverable under the terms of the contract from the defaulting contractor is not actually recovered from him either in part or in full for special reasons, or is not recoverable at all. Neither do these instructions apply to cases where the cost of repurchase is lower than the value of the original order. The readjustment of departmental charges is therefore necessary only in cases falling in the first category.**

17.8 **FEES FOR THE INSPECTION OF ORDERS PLACED BY OTHER AUTHORITIES, FOR TESTS, DESIGN AND ADVISORY WORK : In which the**

Directorate General of Supplies & Disposals undertake the inspection of stores purchased by another agency, or carries out tests, analysis, investigations etc. the charge for such work is made in accordance with the rates prescribed in the schedule of fees sanctioned by the Government of India.

17.9 **LEVY OF DEPARTMENTAL CHARGES FOR INSPECTION OF STORES IN FOREIGN COUNTRIES WHERE OUTSIDE AGENCIES ARE EMPLOYED BY THE DGS&D :** **On contracts placed by DGS&D in foreign countries providing for inspection by commercial agencies in those countries, the actual inspection charges incurred are to be recovered from the indentors i.e. the inspection charges paid to the commercial agencies plus other expenses incurred by the DGS&D by way of tests carried out in India. These orders apply to all cases irrespective of whether the total charges to be so recovered are more or less than the normal departmental charges for departmental inspection i.e. 0.5 %.**

CHAPTER – 18

SETTLEMENT OF DISPUTES/CLAIMS ARISING OUT OF THE DGS&D CONTRACTS THROUGH ARBITRATION/COURTS-PROCEDURE REGARDING

18.1 SETTLEMENT OF DISPUTES THROUGH SOLE ARBITRATOR

18.1.1 Clause-24 of the General Conditions of Contract in form DGS&D-68 (Revised) provides that in the event of any question, dispute or difference arising under the conditions of or in connection with the DGS&D contract (except as to matters the decision of which is specifically provided for) the same shall be referred to the sole arbitration of an officer in the Ministry of Law appointed to be the arbitrator by the Director General of Supplies & Disposals 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 and Reconciliation Act, 1996 and the rules thereunder.

18.1.2 With a view to obtaining the consent of the contractor to the arbitration clause as mentioned above the questionnaire in the list No. 1 issued alongwith the tender enquiries requires the contractor to give his acceptance/or rejection to the said clause. It is stipulated that an omission to answer specifically in this regard will be deemed as an acceptance of the clause.

18.1.3 Where the contractor has answered or is deemed to have answered the question specified above, in the affirmative, the words, “Including clause-24 thereof” are to be added, at the appropriate place, in the clause relating to the Conditions of Contract in the schedule to the Acceptance of Tender. Where the contractor has not accepted the arbitration clause, the words “excluding clause –24 thereof” are to be inserted in the Acceptance of Tender. Once the contractor has accepted Arbitration clause-24 of the General Conditions of Contract, any dispute/claim arising out of the DGS&D contract by either side becomes adjudicable by the Sole Arbitrator to be appointed by the director General of Supplies and Disposals.

18.1.4 Occasion may arise where in respect of a contract, the contractor had earlier not agreed to the Sole Arbitration Clause but later agrees to the settlement of the dispute(s) arising out of the contract through arbitration by signing an agreement to refer the dispute to the Sole Arbitration by an officer appointed by the DGS&D. Before an agreement is executed the Purchase Section will undertake an exercise, in consultation with the Ministry of Law to determine whether the case is fit for reference to arbitration. If the view arrived at is to refer the dispute to arbitration, administrative approval of the competent authority will be obtained. After such an approval is obtained the concerned Directors of Supplies will be competent to sign the agreement (format given in [Annexure-65](#)) irrespective of the value of the contract.

18.2 SETTLEMENT OF DISPUTES/CLAIMS THROUGH ARBITRATION IN THE CASE OF CONTRACTS ENTERED INTO WITH PUBLIC SECTOR UNDERTAKINGS:

18.2.1 The above provisions are not to be applied in the case of disputes/claims arising out of contracts entered into with public sector undertakings of the Central Government. As per the instructions issued by the Department of Public Enterprises, disputes regarding commercial and other contracts between the Government Department and a Public Sector Enterprises (excluding those relating to income tax, customs and central excise) are to be referred to permanent arbitration machinery set up in the Department of Public Enterprises.

18.2.2 As the arbitration machinery is designed to be financially self supporting the disputants are required to share equally the cost of the service rendered by the machinery and would be intimated to them.

18.2.3 In case the Department of Public Enterprises fails to settle the dispute/claim, the matter may be referred to the Cabinet Secretariat through Department of Supply in line with the instructions issued by the Cabinet Secretariat vide their Office Memorandum No. 53/3/91-Cab dated 31.12.91 for settlement of disputes. Further it has to be ensured that no litigation involving such dispute is taken up in a court or tribunal without the matter having been first examined by the above constituted Committee and the Committee's clearance for litigation is obtained.

18.2.4 The Committee consists of;

1. Cabinet Secretary
2. Secretary, Department of Industrial Development
3. Secretary, Department of Public Enterprises
4. Secretary, Department of Legal Affairs
5. Finance Secretary
6. Secretary of the concerned Ministry/Department

18.2.5 The concerned Ministry/Department should refer the cases of dispute with the Public Sector Undertaking to the Cabinet Secretariat with a self-contained note as per [Annexure-66](#) for placing before the above constituted Committee for decision.

18.2.6 Accordingly, in so far as contracts entered into with Public Sector Enterprises are concerned a suitable clause should be included in the Acceptance of Tender that in the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the permanent arbitration machinery set up in the Department of Public Enterprises and that if the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

18.3 SETTLEMENT OF DISPUTES THROUGH COURT OF LAW OF COMPETENT JURISDICTION:

18.3.1 Where a contractor has not agreed to Sole Arbitration Clause-24 of the General Conditions of Contract, the dispute/claims arising out the contract entered into with him will be subject to the jurisdiction of the competent court of law as per the provisions of

Clause 20 of the General Conditions of contract (Form DGS&D68). In the Acceptance of Tender under the heading “Jurisdiction” below the entry relating to conditions of contract, the following should be inserted:-

“This contract is subject to jurisdiction of Courts at _____ only”. The name of the place from which A/T is issued should be inserted in the blank space.

18.4 APPOINTMENT OF ARBITRATOR-PROCEDURE REGARDING CONSENT OF OTHER PARTY NOT REQUIRED FOR APPOINTMENT OF ARBITRATOR:

18.4.1 In cases where the parties have agreed to settlement of disputes/claims arising out of the DGS&D 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 agreed party asks concerned authority to do so.

18.5 PROCEDURE LEADING TO THE APPOINTMENT OF THE ARBITRATOR WHEN THE CONTRACTOR SEEKS TO REFER THE DISPUTE TO ARBITRATION:

18.5.1 On receipt of a request from the contractor to refer the dispute to arbitration, the Purchase Section will verify that the arbitration clause is included in the contract. On such verification, the Purchase Section will prepare a self contained note giving the points put forward by the contractor and the points of the purchaser in reply thereto and refer this note to the Ministry of Law for advice whether the purchaser’s stand is tenable and whether the case is fit to be referred to arbitration. It should be ensured that all doubtful points requiring a ruling are clearly brought out by the Purchase Section in the self contained note. If the advice of the Ministry of Law is in the affirmative, the case will be put up alongwith the advice of the Ministry of Law to the competent authority for according administrative approval for referring the dispute to arbitration.

18.5.2 With the approval of the competent authority the purchase file will be forwarded to Litigation Branch for appointment of Arbitrator. Purchase directorate should also record that none of the existing Arbitrator has seen this file. The Litigation Branch thereupon will submit the file to DG for appointment of Arbitrator and arrange to issue a letter appointing the Arbitrator.

18.6 PROCEDURE LEADING TO THE APPOINTMENT OF ARBITRATOR WHEN IT IS PROPOSED TO REFER DISPUTE ON BEHALF OF THE PURCHASER:

18.6.1 In the case of Government claims where the Director General contemplates taking recourse to arbitration, the Purchase Section should first verify the financial standing of the party and the prospect of recovery of the amount claimed, where the amount to be recovered is less than Rs. 5,000/-, no verification of the financial standing of the party need be made. In cases where the amount to be recovered is less than Rs. 5,000/- and the firms are registered with DGS&D, the financial scrutiny may be carried out with reference to the registration records only. Claims of this magnitude from unregistered firms and in the case of

those registered firms where no conclusion can be formed with reference to the registration records, full scrutiny should be done as laid down below:

- (1) Report from the Bankers who originally reported on the financial status of the firm.
- (2) Report from the Income Tax Officer whether they are prompt in paying income tax if not, whether they are in arrears.
- (3) Report from the Wealth Tax Officer regarding payment of wealth tax by its Directors.
- (4) Report from the Registrar of Companies as to the balance sheets showing Profit and Loss Account of the concern.
- (5) Report from the Registrar of Partnership firms regarding the names and addresses of the partners if the firm is partnership concern.
- (6) Details about attachable assets/financial condition of the firm from the Deputy Commissioner/Collector of the District concerned.

18.6.2 After the financial standing of the party has been done, where required, a complete summary of the case will be prepared and referred to the Ministry of Law for opinion as to whether or not the Government has got a tenable and strong case fit for reference to arbitration. If the Ministry of Law advised that the case is fit for reference to arbitration, the Purchase Section should obtain the administrative approval of the competent authority to the institution of the arbitration proceedings in the same manner as given in para-18.5.

18.6.3 If the contractor has not complied with the Demand Notice served on him by or recovery he may be disputed the purchaser's claim or recovery he may be served with a fresh Demand Notice to deposit the Government dues alongwith interest within 15 days from the date of issue of the Notice. The specimen draft notices to be served on limited firms etc. and partnership firms are given for the guidance of the Purchase Officers at [Annexures-67](#) and 68 respectively.

18.6.4 Thereafter the file will be referred to the Litigation Section to take necessary steps for appointing an arbitrator on behalf of the Government.

18.7 REFERENCE OF DISPUTES TO ARBITRATION ON THE DIRECTION OF COURTS:

18.7.1 The DGS&D contracts are usually governed by the standard arbitration clause. On a request received from the contractor, effort should be made to ensure the appointment of an arbitrator and not to compile the firm to go to the Court unless, there is any objection to it. In certain cases, the firms file petitions in courts for directions to the Union of India for reference of disputes to arbitration in terms of the Arbitration Clause. On receipt of such an order of the Court, the Purchase Directorate will examine the case and obtain the administrative approval of the competent authority.

18.7.2 The value of the contract shall be taken into account for deciding as to the officer competent to accord such approval.

18.7.3 Immediately after obtaining administrative approval as above the Purchase Directorate will send the file to Litigation Branch for appointment of Arbitrator as the procedure given in para-18.5.

18.7.4 The reference to particulars of the suit filed by the firms and the order of the Court in terms of which disputes are being referred to arbitration shall be indicated in the file.

18.8 PROCEDURE FOR APPOINTMENT OF ARBITRATOR IN CASES CONCERNING REGIONAL OFFICES:

18.8.1 As soon as a notice from the contractor to refer the matter to arbitration is received by a Regional Office, a complete summary of the case should be prepared by the Regional Office within 24 hours (exclusive of holidays), the claimant which should be checked up by a Senior Officer not below the rank of Deputy director. The file should then be referred to the Local Branch of the Ministry of Law in the case of Mumbai, Calcutta and Chennai for opinion as to whether or not the firm's demand for arbitration is in order and whether the case should be contested by Government and if so, on what grounds.

18.8.2 After the legal opinion has been obtained in the manner laid down above, the regional offices at Mumbai, Calcutta and Chennai would obtain the administrative approval of Deputy Director General concerned in falling within the powers of purchase of Deputy Director General and send file to Regional cell at Headquarters. The Regional Cell will forward the case to Litigation Branch for submission to DG (S&D) for appointment of arbitrator.

18.8.3 In respect of the cases, which are beyond the powers of DDGs the Regional Cell will take approval of competent authority before sending the file to litigation Branch.

18.9 INFORMATION TO INDENTORS/CONSIGNERS ETC. FOR REFERENCES OF DISPUTES OF ARBITRATION:

18.9.1 As soon as it is decided that the disputes be referred to Arbitration, the Purchase Directorate concerned shall immediately inform the Indentor/Consignees/Inspecting authority/Controller of Accounts etc. about reference of the case to arbitration so that all relevant files, records and documents are retained and kept ready by them for use in the arbitration proceedings as and when necessary. They should also be informed to retain all the records till the settlement of the disputes in arbitration. Besides Indentor/Consignee will be informed of the amount of claims –referred against the purchases with a request to make necessary provisions for making available funds, in the event of an award being made or decree being passed against the Government.

18.10 PREPARATION EXAMINATION AND FINALISATION OF PLEADINGS TO BE FILED BEFORE THE ARBITRATORS:

18.10.1 In cases where the Government is the claimant before the Arbitrator is appointed by issue of a formal letter of appointment in terms of the nomination made by Director General, the Litigation Branch shall prepare the statement of claim to be filed on behalf of Union of India. It will be the responsibility of the respective Purchase Directorate 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 Government. It should sort of claims in the particular contract for which the reference is made to arbitration.

18.10.2 The concerned Purchase Directorate will specify the documents in support of the claims preferred by them. It will also be the responsibility of the concerned Purchase Directorate to collect the particulars from Controller of Accounts, the consignees, the concerned QA Wing and the Department of Supply in respect of any items necessary for formulating the claim on behalf of the Union of India or any other purchaser shown in the contract. It will also be the responsibility of the concerned Purchase Directorate to give the list of officers who have dealt with the contract in the Purchase Directorate during the relevant period.

18.10.3 In the cases in which the Government is the respondent, a copy of the claim statement, as and when received from the claimant contractor, will be forwarded by the Litigation Section to the concerned Purchase Directorate along with the file (if it had been retained by the Litigation Section), calling for detailed parawise comments on all the paragraphs of the claim filed by the claimant contractor. The concerned Purchase Directorate has to admit or deny categorically all the allegations made in the firm's claim statement and should also give explanatory notes about the stand taken by the Purchase Directorate giving reference to the advice of the Ministry of Law which might have been obtained earlier. The concerned Purchase Directorate will also examine the copies of the documents, filed on behalf of the claimant firms and will also give explanatory notes, whether documents, the copies whereof have been filed by the claimant firm, are available in the purchase files and whether they are true and correct copies of the original available with the Purchase Directorate.

18.10.4 If there are some mistakes in the copies filed by the claimant firm, the same should also be pointed out. The Purchase Directorate will also consult the Controller of Accounts, the consignee, the QA Wing and the Department of Supply if some particular item referred to in the claim statement or some particular item necessary for substantiating the Government's counter claim, is required to be ascertained from the said offices under the existing instructions and in the manner provided.

18.10.5 When the self contained statement of facts is received from the concerned Purchase Directorate in the case of Government being the claimant or when the detailed parawise comments and other particulars are received from the concerned Purchase Directorate in the cases of Government being the respondent, the same will be examined by the concerned dealing assistant in the Litigation Section who will prepare the draft claim statement/counter statement accordingly. The draft statement/counter statement of claim will then be put up to the concerned Litigation Officer i.e. AD (Lit); DD (Lit), Additional Legal Adviser (Lit) who will examine it with reference to the para-wise comments and original

documents available in the Purchase file and referred to in the comments or the self contained statement of the claim. He will also ensure that all defences are taken and all claims/counter claims are included in the pleadings. The Litigation Officer concerned will also settle the documents to be filed along with statement/counter statement of claim. In certain important cases, Litigation Officer, if he thinks necessary will obtain approval of the Additional Legal Adviser and/or Ministry of Law before the statement/counter statement of claim is finalized.

18.10.6 Additional Legal Adviser (Lit) will decide to entrust the case to a Government Counsel where the value of claims exceeds the powers delegated to Litigation Officers to defend or in respect of cases where heavy stakes or complicated questions or facts are involved a reference shall be made to the Ministry of Law for nomination of a Government counsel borne on the Panel of that Ministry for the conduct of the cases in Arbitration. The engagement of such counsels is made in accordance with the rules, instructions and scale of fees prescribed by the Ministry of Law but approval of DG is necessary before issuing a formal letter appointing the Government counsel.

18.10.7 In cases where Government counsels are engaged, the detailed para-wise comments offered by the Purchase Directorate or the self contained statement of facts offered by the Purchase Directorate will be submitted before the Government Counsel so appointed and the said Counsel will be requested to prepare the claim/counter statement of claim.

18.10.8 If the Litigation Officer/Government Counsel engaged for conduct of the case, requires prior consultation with the conversant officer of the Purchase Directorate to enable him to prepare or settle the claim/counter claim, the concerned Purchase Directorate shall depute the conversant officer for such consultation. The officer so deputed shall record on the file the date, time and duration of the discussions held with the Government Counsels to enable verification of the bills of the Counsels.

18.10.9 After the draft claim/counter statement of claim is settled by the officer the same will be fair typed in the Litigation Branch with as many copies as may be required in each case. However in respect of cases where Government counsel has been engaged this exercise will be undertaken by the Purchase Directorate. The fair typed copies/counter statement of claim will thereafter be signed by the Purchase Officer dealing with the contract after verification of the factual position and swearing in of affidavits, where required, by presenting themselves before the Oath Commissioner. The pleadings shall then be signed and filed by the Litigation Officer/Government counsel, conducting the case.

18.10.10 List of Officers authorized to sign and verify the pleadings on behalf of the Union of India concerning the Directorate General of Supplies and Disposals, has already been notified under Notification SRO 351 dated 14.2.90 published in the Gazette of India vide Appendix I. As per the said Notification and as per the provisions of orders XVII Rule I.C.P.C., the pleadings are to be verified or the Affidavits are to be sworn by any person who is acquainted with the facts of the case. Similarly, affidavits are to be sworn by the officers who are dealing with the case and who are acquainted with the facts of the case, either in the capacity of being a Purchase Officer. It is only the said Purchase Officer who can be deemed to be dealing with the facts of the case. The verification of the pleadings and the swearing of the affidavits must, therefore, be done by the concerned Purchase or Disposal Officer. Thereafter, the pleading will be signed either by Government Counsel or by the Additional L.A. (Lit) or A.D. (Lit.) whosoever might be conducting the case.

18.10.11 In order to expedite preparation and finalization of statements of claims together with supporting documents, model drafts of such statements of claim separately for cases involving claims on account of Risk purchase, price variation, L/D, General Damages, have been finalized in consultation with the Ministry of Law are at [Annexure-69](#). These model drafts also indicate broadly the type of supporting documents required to be filed alongwith the statements of claims in order to substantiate the claims of UOI. These model drafts would not only help the Litigation Officers/Government Counsels in the preparation of statements of claims but would also guide the Purchase Officers to know what documents are normally required for successful conduct of cases in arbitration.

18.10.12 The Purchase/Litigation officers may however note that these drafts only serve as model which will be adopted with minor modifications here and there in individual cases to meet the requirements of particular situation and they should not be blindly followed lest any other point of importance germane to a given situation should escape notice.

18.10.13 If as a result of examination, any additional documents/details are required by the Litigation Officer/Government counsel, the same shall be furnished by the concerned Purchase Directorate. In cases where the firms file counter statements of claims raising inter-alia certain fresh points and it is decided to file a Rejoinder on behalf of the UOI, the concerned Purchase Directorate shall furnish detailed comments on each of the fresh points/allegations and also furnish complete information/data to substantiate the view point of the Union of India so that Litigation Officer/Government Counsel may prepare draft rejoinder.

18.10.14 List of documents referred to in the statement/counter statement of claim/replication/rejoinder as also in the advice of the Ministry of Law to support the claims of Government shall be prepared and finally settled with the approval of the officer/counsel who is to conduct the case.

18.10.15 It will be the responsibility of the Purchase Directorate to arrange for the presence of witness (where necessary with the help of Administration) to give evidence on behalf of the Government where so desired by the Litigation Section/Government Counsel. Litigation Section will be completely responsible for watching the progress of each case, for production of evidence, and the Purchase Directorate concerned shall render all assistance to the Litigation Officer/Government counsel as he may require and to see to the successful conduct of the cases.

18.11 CONDUCT OF ARBITRATION CASES AT THE HEADQUARTERS AND IN THE REGIONAL OFFICES :

18.11.1 In the Headquarters office, arbitration cases are conducted by the Additional Legal Adviser (Litigation), Deputy Director (Litigation) and Assistant Director (Litigation). AD (Lit) / DD (Lit) will conduct cases before the

Arbitrator where claims involved in individual cases upto Rs.3,00,000/- . In the cases involving complicated question of law and / or facts, Addl. L.A. (Lit) on the recommendation of the Ministry of Law and with the approval of Director General may engage services of a senior / junior Counsel on the panel of Ministry of Law for conducting of arbitration cases at Headquarters Office.

18.11.2 In the arbitration cases, arising out of the contracts placed by Calcutta and Mumbai offices and which are heard at these places the same are conducted through the Central Government Solicitor at Calcutta and Mumbai who is an officer of Ministry of Law, Branch Sectt. At these places. The Solicitor, if he thinks necessary may engage the services of Counsel on the panel of Ministry of Law, Branch Sectt. at these places . The Solicitor, if he thinks necessary may engage the services of counsel on the panel of Ministry of Law at these places for any work connected with the prosecution of Defence or /arbitration proceeding. The Counsel so engaged will be paid fees through the Solicitor on his recommendations.

18.11.3 The arbitrations cases arising out of the contracts of Chennai office are to be conducted by the Government Counsel at Chennai in consultation with Ministry of Law (Branch Secretariat).

18.12 EXAMINATION OF AWARDS/ DECRESS AND ACTION THEREAFTER:

18.12.1 Arbitration awards may be classified as :

- (a) Declaratory Awards: This is an award which either dismisses claim made but awards no sum of money whether by way of cost or otherwise or only declares an interpretation of the contract. In the case of such an award, the Litigation Section will take steps promptly to cause the award to be filed in the competent court to make to it rule unless it is advised by the Ministry of Law that a suit relating to the dispute referred to arbitration has become barred by time.
- (b) Other Awards: These are awards which direct payment of a sum of money by one party to other.

18.13 SPEAKING AWARDS

18.13.1 The speaking awards made by an Arbitrator contain reasons for admission or rejection of claims. In terms of clause-24 of Conditions of Contract, DGS&D-68 (Revised), if the value of the claim in a reference exceeds Rs. 1 lakh the arbitrator shall give reasoned award.

18.14 **NON-SPEAKING AWARDS:**

- 18.14.1 Non-speaking awards do not contain reasons for admission or rejection of claims.
- 18.14.2 When the arbitrator/the court has delivered the award, the Litigation Section will arrange to obtain copies of the award.
- 18.14.3 Litigation Officers/Government Counsel conducting the cases, would examine the awards very carefully and after the detailed study pin point any unusual features, defects, infirmity or weaknesses and refer to Purchase Directorate for obtaining the approval of the competent authority for acceptance or otherwise of such awards. Depending upon the merits and demerits of the case, the Addl. L.A.(Lit.) may refer only those cases to CDN Directorate which in his opinion require such remedial action as is necessary.
- 18.14.4 In cases where the sole arbitrator makes a non-speaking award directing the Government to pay a certain sum to the party in full and final settlement of all the claims and counter-claims of all the parties against each other, the examination of every case as to why the Government did not get its full claim before the arbitration would involve labour which would not be commensurate with the results achieved as the award is a non-speaking award.
- 18.14.5 In respect of Arbitration cases covered under the new Act, 1996, request for any correction, interpretation or additional award can be made under section 33 of the Act within 30 days from receipt of the award unless another period of time has been agreed upon by the parties.

18.15 **PROCEDURE OF FOLLOW-UP ACTION**

18.15.1 **AWARD IN FAVOUR OF THE GOVLERNMENT:** Immediately on receipt of the award or the decree as the case may be by the Purchase Directorate through Litigation Branch, the Purchase Section will initiate action to obtain the decision of the competent authority as to the acceptance or otherwise on behalf of the Government of the award or the decree. Reference to the Ministry of Law would not be necessary where;

- (i) the arbitrators/court has allowed the claim of the Union of India to the full extent;
- (ii) the arbitrator/court has dismissed the claim of the contractor against the Union of India and the Union of India preferred no counter claim.

18.15.2 If the award is fully in favour of the Union of India, the question of challenging the same does not arise and the file need not be sent to the Ministry of Law unless advised or any question of law is still required.

18.15.3 In respect of cases where award generally is in favour of the government and it has been advised by the Ministry of Law that it may be converted into a decree and the purchase section, after obtaining the approval of the competent authority will refer the case to

Litigation Branch to arrange for moving an application in the court under Section 14 and 17 of the Arbitration Act within 30 days of the service of the notice for making the award a rule of the court.

18.15.4 An arbitrator has to make an award within 4 months of the date of which he enters upon reference or within such time as is extended by the parties through mutual consent. Where an award is made after the time allowed as referred to above, an application shall also be made under Section 28 of the Arbitration Act for extension of time for making the award. Such an application for extension of time for making the award can also be made along with the application under Section 14 & 17 of the Arbitration Act for making the award a rule of the court.

18.15.5 In respect of cases, coming under the Arbitration and Conciliation Act, 1996 i.e. cases referred to arbitration after 25.1.1996, an application for setting aside an award is to be made under section 34 of the Act within 3 months from the date on which the party making that application have received the arbitral award or, if a request has been made under section 33 of the new Act, from the date on which that request had been disposed of by the Arbitral Tribunal.

18.15.6 The Purchase Section concerned who shall thereupon serve a demand notice in form given in [Annexure-70](#) for recovery of the awarded amount from the contractor. The Purchase Section shall at the same time explore the possibility of effecting recovery in full or part of the awarded amount from the pending bills of the firm and report the result to the Litigation Section. In case payment is not made within 30 days of the issue of the demand notice the purchase section shall forthwith institute investigations through appropriate civil and police authorities to find out financial assets of the judgments debtors and also ascertain the immovable properties and other assets held by them and intimate the same to the Litigation Section along with certificate that recovery through normal channels could not be possible so that immediately after award is converted into a decree, execution proceedings may be initiated for getting an order of the court for attachment of the properties in question in satisfaction of the decree. It must be noted that complete details and location of all such properties are to be given in the execution petition itself to enable the court to pass the requisite order of attachment.

18.16 **WARD NOT IN FAVOUR OF THE GOVERNMENT:**

18.16.1 Where the award is against Government/the Indent or partly in favour and partly against the Government/the Indentor as for example where it directs the Government/Indentor to pay a sum lesser than the sum claimed by the Contractor it is not necessary to cause the award to be filed in court, if the Government/indentor accepts the award and other partly accepts payment thereof in full and final settlement of all claims forming the subject matter of reference in pursuance of an offer made in accordance with the procedure laid down in the ensuing para.

18.16.2 the Purchase Section shall, immediately after obtaining the approval of the competent authority to accept the award or on receiving such intimation from the indentor, communicate in [Annexure-71](#) to the contractor the fact of such acceptance and offer payment

in terms of the award. If the contractor communicates acceptance of the award within specified time, payment so made will bar the contractor from using again in respect of the same dispute vide decision of the Supreme Court reported in Kashinath Shah and Narsing Shah AIR 1961 SC 1077.

18.16.3 It may be clarified that a letter of consent from the firm can serve the purpose and in cases where an amount has to be paid to the firm by the Union of India or by the firm to the Union of India, for, in such cases discharge is obtained by payment of the amount by either of the parties in pursuance of the award. In cases where there is simply a declaratory award, it is always advisable to have the award made a rule of court. In the latter category of cases it would not be possible to urge that the letter of consent from the firm operates as a discharge.

18.17 RECOVERY OF GOVERNMENT DUES CONSEQUENT TO AWARD OF DECREE IN FAVOUR OF GOVERNMENT:

18.17.1 On receipt of the copy of the decree, Litigation Section shall furnish a copy of the decree to the Purchase Section concerned who shall then serve demand notice on the judgment debtor demanding the amount and also simultaneously ascertain if any bills of the judgment debtor are pending with the Department from which the amount decreed in favour of Government can be recovered. In the latter case the Purchase Section shall furnish to Litigation Section full particulars of such bills as well as the connected contracts to which these bills relate to enable Litigation Section to have those bills attached through the Court. If there are no such bills, and there is also no response to the demand notice, the Purchase Section shall report back to the Litigation Section the circumstances under which recovery has not been possible at the same time giving full particulars of assets of the judgment debtor of which the Purchase Section may be aware and which may be proceeded against in execution of the decree. The Purchase Section should refer all specific cases brought to their notice to the Controller of Accounts without any loss of time by self contained note through authentication for effecting recoveries, where due, from the firms concerned. Simultaneously the audit Officer and Section CDN-3 should be informed so that the latter may notify all concerned about the recovery to be made from the firm and action to be taken in that respect. The Purchase Section shall also inform Section CDN-3 of further developments so that similar action for recovery from outstanding dues to the firm is taken against, if necessary.

18.17.2 On receipt of non-recovery of the decretal amount from the Purchase Section concerned Litigation Section shall in consultation with the Ministry of Law take such steps for execution of the decree as may be advised by that Ministry from time to time, to this end. Purchase Section shall also make wherever necessary discreet and confidential enquiries through police/civil authorities concerned or otherwise as to the available assets of the judgment debtor from which recovery of decretal amount may possibly be made.

18.17.3 Where it is not possible to realize the decretal amount by means of attachment and sale of properties of the judgment debtors, a decree holder may ask for detention in the civil prison of the judgment debtors, in accordance with the existing law. Under Section 56 of the Code of Civil Procedure, decree holder can request the appropriate court after having exhausted the remedy of recovery of decretal amount from the property of the judgment debtor, for the arrest of the judgment debtor who can be detained in the civil prison in the execution of the decree for 6 months provided the decree is for a sum exceeding Rs. 50/-. The existing law also provides that in case judgment debtor is detained in prison, the decree

holder will have deposit diet allowance for such prisoner for the period of detention. The diet allowance is fixed by the court. In some states, the State Government have fixed the allowance. In any case, this will be nominal amount and vary from State to State. It may, however, be added that the committal of judgment debtor to a civil prison does not absolve him from the liability to pay. He can make the payment at the time of his arrest is made or at any subsequent time. The moment he makes the payment judgment debtor is released from the civil prison. Even if he has undergone the full term of imprisonment i.e. six months, he can still be compelled to pay by attachment and sale of his movable and immovable properties. Thus a committal to the Civil prison will not prejudicially affect the interest of the Government. Further, the amount paid by the Government by way of subsistence diet allowance is a cost of the suit and is also recoverable along with the decretal amount from the judgment debtor, if he has sufficient assets.

18.17.4 The above procedure will apply in the case of an individual, sole ownership firms, and partnership firms. After the life of the decree has run out or if at an earlier stage it becomes apparent that recovery is not possible and the Ministry of Law advise that it is no use pursuing the matter of recovery further, Litigation Section will communicate to the Purchase Section the circumstances under which it has been decided to drop the Ministry of Law. The Purchase Section shall then take necessary steps to obtain approval of competent authority to the closure of the case and/or to write off of the loss involved, as the case may be.

18.17.5 Under the Limitation Act, 36 of 1963 an application for execution of a decree (other than a decree granting a mandatory injunction) or order of any civil court, must be made within 12 years of the date when the decree or order becomes enforceable and where decrees or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, application for execution must be made within 12 years of the date when default in making the payment or delivery in respect of which execution is sought takes place.

18.17.6 Till such time as the decree runs out its normal life of 12 years applications for execution of the decree shall be made frequently at suitable intervals in consultation with the Ministry of Law. With a view to keep a constant watch on the progress of recovery as well as proceedings in court, Litigation Section shall maintain a register as in the proforma given in [Annexure -72](#) and enter in this register particulars of all court decrees/orders under which any sum of money has been awarded to Government against part. A separate file shall be opened in respect of each such case as soon as a certified copy of decree or order is received. The regional offices will also maintain registers as envisaged above and proceed on similar lines in regard to such cases arising at their end in consultation with their legal advisers.

18.17.7 In cases where the firms are wilfully avoiding payments of the decretal amount, a note should be sent to CDN for taking further penal action including stoppage of quotas of steel and other Government controlled articles.

18.18 PROCEDURE REGARDING PAYMENT OF DECETAL AND AWARDED AMOUNT WHEN THE AWARD IS IN FAVOUR OF THE CONTRACTOR:

18.18.1 Prompt payment of decretal and awarded amount is essential, especially when such amounts carry interests. The indentor should, therefore, be in a position to make funds

readily available for meeting decrees and awards. It is essential, therefore, that they have sufficient notice of the sums which they are likely to be called upon to provide in the event of an award being made or decree being passed against the Government. To ensure this, the instructions given below should be followed:-

- (a) As soon as a claim is preferred in arbitration or a suit is brought against Government in respect of contract placed by the Directorate General of Supplies & Disposals, the Purchase concerned will furnish to the Indenting Department concerned full particulars of the claims preferred against Government with a request that the indenting Department shall keep the claim in view while making provision for the charged expenditure through supplementary appropriation during the current financial year or by way of original appropriation for the next financial year, as it may be feasible in the circumstances of the case. Indentors may be further advised that in the ordinary course they are not likely to be called upon to make funds available at least within six months of the institution of the legal proceedings.
- (b) Again by the 15th August every year the Purchase Sections will furnish to the indenting Departments concerned a statement showing all the cases pending in arbitration and court in respect of their contracts with an indication of their position at the time so that the indenting Departments can ask for supplementary appropriation during the current financial year or include them in their demands for the next financial year. With a view to ensure the preparation of this statement, the Purchase Section shall maintain a register showing claims preferred against Government in respect of contracts dealt with by the Section. This register will show the name of indenter, indent number and date, indenter's Head of Account, A/T number and date, contractor's name and address, nature and amount of claim preferred against Government, date of institution of arbitration proceedings or suit, present position likely date when the funds would be required in the event of a decree or award being made against Government. The last two columns will be filled up in consultation with the Litigation Section.
- (c) As soon as decision as to acceptance or otherwise of the award has been obtained, the Purchase Section shall examine if:-
 - i) The awarded amount is contractually due to the contractor, as balance 5 or 10% payment for supply of stores;
 - ii) The amount sufficient to satisfy the award has been previously recovered/withheld by the Controller of Accounts at the instance of Purchase Officer and has not been passed on to the Accounts Officer of the indenter and is available with him at the material time i.e. when the award is published.
- (d) In case of the above two categories there will not arise the need to ask the Indenter for provision of funds so long as the award is not made a court decree.
- (e) In other cases where the amount recovered/withheld falls short of the awarded amount, or has been passed on to the Indenter or where though the amount is available with the Controller of Accounts, the award has been converted into a

decree it will be necessary to make a reference to the Indentor for provision of funds. The Purchase Section will without delay, forward a copy of the award/decree to the indenting officer with full particulars of the case inviting the indenting officers' attention to previous communication made to him under sub clause (a) and (b) above and enquiring provision exists for meeting the expenditure involved. The indentor will also be informed of the opinion of the Ministry of Law, Integrated Finance and the decision of the competent Authority. The Indentor will be further advised that in case no provision has already been made, he should immediately apply for advance from the Contingency Fund to meet the expenditure involved. Copies of communication made in this connection to the indenting officer should also be endorsed to the administrative Head of the Department as well as the administrative Ministry concerned. The indentor will be requested to communicate the provision of funds within a fortnight.

- (f) Even in cases where the decision is not to accept the award the indentor shall be informed of the decision by the Purchase Section concerned and requested to make provision of funds notwithstanding the non-acceptance of the award by the Government so that in the event of the award being made a rule of the court, prompt payment can be made if the decree is acceptable to Government. Where the decree is not accepted and where an appeal is filed on behalf of the Government the prompt payment would be necessary in the event the court orders payment with or without security for restitution pending decision on the appeal (in the event of Government succeeding in an appeal from the decree).
- (g) In cases where the amount of the award/decree is not more than Rs. 1 lakh it will be made clear to the indentor that even if provision of funds is not communicated by the indentor within the target period, the DGS&D will authorize payment without further notice as an "inevitable payment" in terms of Government of India decision No. 3, below rule 75 of the General Financial Rules, 1963. In case where the amount is more than Rs. 1 lakh and no reply is received from the Indentor by the target date the matter will be taken up with the indentor at higher level explaining fully the financial implications involved in delay in payment with a view to obtain necessary funds to meet the award from the decree as the case may be.
- (h) Subject to availability of funds that may be intimated by the indentor (and without awaiting intimation where the amount involved is less than Rs.1 lakh) the Purchase Section will issue a formal sanction (proforma given in [Annexure-73](#)) addressed to the CCA authorising payment of the awarded amount, with a copy to the indentor, consignee, the Accounts Officer of the consignee etc. The expenditure so involved will be debatable to the indentor against the Head of Account as mentioned in the contract.
- (i) In cases where the arbitration award is backed by the court decree, the expenditure irrespective of any monetary limit, has to be treated as "Charged" on the Consolidated Fund of India. The Indentor should furnish confirmation regarding the provision of funds to the DGS&D positively within 15 days of the receipt of intimation from the DGS&D. In case there is no budget provision available for the purpose, the indentor should obtain advance from the Contingency Fund of India in all such cases which may be recouped by obtaining necessary appropriation from the Parliament.

- (j) Soon after the issue of the sanction the Purchase Officer concerned will prepare a bill ([Annexure-74](#)) in the form of a receipt giving details of the claim the number and date of sanction letter the amount and full name with complete address of the payee i.e. the contractor in whose favour the cheque is to be drawn and forward the same to the controller of Accounts concerned. The Controller of Accounts will draw a crossed cheque in the name of the contractor as given in the bill and forward the same to the Purchase Officer concerned by name who shall arrange to delivery it to the payee after proper identification and after obtaining from the contractor concerned acceptance of the award and a receipt.
- (k) In the case of a court decree if execution proceedings started then the cheque shall be made out in the name of the court and after it is received from the Controller of Accounts the Purchase Officer concerned, without any avoidable delay, arrange to have the sum deposited in the court by the stipulated date.
- (l) Pending deposit in the court or delivery to the contractor as the case may be, the cheque will remain in the safe custody of the Cash Branch. Under no circumstances should the cheque remain with the Purchase Officer.
- (m) It is of utmost importance that those cases specially where payment of interest is involved receive immediate attention at all the stages. The Purchase Officer shall be personally responsible for processing the cases from the time of the receipt of the award/decree till payment is made.

18.19 SPECIAL LUMP SUM PROVISION IN THE BUDGET OF DEPARTMENT OF SUPPLY FOR PAYMENT AGAINST COURT ORDERS/DECREES:

18.19.1 While the Purchase Section shall invariably take steps to obtain funds from the concerned indentors a special lumpsum provision is made in the budget of the Department of Supply for payment of decretal amount based on court orders/judgment/decree etc. where the indenter fails to provide funds in time. The lumpsum provision is made under the "Charged" Head to meet only the expenditure of the following types:-

- a) Cases where attachment decrees are received from the Court.
- b) Cases where the court is not prepared to grant extension of time to make payment.
- c) Cases where a target date is stipulated in the court judgment for making the payment and it is not possible to approach the indenter for provision of funds for want of time to avoid accrual of interest.
- d) Cases where the indenter regrets to provide funds in time.

18.19.2 The lumpsum provision has been made in the budget of the Department of Supply to avoid last minute rush of cases for obtaining an advance from the Contingency Fund of India for meeting the expenditure in respect of the above mentioned types of cases. It may be noted carefully that the lumpsum funds provided in the budget of the Department of Supply will be utilized only in the types of cases referred to above. In all other cases the indenter should be approached for provision of funds immediately on receipt of court judgment.

18.19.3 the funds shall be released by the Department of Supply in consultation with Finance and requisite sanction letter shall be issued by the administrative wing of the Department of Supply.

18.19.4 The expenditure sanction letter that may be issued for payment from the special lumpsum provision under the Charged head of expenditure of the Department of Supply should contain a suitable provision regarding the recovery of the amount so authorized for payment, from the indentor/consignee concerned and indicate the full details of the acceptance of tender/rate contract, supply order and the Accounts Officer of the indentor/consignee to enable the Controller of Accounts concerned to recover the amount from the Accounts Officer of the indentor/consignee. The recoveries will be taken as reduction in expenditure if the reimbursement of the claim is received from the concerned Accounts Officer of the indentor/consignee or the concerned Accounts Officer of the indentor/consignee or the concerned Ministry/Department within the same financial year in which the expenditure is initially met from the "Charged Provision" in the budget of the Department of Supply. In case the reimbursement is received in the subsequent financial year, the same will be treated as "Revenue Receipt" of the DGS&D under the "Major Head-057 Supplies and Disposals". The Director of Supplies concerned and the office of the Chief Controller of Accounts are required to watch the progress of recoveries so as to ensure that action is being taken in their respective offices for effecting recoveries from the indentors/consignees concerned during the course of year.

18.20 PROCEDURE REGARDING ROUTING OF FILES FOR CONSIDERATION OF AWARDS/DECREES ETC:

18.20.1 The Purchase Dte. Though Addl. L.A.(Lit.) in the DGS&D will consult the Ministry of Law, on receipt of the award/decree of the arbitrator/court, and refer the file to the Deputy Director General concerned who will then consult the Integrated Finance, and submit file to the competent authority for his orders for accepting the award /decree or otherwise and to the payment of the awarded/decree amount.

18.20.2 In the case of Regional Offices after obtaining the opinion of the Branch Secretariat of the Ministry of Law and Integrated Finance the file will be submitted to the Deputy Director General for his orders/or for obtaining orders of the competent authority, as the case may be.

18.21 LEGAL PROCEEDINGS:

18.21.1 All legal notices, summons or other legal processes regarding contracts for procurement and disposals of stores, entered into by DGS&D Headquarters, are to be received and dealt with by the Litigation Section. The notices etc. pertaining to Regional Offices will be received and dealt with by the respective Regional Offices. Notices served on the Union of India through the Department of Supply will also be dealt with by the DGS&D Headquarters (Litigation Section)/Regional Offices as the case may be. The Department of Supply are to be consulted in cases where questions of policy and/or large sums are involved.

18.21.2 It may be noted carefully that according to Order No. 37 (as amended by Section 84 of the Code of Civil Procedure-Amendment Act,1976), in all suits arising out of written contracts there is no right to the Defendant to defend the suit unless:-

- i) He enters appearance within 10 days of service of the notice in the suit;
- ii) Applies for leave to defend the suit within 10 days of the service of the summons for judgment served on the defendant after he enters/appears.

The importance and urgency in handling the notice needs emphasis and should be noted by all concerned.

18.21.3 If on preliminary scrutiny it is established that the notice/summons etc. received are actually for the DGS&D, the same should be passed on, without delay, to the officer concerned with the defence of the case, so that he may timely and properly instruct the appropriate counsel to act in the matter. Failure to do so will result in the case being put on the undefended list and to ultimately on ex-parte decision being made by the Court against the Government.

18.22 INSTITUTION AND DEFENCE OF LAW SUITS/FILING OF APPEALS:

- i) Institution of suits and other legal proceedings excepting appeals on behalf of the Government, wherever necessary, for the recovery of any amounts due from the contractors in respect of contracts for the purchase of or sale of stores. The Ministry of Law and the Integrated Finance shall be consulted before instituting any suit.
- ii) Appeals are to be filed after due consideration in exceptional cases where the circumstances of case so require. In such cases prior approval of the Government of India in the Department of Supply shall be obtained before filing an appeal against orders of a Court. The Ministry of Law, will no doubt be consulted before filing an appeal.
- iii) Defence of suits and other legal proceedings including appeals which are brought against the Government and which the DGS&D are to defend, the powers of the Director General (Supplies and Disposals) for defence of suits/appeals will be exercised by the Additional Legal Adviser (Litigation).

18.23 NATURE OF CASES IN COURT:

18.23.1 Cases in courts may broadly be categorized as

- i) court proceedings initiated under section 28 of the Arbitration Act 1940 to seek extension of time for making of award by the Arbitrator in cases where the parties do not mutually agreed to extend such time and the proceedings were adjourned since die.
- ii) Application under Section 14 or under Sections 114 and 17 of the Arbitration Act 1940 (Under Section 34 of 1996 Act) to have the award filed in the court, for challenging the award or for making it a rule and obtain decree in terms thereof.
- iii) Under sections 5 and 11 of the Arbitration Act 1940 (under Section 12 of 1996 Act) where the authority of the Arbitrator is sought to be challenged.
- iv) Application under section 33 of the Arbitration Act 1940 (under Section 8 of 1996 Act) moved by the firms in the courts challenging

- the existence of validity of an Arbitration Agreement or an award or to have the effect of either determined.
- v) Sometimes firms also file suits even in cases where Arbitration clause is applicable. In such cases, however, the Union of India is required to move an application under section 34 of the Arbitration Act 1940 (under Section 8 of 1996 Act) before taking any other steps to defend the suit brought by the contractor.
 - vi) When after request is made by firms DGS&D do not appoint Arbitrator within 15 days, the firms file petitions in court under section 8 and 20 of the Arbitration Act 1940 (or under Section 11 of 1996 Act) seeking directions from the court to DGS&D for appointment of Arbitrators either in accordance with the arbitration agreement or otherwise. Such objections are to be defended appropriately.
 - vii) Firms file declaratory suits seeking clarification that no contract exists or contract is frustrated. These suits are to be defended.
 - viii) In cases where the contracts do not contain an Arbitration clause, suits are filed for settlement of disputes.
 - ix) Contractors file writs for enforcement of their alleged rights under provisions of Article 226 of Constitution.
 - x) Appeals, petitions for review/revision filed in courts of appropriate jurisdiction against various orders/judgments of the courts.
 - xi) Petitions before the Supreme Court of India for Special Leave under Article 136 of the Constitution.
 - xii) Executions Proceedings:-** When judgment debtors fail to pay the decretal amount through normal channels, execution proceedings are initiated by the decree-holders so as to obtain an attachment order from the court for getting the assets and property of judgment debtors attached in satisfaction of the decrees. The courts having jurisdiction on the area where such asset/property of Judgment Debtors exists are competent to entertain such petitions.
 - xiii) Summary Suits:-**These suits are filed under Order 37 Rules (2) and (3) of CPC in various courts against recovery of certain amounts from the bills of the firms. These are very important suits where immediate action is required to be taken and it has to be ensured that the defendant or his counsel appears in the appropriate court within ten days of the receipt of first notice failing which the Courts may proceed to pass a summary order or decree against which there is normally no appeal.

18.24.1 In cases where the contracts are not governed by the Standard Arbitration Clause 24 of the conditions of Contract DGS&D-68(Revised) or where existence of such a clause is held void, before instituting litigation proceedings in courts against the contractor for settlement of disputes, the Purchase Directorates concerned shall consult the Ministry of Law immediately by a self contained note bringing out clearly the view points of the purchaser and the supplier as also all the doubtful points on which the ruling of the Ministry of Law is required and seek their categorical advice:

- a) Whether the stand taken by the Purchase Directorate is legally tenable and whether such a stand can be taken before the court;
- b) In case the stand taken by the Purchase Directorate is not legally tenable and whether the claim of the contractor is to be accepted and acceded to so that frivolous litigation in court is not resorted to.

OR

- c) Whether the matter could more appropriately be settled through negotiations in order to minimize avoidable expenditure on litigation proceedings.

18.24.2 If the advice of the Ministry of Law to initiate litigation proceedings in the court is in affirmative, the Purchase Directorate concerned will immediately obtain administrative approval of the competent authority (F.f.para 12). As in the case of reference of disputes to arbitration, for institution of suits in courts also, the Purchase Directorate concerned would take steps as per Para 4 above and also inform the indentor/consignee etc. etc. for institution of court proceedings as mentioned in para 3 above. The file would, thereafter, be forwarded to Litigation Branch for filing a suit in the court of appropriate jurisdiction.

18.25 DEFENCE OF SUITS FILED AGAINST UNION OF INDIA NOTICE UNDER SECTION 80 CPC :

18.25.1 Before a suit is filed against the Union of India a notice under section 80 CPC is issued by the contractor. The object of such notice is to provide an opportunity to the opposite party to examine the claim made and make amends if necessary and settle the issues amicably and avoid fruitless litigation proceedings.

18.25.2 Immediately after such a notice is received the Litigation Branch shall pass it to the concerned Purchase Section who shall take action as per instructions contained in Ministry of Law .M. No.93(1)57-OM dated 11.12.1957, as amended from time to time, a copy of which is given in Appendix II. The concerned Purchase Section would examine thoroughly the various claims/allegations made in the notice and make a self-reference to the Ministry of Law giving inter-alia the complete history of the case, parawise comments together with reference to all relevant documents/papers duly flagged. Whether a reply be sent to the notice or not the decision will be taken by the Purchase Section in the light of the advice given by the Ministry of Law.

18.25.3 In case the dispute is not settled mutually, any time after the expiry of two months of the date when the notice was received, the party who served the notice is entitled to file a suit in the court of appropriate jurisdiction.

18.26 RECEIPT OF NOTICE OF SUIT FILED BY THE CONTRACTOR IN THE COURT ;

18.26.1 Immediately on receipt of a court notice, the Litigation Branch would examine the petition filed by the firm, collect all relevant records and put up file to Additional Legal Adviser (Litigation) for according sanction on behalf of the DGS&D for defence of the suit.

18.26.2 Therefore, in so far as suits are filed in Delhi Court, the Litigation Branch on receipt of notice, would immediately move the Superintendent (Legal) of Delhi High Court or lower court section of the Ministry of Law for engaging the Government Counsel with the request for causing appearance before the court on the appointed day mentioned in the notice.

18.26.3 The Litigation Branch would make out two copies of the Court Notice and the petition if any enclosed with it. The notice and the petition, in original, together with copies of other relevant papers would be forwarded to the Superintendent (Legal) High Court/Lower Court Section, for onward transmission to the Government Counsel to enable him to draft a reply on behalf of the Union of India in case a copy of the petition is not received along with the court notice. While writing to the Superintendent (Legal) High Court/Lower Court Section of the Ministry of Law for engagement of a Counsel request will also be made to obtain copy of the petition filed by the firm.

18.26.4 Another copy of the court notice and the petition will be forwarded to the Purchase Section concerned who would take action for preparation, examination and finalisation of pleadings on the lines given in para 18.28.

18.27 ENGAGEMENT OF A COUNSEL FOR INSTITUTION / DEFENCE OF SUITS FILING OF APPEALS ON BEHALF OF THE UNION OF INDIA;

18.27.1 For filing a suit in a court of appropriate jurisdiction or for defence of suits filed against the Union of India, in so far as Delhi Courts are concerned, the Superintendent (Legal) of the High Court or lower court section of the Ministry of Law is to be requested for engagement of Counsel. All relevant documents required for filing/defence of a suit are also forwarded to the Superintendent (Legal)/Lower Court Section to enable the Counsel to draft the requisite petition.

18.28 FINALISATION OF PLEADINGS IN COURT CASE :

18.28.1 For preparation of draft petitions, written statements/replications etc., and settle supporting documents for filing/defence of suits on behalf of Union of India, if the Government Counsel requires prior consultation with the concerned Purchase Officer and intimates the Litigation Branch in this regard either orally or in writing, the Litigation Branch shall inform the concerned Purchase Director who shall discuss with the Government Counsel and the DD shall assist the Government Counsel in the court. If the need arises the DD/Director can take assistance from the AD/SO. Litigation work should be handled at the level of Deputy Director except where the case is falling within the powers of AD/SO who shall then be solely responsible.

18.28.2 Before the draft written statements/replications etc., are got fair typed in the Litigation Branch, they shall first be checked and verified by the concerned Purchase Director as to their factual accuracy. Fair copies will thereafter be made and the Purchase Officers would sign and return the same to the Government Counsel. When Affidavits are to be filed, the draft affidavits are fair typed in Purchase Section and sworn in by the Purchase Officers by presenting themselves personally before the Oath Commissioners.

18.28.3 Admission and denial of document is made in courts. On receipt of an intimation from the Government Counsel about the date fixed for admission and denial of documents, the Litigation Branch shall immediately inform the concerned Purchase Officer with all original records of the case to admit/deny the documents in court. IN case the Government Counsel desires prior discussion with such an officer, the latter shall do the needful immediately before actual admission and denial takes place in court. In cases where oral evidence is to be adduced, the Purchase Directorate would finalise the list of witnesses in consultation with the Government Counsels. As soon as the information is received about the date on which oral evidence is to be held, the Litigation Branch shall immediately inform the Purchase Directorate concerned to arrange presence of witnesses in the Court on the date and time so fixed whereupon the Purchase Directorate shall arrange their presence, if necessary through Administration.

18.29 DELIVERY OF FINAL ORDER/JUDGMENT BY THE COURT AND OBTAINING A COPY THEREOF.

18.29.1 THE Purchase Officers attending to the court cases will inform Litigation branch within 24 hours after the hearing is over with a request to obtain copies of judgment/decreed from the relevant court. The Litigation Branch will obtain the same as expeditiously as possible. The Purchase Director have to ensure timely follow-up action for obtaining copies of the judgment and not to place reliance on the Government Counsel. In case of delay exceeding a week the matter should be reported to OSD(Lit.)/ADG in charge of Litigation matter. In case of extreme urgency katcha copy be obtained from Superintendent (Legal) of ministry of Law's section in the court.

18.30 EXAMINATION OF COURT ORDERS/JUDGMENTS AND TAKING A DECISION AS TO LTHEIR ACCEPTANCE OR OTHERWISE:

18.30.1 After receipt of the copy of the order/judgment, the Purchase Directorate shall analyse the various points, examine and decide in consultation with the Ministry of Law through Addl. L.A. (Lit.) whether the order/judgment is to be accepted or appealed against and obtain administrative approval of the competent authority as discussed earlier.

18.30.2 In cases where a petition was filed for making the award as rule of the court and the order/judgment of the court is to make the award a rule exactly in terms in which it was published by the Arbitrator & accepted by the Union of India with the approval of competent authority, there is no need either to refer the file to Ministry of Law or to the competent authority again for according administrative approval for acceptance of the order/judgment. Such cases should only be put up to Additional Legal Adviser (Litigation) after the judgment/order is received.

18.30.3 Similar shall be the position in respect of awards which were challenged in Court with the approval of the competent authority and the court passed an order/judgment exactly in terms of the petition filed by the Union of India.

18.30.4 In cases where the time for making the award by the Arbitrator was sought to be extended by filing a petition in court u/s 28 of the Arbitration Act, the Litigation Branch, on receipt of the final order/judgment, shall obtain approval of the competent authority to the acceptance or otherwise of the Court order/judgment.

18.30.5 In cases where petitions were filed u/s. 20 of the Arbitration Act, 1940 or section 8 of the New Arbitration Act, 1996 seeking a direction of the court for reference of disputes to arbitration and the courts pass an order accordingly, the Purchase Section would obtain the administrative approval of the competent authority to the acceptance or otherwise of the court/judgment, as the case may be, in consultation with Integrated Finance/Ministry of Law.

18.31 FILING OF APPEALS/REVISION/REVIEW AGAINST A COURT ORDER/JUDGMENT:

18.31.1 Filing of petitions for appeal, revision or review with the statutory period is the responsibility of the Purchase Section. Prior approval of Department of Supply is necessary for going in appeal against an order/judgment of the court. In cases where appeals, petitions for review/revision are to be filed, assistance of Purchase Officer, if required shall be taken. All action is to be taken well in time so as to save expiry of Limitation period prescribed.

18.32 HANDLING OF COURT CASES BY REGIONAL OFFICES:

18.32.1 In respect of disputes arising out of contracts for sale and purchase of stores placed by the Regional Offices, if certain suits are filed in courts at Delhi (Lower Courts, High Court and Supreme Court), the cases would be handled by the Litigation Branch at Headquarters, who would engage a counsel through the Ministry of Law, New Delhi. If any legal advice is required, the Litigation Branch shall obtain the same from the Ministry of Law, New Delhi. The Regional Office concerned would depute the conversant officer to brief the counsel as and when required and render such assistance as is necessary for conduct of the court case.

18.32.2 In respect of disputes arising out of contracts for sale and purchase of stores placed by DGS&D Headquarters or by Regional Offices, if certain suits are filed/to be filed in the courts at Mumbai, Calcutta and Chennai, the Regional Offices at these places would handle the cases by engaging a counsel through the Branch Secretariat of the Ministry of Law located there. If any legal opinion is required, the Regional Offices shall obtain the same from the Local Branch Secretariat of the Ministry of Law. The Purchase Directorate concerned at Headquarters or in Regional Offices as the case may be, would however, depute the conversant Purchase Directorate Officers as and when necessary to brief the counsels and render such assistance to the Regional Office concerned/Government Counsels as is necessary for conduct of the case.

18.32.3 In cases where suits are filed in courts at places other than Delhi, Mumbai, Calcutta, and Chennai the services of Central Government Standing Counsels engaged by the Ministry of Law, shall always be utilized for the conduct of cases in High Courts. The terms and conditions of appointment of the Central Government Standing Counsels in various High Courts (except Delhi, Mumbai, Calcutta and Chennai) have been laid down by the Ministry of Law in their O.M. F. No.36(5)/76-Judl. Dated 23.2.77 as amended by O.M. of even number dated 29.2.1979. Where such Central Government Standing Counsels have not been appointed by the Ministry of Law, the Litigation Branch shall make a reference to the Ministry of Law to engage a counsel. As regards cases relating to District Courts, the Central Government cases are entrusted to District Government Counsels/AGPs/GPs etc. In appropriate cases the Judicial Section/Legal Remembrancer of the State Government may be consulted. After all the papers are sent to the Counsels, the Purchase Directorate concerned shall depute the conversant officers to brief the Government Counsels, wherever necessary, keep a watch on the progress of court cases and render such assistance to the counsels as is required by them for the conduct of court cases.

18.33 ENGAGEMENT OF GOVERNMENT COUNSELS FOR CONDUCT OF COURT CASES AT PLACES OUTSIDE DELHI ;

18.33.1 All cases arising in courts at Calcutta, Mumbai and Chennai, either on the original or appellate side, are referred to the Branch Secretariat of the Ministry of Law at these places. The court cases at these places are allotted to the Counsels by Ministry of Law at these places.

18.33.2 Approval of DG/Finance is not necessary where the engagement of the counsel is made by or at the instance of the Ministry of Law or in accordance with the rules apply for appointment of counsels in court as well as arbitration cases.

18.33.3 In cases where private Advocates who are not on the approved panel of the Ministry of Law, are appointed in Regional Offices, sanction of Director General (Supplies & Disposals) will be necessary even when the cases are entrusted with the concurrence of the Ministry of Law.

18.34 EXAMINATION OF ARBITRATION AWARDS OR COURT ORDERS/ JUDGMENTS/DECREES BY THE REGIONAL OFFICES;

18.34.1 On receipt of arbitration award or an order/ judgment/decree passed by the court, the Regional Offices at Mumbai, Calcutta and Chennai shall examine the same and obtain the advice of the Branch Secretariat of the Ministry of Law located at these places whether the award of court order/judgment/decree should be accepted for challenged.

18.34.2 The general instructions given in this regard should be strictly followed by the Regional Offices. The Regional Offices at Mumbai, Calcutta and Chennai shall thereafter obtain the financial concurrence from their respective Integrated Finance and obtain administrative approval of Deputy Director General for acceptance or otherwise of the award or court order/judgment/decree. The cases requiring such approval beyond the prescribed powers of Deputy Director General, would be referred to Litigation Branch at Headquarters through Regional Cell.

18.34.3 After receipt of the files from the Regional Offices at Mumbai, Calcutta and Chennai, vide para 27.1 above. The regional Cell shall examine the case and obtain administrative approval of the competent authority as to the acceptance or otherwise of the arbitration award or court order/judgment/decree.

18.34.4 In cases where the awards made are in favour of Government under which some recoveries are to be made, prompt steps shall be taken by the Regional Offices to move an application u/s 14/17 of the Arbitration Act in appropriate court for causing the award to be filed in that court with a view to have the award made a rule of the court. Since such applications are moved as quickly as possible and, in any case, within thirty days of the service of the notice of making the award, the Regional Offices shall take this action without reference to Headquarters because the observation of the requirements of law of Limitation is of primary importance; departmental formalities can be completed later. Even in cases where the award is partly in favour of Government, similar action shall be taken irrespective of what might be the ultimate decision regarding the acceptance of the award/decree. Regional Offices at Chennai, Mumbai and Calcutta shall take action invariable with prior approval of the Branch Sectt of the Ministry of Law at these places.

18.34.5 If the case is governed under new law i.e. the Arbitration and Conciliation Act, 1996, such application is not required to be filed as the award will become decree automatically after the lapse of 3 months of the award and the same can be executable.

18.34.6 In cases pertaining to Headquarters where court proceedings were held at Mumbai, Calcutta and Chennai and which were handled by the Regional Offices, on receipt a final court order/judgment/decree, the Regional Office concerned shall take prompt steps to obtain a certified/Kacha copy of the order/judgment/decree and pass on the same to the respective purchase directorate at Headquarters together with the opinion of the Government counsel who conducted the case in the court and advice of the local Branch Secretariat of the Ministry of Law at Mumbai, Calcutta and Chennai as to the acceptance or otherwise of the Court order/judgment/decree.

18.34.7 In cases pertaining to Regional offices where court proceedings were held in courts at Delhi and which were handled by the Litigation Branch at Headquarters, the Litigation Branch, on receipt of a final court order/judgment/decree, shall prompt steps to obtain a certified/Kacha copy of the court order/judgment/decree. The Litigation Branch would thereafter examine the case in consultation with the Ministry of Law at New Delhi and after obtaining the advice of the counsel who conducted the case in the court would decide whether the court order/judgment/decree should be accepted or challenged.

18.34.8 Requisite administrative approval of the competent authority would also be obtained by the Litigation Branch before the files are returned to the Regional Office concerned with advice to implement the court order/judgment/decree.

18.34.9 In cases pertaining to Headquarters where court proceedings are held at places other than Delhi, Mumbai, Calcutta and Chennai, the Purchase Directorate concerned, who brief the counsels and assist them in the conduct of court proceedings, shall on conclusion of the court proceedings, request the Government counsels concerned to obtain a certified/kacha copy of court order/judgment/decree. The Purchase Directorate shall pursue the matter with

the Government counsel concerned and, on receipt of the copy of the court order/judgment/decree would examine the case in consultation with the Ministry of Law and, after obtaining the opinion of the Government counsel who conducted the case in the court, would decide whether the court order/judgment/decree should be accepted or challenged. The Purchase Directorate shall obtain administrative approval of the competent authority for acceptance or otherwise of the court order/judgment/decree.

18.35 PRODUCTION OF OFFICIAL DOCUMENTS BEFORE ARBITRATORS/COURTS AND CLAIMING OF PRIVILEGE CONCERNING THE SAME:

18.35.1 Sections 123 and 124 of the Evidence Act which are relevant in this connection are reproduced below for reference:-

18.35.2 INDIAN EVIDENCE ACT, 1872: Section 123 Evidence as to affairs of State – No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the Head of the Department concerned, who shall give or withhold such permission as he thinks fit.

18.35.3 Section 124 – Official communications No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

18.35.4 Section 162 – Production of documents A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

18.35.5 It will be observed from the provisions of Sections 123 and 124 *ibid* that privilege can be claimed for not producing official documents, the disclosure of which may be considered detrimental to the public interest. Such a privilege may invariably be claimed in respect of all unpublished records of the Government i.e. documents which have not come to the knowledge of the other parties. For this purpose, “Note Portion” of the file and all communications and letters other than those emanating from or are sent to the parties should be treated as “unpublished records”. The privilege may be claimed by producing declaration before the Court/Arbitrator given in the prescribed form. Detailed instructions on the subject are contained in Ministry of Law O.M. No. F.37 (1)/63-J dated 23.6.66, a copy of which is given in Appendix III, read with Cabinet Secretariat OM No. 74/1/2/72-CF dt. 2.6.1973 given at Appendix-IV.

18.35.6 Where the summons have been served on the Head of the Department or on a Government servant who has the custody of the documents, in any special circumstances, it should be firstly determined whether the documents called for is on a privilege class under Section 123 or privileged, if -

- i) It is an unpublished official record relating to any affair of the State;
- ii)
- iii) It contains any communication made to a public officer in official confidence; provided – that in neither case the disclosure of the document would cause injury to the public interest.

18.35.7 If the document(s) required to be produced in the court is(are) in the custody of the Government servant who has been summoned; he should inform the court or in the case of the High Court, or the Supreme Court, the Registrar of the court accordingly by an official letter in the form prescribed in this regard (vide Ministry of Law O.M. No. F.37 (1)/63-J dated 23.6.66) and also send a copy of the letter to both parties to the proceeding in which the production has been required.

18.35.8 If the document required to be produced is in the custody of the Government servant and is either of the opinion that the document belongs to a privileged class, or has any doubt in the matter, he should refer the matter to the Head of the Department unless the document falls under (ii) above. In the latter case the Government servant has himself to take a decision whether the public interest would suffer by the disclosure of the document.

18.35.9 If he decides that injury to the public interest would be caused by the disclosure of the document he should claim privilege under section 124 of the Evidence Act in the manner hereinafter stated.

“For claiming privilege under section 124 of the Evidence Act, the officer concerned should make an Affidavit in the form No. 3 given in the Ministry of Law Office Memorandum quoted earlier. If he is summoned to give oral evidence he should attend personally and when called upon to produce the document or give any evidence relating to the communication contained therein he should claim privilege by filing the Affidavit. If summoned to produce the document and not to give oral evidence, he may depute a subordinate officer to attend the court with the document (in a sealed cover) and the Affidavit. The court, it should be noted, is entitled to inspect such documents for the purpose of determining the claim of privilege. If the claim is rejected and it is considered advisable to move the High Court, an application in the prescribed form should be made. The production is still insisted upon the document should be produced in a sealed cover and it should be submitted though time may be given to the public officer to consider whether the High Court should be moved in revision and that in the meantime, if he sees no objection the document may be kept by the court in a sealed cover. The Government servant should then abide by such order as the court may make in the matter.”

18.35.10 Where it is desired to claim privilege for an official document under section 123 the matter is to be considered by the Head of the Department whether the document is an unpublished official record relating to any affairs of the State. If it is decided by the Head of the Department to claim privilege under section 123 of the Evidence Act, and the summons is only for the production of the document, a subordinate officer should be deputed to attend personally.

18.35.11 In either case, the Government servant attending the court should take an Affidavit in the prescribed form (vide Ministry of Law O.M. quoted earlier) which should be sworn by the administrative Head of the Department. The Government servant should also take along with himself in a sealed cover the document(s) which is(are) required to be produced.

18.35.12 When called upon to produce the document, the Government servant attending the court should present the Affidavit from the Government Counsel and explain that he is not at liberty to produce the document or give any evidence derived therefrom. It is, however, left to the court either to grant the privilege claimed or to reject the claim. If the claim is rejected, the Government servant attending the court should make an application in the prescribed form vide Department of Legal Affairs O.M. quoted earlier. If production is insisted upon, the document should be produced in a sealed cover and it should be submitted that the Head of the Department had instructed him to state that he would desire to consider whether the High Court should be moved in revision and that, if the court sees no objection, the document may be kept in sealed cover pending decision of the High Court. The Government servant should then abide by such order as the court may make.

18.35.13 It should be noted, however, that where a claim is made that a particular document relates to affairs of State, the court is not entitled in view of the provisions of section 162 of the Evidence Act to inspect the document, although it must notwithstanding the objection, be taken to the court; the court has only power to take the document and may for this purpose require the officer who makes the claim of privilege to appear for cross-examination.

18.36 **ORAL EVIDENCE DERIVED FROM PRIVILEGED DOCUMENTS:**

18.36.1 The privilege recognized by section 123 Evidence Act, 1872 extends not only to the production of the document but also to the giving of any other evidence as to either contents or as the facts derived therefrom. No person, whether a Government servant or not, may give such evidence. When a public officer summoned as a witness to give oral evidence is asked in the course of this examination as a witness any question concerning a matter which has come to his knowledge from any unpublished official record relating to affairs of State, if no summons has been issued to the Head of the Department for production of documents and his prior permission to give evidence derived therefrom has not been obtained, he should decline to answer the question until such permission is given. If the witness be the Head of the Department himself, he should object to the question on the ground that it relates to the contents of a privileged document. If the question is pressed and allowed by the court he should claim privilege after considering the document in the light of the preceding instructions. If an affidavit is required he should request for time to file it. If the witness is not himself the Head of the Department and the question is allowed by the court, he should pray that the Head of the Department may first be summoned to produce the document and decline to answer the question until it is produced.

18.36.2 The instructions contained in paragraph 28 and 29 above apply as well to the cases, in which Government is party to the case as "Others". These also apply to summons from tribunals such as arbitrators etc.

18.37 **PERSONS APPOINTED TO ACT AS ARBITRATORS, PAYMENT OF THEIR FEE, COST OF ARBITRATION PROCEEDING ETC.**

18.37.1 The services of two officers of the rank of Additional Legal Adviser in the Ministry of Law have been made available to the DGS&D for appointment as sole arbitrators. Since, they are whole time officers drawing pay and allowances from the Ministry of Law, no fees are payable to them.

18.37.2 If neither of the two officers of the Ministry of Law are available for appointment as an arbitrator in a case, either because they had seen the case earlier and tendered an advice on it, or for some other reasons to be recorded in writing, any other officer may be appointed to act as arbitration in consultation with the ministry of Law and Integrated Finance. Ordinarily, a departmental officer should not be appointed arbitrator/umpire in a matter concerning a Department. Any officer of the Government appointed as Arbitrator is entitled to be paid honorarium as per provisions made under FR-46(b).

18.38 APPOINTMENT OF RETIRED JUDGES OF HIGH COURTS/SUPREME COURT TO ACT AS ARBITRATORS:

18.38.1 Although the contracts placed by DGS&D are generally governed by the Standard Arbitration clause, sometimes firms file petitions in the courts challenging the existence of an Arbitration agreement and pray that the court may direct reference of disputes to the arbitration of a retired Judge of the High Court/Supreme Court. If, in such cases the Courts pass an order in favour of the petitioner and direct reference of disputes to a Retired Judge of the High Court or Supreme Court, the Union of India should appropriately use the ruling, of Supreme court dated 12.7.96 as per which the Hon'ble Supreme court set aside the order of High Court appointing a retired Judge as Sole Arbitrator with a direction to appoint an arbitrator in terms of Clause-24 of the Conditions of Contract. (Verdict of Supreme Court dated 12.7.96 may be seen at [Annexure-75](#)).

18.38.2 Some contracts placed by the DGS&D are not governed by the Standard Arbitration clause-24 of the Conditions of Contract DGS&D-68 (Revised) and specifically provide that any questions, disputes or differences arising out them shall be referred to the arbitration of a Retired Judge of High Court/Supreme Court. Such Cases are first referred to the Ministry of Law for nomination of a retired Judge of the High Court or Supreme Court and then the Judge so nominated, would be appointed as an Arbitrator.

18.39 FEES PAYABLE TO THE RETIRED JUDGE OF HIGH COURT/ SUPREME COURT ACTING AS ARBITRATOR/UMPIRES:

18.39.1 Retired Judge of the supreme Court/ High court acting as arbitrator/Umpires in Central Government arbitration cases (excluding Calcutta) are entitled to be paid fees as fixed by Ministry of Law, Justice and Company Affairs, Department of Legal affairs.

18.40 COST INCIDENTAL TO REFERENCE TO ARBITRATION AND MAKING OF AWARD:

18.40.1

Para (v) of the standard Arbitration Clause 24 contained in DGS&D-68 (Revised) provides that assessment of the costs incidental to the reference and award respectively shall be in the discretion of the Arbitration under section 14 (2) of the Arbitration Act. The Arbitrators or Umpires shall:

“..... upon payment of fees and charges due in respect of the arbitration and award of the costs and charge of filling the award ,cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before him, to be filed in court.....”.

18.40.2 Condition 8 of the First Schedule to the Arbitration Act, 1940 reproduced below, is also relevant in this regard.

“ The costs of the reference and award shall be in the discretion of the arbitrator or umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.”

18.40.3 The Arbitrator or the Umpire can demand payment under the following three hands:

- (i) Fees of the arbitrators or the umpire;
- (ii) Charges, i.e. expenses incurred in connection with the arbitration proceedings including stamp duty and expenses of registration of the award, if any, have been incurred;
- (iii) Charges and costs incurred or to be incurred in filing the award in court. The amount to be paid under Head (ii) and (iii) will be the actual expense incurred by the Arbitrators or the Umpire”.

18.41 **PAYMENT OF CHARGES FOR TYPING OR SHORTHAND NOTES AS PART OF ARBITRATION COST:**

18.41.1 The arbitrator may award the costs of typing or shorthand notes as part of the cost. If the award does not contain any direction for payment of such charges, the court may direct payment of the same.

18.41.2 In the absence of an award or an order of court directing the payment of expenses of the description aforesaid, the payment of typing charges etc. can be made in case the arbitrator or the Umpire has issued directions for payment of typing charges and such charges are considered reasonable.

18.42 **APPOINTMENT AND REMUNERATION OF GOVERNMENT COUNSELS:**

18.42.1 In any legal proceedings unless otherwise provided by general or special orders the Government shall, normally be represented by one or more counsels who may be person or persons or persons notified as Government Pleader under XXVII Rule 8-B of the Civil Procedure Code or a person or persons appointed specially to act for the Government in any particular case in consultation with the Ministry of Law and Finance or in accordance with any special or general instructions of the Ministry of Law.

18.42.2 The counsel shall be paid such fees as per the standard scale laid down by the Ministry of Law and where for any reasons, fees higher than those laid down in the standard scale are to be paid, such higher fees will be paid in consultation with the Ministry of Law and Finance.

18.42.3 In every case where counsel is proposed to be engaged at a fees of more than Rs.750/per day for appearance before Supreme Court or in a court at Mumbai and Calcutta or at more than

Rs.400/per day else where it should be regarded as a case of high fee and after the Ministry of Law have approved the engagement of the counsel at high fee, the express concurrence of the Minister in charge of the Department of supply will be obtained in every such case and the Department of supply be requested to report the case of engagement of the counsel to the Prime Minister's Secretariat.

18.42.4 In cases where a counsel is engaged on high fee, the entire legal expenses on counsel's fee etc. should be borne by the Indenting Officer.

18.42.5 In the event of engagement of state Government Pleader in any case, he will be a paid fee in accordance with the state Government rules or under the High Court Rules as the case may be.

18.42.6 The powers of the Director General of Supplies and Disposals and other officers working under him to sanction payments of counsel's fee are given in the Chapter on "Delegation of Powers".

18.42.7 Besides the expenditure on payment of fees of the counsels expenditure incidental to arbitration/legal proceedings have also to be incurred. The financial powers delegated to incur such expenditure are also set out in the Chapter on "Delegation of Powers".

18.43 **PROCEDURE FOR DEALING WITH THE BILLS OF ARBITRATION/COUNSEL:**

18.43.1 In the Headquarters office it will be the responsibility of the Litigation Section to arrange the payment of fee of Arbitrators, counsels, etc. after obtained the necessary administrative and financial sanctions.

18.43.2 Litigation Section will deal with these bills after obtaining the necessary administrative and financial sanctions. The Litigation Section will also deal with such bills as are referred to the Headquarters Office by Regional Supplies Organizations for obtaining sanction of the competent authorities for payment. As soon as the bills are received in the Litigation Section, the same shall, before any other action is initiated, be entered in a 'Bill Register' to be maintained for the purpose. This Bill Register should contain columns showing besides other details, the latest position (to be entered in pencil) periodically or as it alters and the date of issue of sanction.

18.43.3 After scrutiny and verification are complete the sanction of the payment of the bill, the relevant sanction letter will be sent by Litigation Section to the Cash Branch for arranging payment. The responsibility of the Litigation Section will not, however, cease until payment has actually been made. They will periodically obtain the contingent Register of the Cash /branch to review the positions of bills passed by them for payment and complete entries in their ' Bill Register'.

18.43.4 The Cash Branch will also endorse to Litigation Section a copy of their forwarding Memo. Under which the cheques are forwarded to the claimants so as to complete the records on the relevant file dealing with the Bills.

18.43.5 So far as Regional Offices of the Directorate General are concerned, they should forward to Litigation Section of the Headquarters office, in each case, a self-contained note in

duplicate together with a draft sanction letter for obtaining sanction of the Director General of Supplies & Disposals or the Ministry, a the case may be, to the payment of the Bills. Full particulars on the prescribed proforma indicating whether the case is before the Arbitrators or a Court of Law should also accompany the self-contained note. The Central Government Advocate and/or local Finance will no doubt be consulted by them in appropriate cases and their remarks, incorporated in the self-contained notes.

18.43.6 Heads of Regional Offices are empowered to incur expenditure on legal charges upto a monetary limit of Rs.10/- or Rs.100/- prescribed for incurring recurring or non-recurring contingent expenditure respectively in the table below Schedule V of the 'Delegation of Financial Power Rules, 1958'. Legal charges other than counsel's fees or charges included in the fees bill of counsel fall under the category of contingent expenditure and the Heads of Regional Offices are authorised to exercise these powers and sanction after due verification legal charges upto these limits. Copies of the Bills with full particulars of the cases in which legal charges are sanctioned under these powers may be sent to the Headquarters for information and record.

18.44 PROCEDURE FOR DEALING WITH CRIMINAL PROSECTION IN DGS&D ARE CONCERNED :

18.44.1 No prosecution shall be instituted of complaint lodged with police by any office, save under the orders of Director General of Supplies & Disposals. In case where immediate action is of paramount importance the concerned ADG in the DGS&D dealing with the subject will grant the necessary permission after recording in writing the circumstances in which such a permission is being given.

18.44.2 The concerned papers necessary for prosecution shall be routed through Deputy Director/Director and the concerned DDG. Invariably a self-contained note should be prepared.

18.44.3 The Deputy Director General, if he is satisfied that it is necessary to lodge a complaint or to report the mater to the police, should record his finding and send these to Litigation Section for due examination.

18.44.4 The Litigation Section will examine the case and obtain whenever necessary, legal advice from the Ministry of Law. The case after due examination by Litigation Section, will be put up to Director General (Supplies & Disposals) for taking further action.

18.45 MONITORING OF ARBITRATION AND COURT CASES

18.45.1 Purchase Directorates shall open a separate register for Arbitration and Court Cases as pr [Annexure-72](#). The Director of Supplies will revive the register once in a month and submit the same to DDG once in two months and to DG once in three months, However, all cases should be regularly monitored and ADG should keep DG informed about all these cases on monthly basis.

Chapter 19
DELEGATION OF POWERS

19.1 FINANCIAL POWERS

19.1.1 According to Rule 21 of the Delegation of Financial Powers Rules, 1978, the department of Supply shall have full powers for purchase of stores and for execution of contracts by the Central Purchase organization, namely, in India or abroad, provided the previous consent of the Ministry of Finance shall be obtained in the following cases:-

- (a) any purchase or contract the value of which exceeds Rs.5 crores if a contract extends over a period of time, total value over the entire period of its currency shall be taken as the value for the purpose of applying the limit;
- (b) any negotiated or single tender contract exceeding Rs.5 crores in value; a limited or open tender which results in only one effective offer shall be treated as a single tender contract for this purpose;
- (c) any indent for stores of a proprietary nature, the value of which exceeds Rs. 1 crore and
- (d) any agreement or contract for technical collaboration or consultancy, services with foreign firms or foreign governments.

19.1.2 The Financial Adviser attached to a Ministry/Department will be responsible both to assist administrative Ministry/Department in the exercise of the powers outside the scope of the delegation, he will function under the general guidance of the Ministry of cases before the exercise of the delegated powers. In Financial Adviser shall be responsible to and have right of access to the Ministry of Finance and to the Finance Minister through the Secretary (Expenditure)/Finance Secretary.

19.1.3 The Financial Adviser attached to an administrative Ministry/Department acts as a representative of the Ministry of Finance, in all financial matters, powers in respect of which are not delegated to the administrative Ministry/Department but are vested with the Ministry of Finance. Thus previous consent of the Integrated Financial Adviser has to be obtained for all purchases of the value exceeding Rs.5 crores, made by the DGS&D; such consent is necessary even if no departure or relaxation is involved of the provisions of the General Financial Rules, 1963 and/or the departmental instructions governing the purchase of stores for the public services. It is left to the Integrated Financial Adviser to refer any such case to the Secretary (Expenditure)/Finance Secretary, before giving his consent.

19.1.4 For purchase of stores of the value not exceeding Rs.5 crores, for which full powers are delegated to the Department of Supply, the Integrated Financial Adviser acts as an adviser to the Secretary, Department of Supply; his advice is to be obtained for such matters and at such levels as are laid down with his approval. However, as stated earlier, the Secretary in the Department of Supply is empowered to over rule the advice of the Integrated Financial Adviser, by a written order.

19.1.5 As per the provisions of the Transaction of Business Rules, 1961 as amended from time to time the subjects allotted to a Ministry/Department will be disposed of by the general or special orders of the far as the Minister In-Charge of the Ministry/Department. In so far as the purchase of stores by the DGS&D is concerned, the Secretary, Department of Supply has been empowered to approve proposals for purchase of stores of the value up to Rs. 10 crores. The proposals for purchase of

stores of the value beyond Rs. 10 crores are to be submitted to the Minister in-charge of the Department of Supply for his approval.

19.1.6 The powers of purchase up to the value of Rs.10 crores delegated to the Secretary, Department of Supply have been further re-delegated to officers at different levels in the Directorate General of Supplies and Disposals for purchase of stores up to the value of Rs.5 crores.

19.1.7 In the exercise of powers of purchase by the officers of the Directorate General of Supplies and Disposals, wherever there is a requirement for consultation with the Integrated Finance and disagreement occurs between the purchase officer and the Finance officer, the matter will be taken up at the next level of purchase officer and of the Integrated Finance Division and so on. Till agreement is reached or the Integrated Financial Adviser is over ruled by the Secretary, Department of Supply.

19.2 PURCHASE POWERS OF THE COMPETENT PURCHASE OFFICERS

Competent Officer	Purchase	Value of stores upto which empowered to approve the purchase for placing adhoc contracts.	Value of stores upto empowered to approve purchase for placing rate contracts.
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Assistant Director		Upto 10 Lakhs	
Deputy Director		Above Rs.10 lakhs & upto Rs.30 lakhs	-----
Director		Above Rs.30 lakhs & upto Rs.1 Crore	Upto Rs.1 Crore
Dy. Director General		Above Rs.1 Crore & upto Rs. 2.5 Crores	Above Rs.1 Crore & upto Rs.2.5 Crores
Addl. Director General		Above Rs.2.5 Crores & upto Rs. 5.0 Crores	Above Rs.2.5 Crores & upto Rs. 5.0 Crores
Director General		Above Rs.5.0 Crores & upto Rs. 10.0 Crores	Above Rs.5.0 Crores & upto Rs. 10.0 Crores

Note⊗i) The newly recruited Assistant Director of Supplies does not have any purchase power during the period of his/her training.

(ii) revised Delegation of powers to DGS&D officers as above would mutatis-mutandis apply to other subject matters such as Tender Purchase Committee etc.

19.3 THE CHANNEL OF SUBMISSION

19.3.1 The Channel of submission of cases will be as under:

Competent purchase Officer	Channel of Submission
Assistant Director	Assistant Director
Deputy Director	Assistant Director/ Deputy Director
Director	Assistant Director /Deputy Director/Director
Dy. Director General	Assistant Director/Director/Deputy Director General
Addl. Director General	Deputy Director/Director/Addl. Director General

Director General	Director/Dy. Director General/Director General
Department of Supply	Director/Dy. Director General/ Director General/ Department of Supply.

19.3.2 The monetary limits of purchase powers delegated to officers of the DGS&D at various levels will be for the gross value (i.e. inclusive of taxes, duties and other incidentals). Cases in which a revision in taxes/ duties is made before the contract is placed thereby increasing the gross value of the quantity of stores to be purchased and exceeding the monetary limits of purchase powers delegated, will have to be got regularized with the approval of the competent purchase officers in consultation with Finance, where necessary.

19.3.3 For adhoc contracts the value of the most satisfactory complete tender received in response to an individual call for tenders will determine the value of the purchase.

19.3.4 For Rate Contracts the total estimated drawals as per the guidelines given in chapter will determine the value of the purchase. Orders placed outside the rate contracts should not be reckoned for the purpose of delegation.

19.3.5 In respect of FOB/FAS/CIF contracts, for determining the competent purchase officer, the gross value of the contracts be calculated in accordance with the following guidelines.

- (a) Where indenter enjoys exemption from payment of customs duty, the total CIF rupees price converted at the exchange rate prevailing at the time of order + 5% for clearance, handling and dispatch to the destination should be taken into account for putting up the case to the competent authority.
- (b) Where indenter does not enjoy exemption from payment of customs duty, FOR destination price should be worked out as under to determine the competent level:-
 - (i) Net FOB value + 10% to make CIF.
 - (ii) To net CIF add agency commission to equal gross CIF.
 - (iii) Add actual rate of customs duty to (ii) above.
 - (iv) Add another 3% of (i) to above for handling and clearance to arrive at landed cost and another 2% for inland freight to arrive at the destination price, which will determine the competent level.

19.3.6 At Post Contract stage also, the powers shall be determined by the gross value of the purchase and not the resultant contract or the estimated drawals of individual rate contract and that the decision shall be taken by the competent purchase officer who decided the tender. Whereas the Dy. Director General Shall exercise the special delegated powers in respect of the cases exceeding Rs.4 Crores i.e. cases falling within the powers of DG/Department of Supply, the cases for value above Rs.1.5 crores and upto Rs.4 crores shall be taken care of by the Additional Director Generals.

19.3.7 In the exercise of the purchase powers delegated to the competent purchase officers, Integrated Finance will be consulted in the following cases/ situations, where the purchase proposal is not processed through the Committee system.

19.3.8 Integrated Finance will be consulted in the case of

- (i) Purchase by Single Tender,
- (ii) Purchase where competition is lacking Instructions given in Chapter 9 may also be referred to.

- (iii) Deviation(s) from standard terms and conditions of contract can be allowed only with the prior approval of the Department of Supply and in consultation with Integrated Finance.
- (iv) But where a firm refused to accept any of the standard terms and conditions of contract, and a contract was placed on it with deviation(s) with the approval of the Government, the Director General is empowered in consultation with Integrated Finance to allow the same deviation to the same firm in future contracts, if asked for, without the approval of the Government. This provision will not apply in cases where deviation(s) from the general conditions of contract of an ad-hoc special nature were agreed to in the earlier case in consideration of the special circumstances.
- (v) The competent purchase officers are empowered to allow, in consultation with Integrated Finance, deviation in respect of
 - (a) force majeure clause and
 - (b) transit insurance clause
- (vi) In respect of ad-hoc contracts for Vehicles, Tyres & Tubes and Spare parts of Vehicles pertaining to certain proprietary firms like Ashok Leyland, Garden Reach Workshop etc., the competent purchase officer could allow payment terms of 98% & 2% instead of 95% & 5% provided that such a deviation had been agreed to initially with the approval of the Department of Supply.

19.3.9 The purchase officers will be competent to make purchase at rates higher than the last purchase rates where the increase is upto 10% and will have full powers in consultation with Finance for accepting rates higher than 10% in respect of purchase falling within their powers.

Note :

- (1) For the purpose of this comparison, the last purchase price will be the price will be the price indicated in the latest contract, which is not more than 3 years old and is of a magnitude similar to the proposed purchase.
- (2) Related instructions are available in Chapter-6

19.3.10 No lower offer will be ignored without consulting Finance excepting in cases of major variations in consultation with Finance is also necessary where it is proposed not to accept the lower offer for full quantity.

19.4 COMMITTEE SYSTEM FOR PURCHASE OF STORES: INSTRUCTIONS REGARDING COMPOSITION OF TENDER PURCHASE COMMITTEES/TENDER ADVISORY COMMITTEES

19.4.1 The particulars of tender purchase committees and tender advisory committees and their composition is given below:-

(A) TENDER PURCHASE COMMITTEES

Value of Purchase	Composition
1. Upto Rs. 15 lakhs	(1) Dy. Director(Chairman) (2) Asst. Director/Section officer

	(3) Rep. of Finance.
2. Exceeding Rs. 15 lakhs upto Rs.50 lakhs	(1) Director(Chairman) (2)Dy.Director (3) Asst. Director/Section Officer (4) Rep. of Finance
3. Exceeding Rs. 50 lakhs upto Rs.1.5 Crores	(1) Dy. Director General(Chairman) (2) Director (3) Asst. Director/ Section (4) Rep. of Finance
4. Exceeding Rs. 1.5 crore upto Rs. 4 crore	(1) Addl. Director General (2) Director (3) Dy. Director (4)Rep. of Finance.
5. Above Rs. 4 crore to Rs. 5 crore	(1) Director General(Chairman) (2) Dy. Director General- Member (3) director (4) Dy. Secretary (Finance)/Director(Finance)-Member

(B) TENDER PURCHASE COMMITTEE FOR PURCHASE OF TMER ITEMS

Timber and Timber products from state Forest Departments on Govt. to Govt. basis and state Forest Corporations (State public Undertakings)	DG..... Chairman DDG.....Member Director IF Wing..... Member
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(C) TENDER PURCHASE COMMITTEE FOR THE CASES PERTAINING TO REGIONAL OFFICE OF DGS&D

Purchase of cases valuing between Rs. 1.5 crore and above the Tender Purchase Committee consists of :-

- (1) DG/ADG.....Chairman
- (2) DDG of the Region
- (3) Director of Supplies of the Region
- (4) Rep. of Finance.

(D) TENDER ADVISORY COMMITTEES:

VALUE OF PURCHASE	COMPOSTION
Above Rs. 5 crore upto Rs.10 crore	(1) JS, Chairman (2) F.A., Member (3) DDG, Member in respect of purchase Directorates within his jurisdiction. (4) Director
Above Rs. 10 crore	(1) secretary, Chairman. (2) JS, Member

	(3) DG, Member (4) F.A., Member (5) DDG Member in respect of Purchase Directorate within his jurisdiction (6) Director
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19.4.2 The Committee system of purchase is to be adopted not as a matter of routine in each and every case but only in cases where the competent purchase officer feels that more than one view is possible and discussion in the Tender purchase Committee/Tender Advisory Committee would be useful, or rendering the file to concerned officers may result in avoidable delay. In respect of purchases of value beyond Rs. 5 crore, the decision to refer a case to the Tender Advisory Committee will be taken by the Secretary.

19.4.3 The Tender Purchase committee will be competent to take decisions in respect of all matters relating to purchase of stores and placement of contracts, which the convenor/chairman of the committee is otherwise empowered to take either without consultation or with consultation of Integrated Finance (since the Integrated Finance is represented on the Tender purchase Committee).

19.5 PROCEDURE

- (i) A self-explanatory brief will be submitted before the Tender purchase Committee/Tender Advisory Committee for consideration and for taking decision of the purchase proposal.
- (ii) The briefs for the TPC under the Chairmanship of DG and the TAC under the chairmanship of Joint Secretary and Secretary and Secretary should be signed by the Director of Supplies concerned.
- (iii) Tender Committees will record their decisions with full justification. View of the dissident member(s) will also be duly recorded on the file but the competent purchase shall have the final say in the matter i.e. his decision shall prevail. If there is difference of opinion between the competent purchase officer and the Finance officer, the matter shall be referred to the next Tender Committee and so on till an accord is reached. Where there is a difference of opinion between the ADG/Finance, next TPC will be DG/Finance; where there is a difference of opinion between DG/Finance, then the case will be referred to the Department of Supply. In case of purchases above the value of Rs.5 crores if there is difference of opinion between the FA and the Secretary, the provisions of paragraphs 19.2, 19.3 and 19.4 will apply. The minutes of the meetings of the Tender Advisory Committees will be drawn by the DGS&D and Goyt approved from the Department of Supply.
- (iv) The self-explanatory briefs as also the decisions of the TPC or the recommendations of the TAC should be kept in the notes portion of the relevant file. The decisions of the TPC or the recommendations of the TAC should be placed immediately after the briefs for TPC/TAC.

19.6 SANCTIONING OF VARIATION IN RATES STIPULATED IN CONTRACTS AND EX-GRATIA PAYMENT:

- 19.6.1 Once a contract has been concluded between the Government and a contractor, the competent purchase officers have no authority to revise directly or indirectly any of the terms of the contract (including rate and running contracts) so as to increase the basic price agreed upon. In this connection, it must be borne in mind that both parties are bound by the terms of the contract and the Government are under no obligation to allow any increase in contract rates except in the case of contracts in which a price variation clause is included.
- 19.6.2 Revision in rates stipulated in contracts may be asked for by the contracting firms in the following types of cases:-
- (a) Those in which revision is required because the contractor has suffered loss;
 - (b) Those in which enhancement of contract rates is asked for owing to bonafide clerical or typographical mistake committed by the contractors, in tenders or other contractual documents.
 - (c) Those in which a revision is required due to increase in charges like fright charges, insurance charges etc., since order was placed, as a result of an act of Legislature or other Government actions over which the contractor has no control.
 - (d) Those in which the alteration of the contract rates arises entirely from bonafide clerical or typographical mistakes on the part of the purchase organization in the original contract.
- 19.6.3 Cases at (a) and (b) above will be treated as cases of ex-gratia payments and those at (c) and (d) will not be treated as cases of ex-gratia payments.
- 19.6.4 In respect of cases at (a) above, the question of revising rates does not arise. The Contractor can, however, be compensated by a lumpsum ex-gratia payment sufficient to protect him from the loss suffered by him in discharging his obligations under the contract which will not include any loss or profit. The Ex-gratia payment will be limited, as far as possible, to the actual loss incurred by the contractor as proved by documentary evidence. For the purpose of ex-gratia payment, the loss incurred by the contractor concerned, not only in respect of any particular contract, but in respect of all contracts received by him during the relevant period should be taken into account. Therefore, in the letter agreeing to the consideration in principle of claim for ex-gratia payment, it should be made specifically clear to the contractors that they will have to prove loss not only in particular transactions but in all transactions with the Government put together to qualify for consideration of their claims on ex-gratia basis. As far as possible, cases considered for ex-gratia payments should be those where the contractor's full capacity utilization has been utilized by the Government.
- 19.6.5 As regards cases at (b) above where enhancement of contract rates arises as a result of bonafide clerical or typographical mistake committed by the contractors, each case shall be considered on its merits. No hard and fast rule can be laid down in this regard.
- 19.6.6 But payments which on strict legal interpretation are not admissible may be asked for and made to the contracting firms on grounds of equity and fairness. Such payments are considered as ex-gratia payments. All payments on ex-gratia basis need not, however, be on grounds of equity but these may be made on other reasons also. The difference in the two categories lies mainly in the procedural treatment. When payments are authorized on grounds of equity only, the merits of the particular transaction are required to be considered, whereas in other cases, it has to be established that loss has been incurred by the contractor concerned not only in respect

of any particular transaction but in respect of the transactions received by him from Government.

- 19.6.7 All ex-gratia payments require the sanction of the Government, both with regard to the admittance in principle of the claims and also for the actual amount of ex-gratia payment. Consultation with Integrated Finance is required before sanctioning ex-gratia payment.
- 19.6.8 Proposals for such payments must be submitted to the Director General through the Dy. Director General through the Dy. Director General concerned in the first instance, with all the facts of the case and after obtaining the clearance of the indenter. If the Director General in consultation with Finance is satisfied that an ex-gratia payment is justified, the purchase section will request the indenting authority to make necessary budget provision for the amount involved and after obtaining his confirmation to this effect, the proposal will be submitted to Government for obtaining their sanction for payment.
- 19.6.9 As for case at © above, each case should be considered on its merits. Increase due to actual expenditure on freight and insurance (where insurance is required by Government), may be allowed without reference to the profits earned by the contractor. But it will be incumbent on the contractors in all the cases to establish their claims by submitting documentary evidence or any other relevant data except where the appropriate purchase officer is in a position to verify otherwise and accept increase claimed. When the production of evidence by a contractor is considered essential, his refusal or failure to provide such evidence or to establish his claims will be regarded as good grounds for rejecting the increases in claims.
- 19.6.10 Failure to establish claims for increases may occur specially in the case of orders where the quotations have been accepted on the basis of tenders without scrutiny of the built-up of the established prices. In such cases claims for increases on account of say, clearance charges or port duties, import duties on raw-materials, should prima-facie be resisted on the ground that Government would not have claimed the reduction in prices on account of reduced cost, if occurring, since there would have been no data on which Government could base their claim. Such claims should be considered only if the contractor is able to produce a break up of his quotations indicating the elements in his quotation affected by increased cost due to Government action.
- 19.6.11 Alteration in rates sanctioned in such cases should not be considered as ex-gratia payments. The following offices are empowered in consultation with Finance to sanction increase in the contract rates due to increases in charges like freight charges, insurance charges etc., since the order was placed, as a result of an act of the Legislature or other Government action over which the contractor has no control.

Deputy Director General	Cases covered upto his purchase powers i.e. cases of purchase upto the value of Rs.1.5 crore
Addl. Director General/Director General	Cases covered by their purchase powers.

- 19.6.12 If the total cost including increases proposed exceeds the powers of the Director General, Government sanction will be necessary.
- 19.6.13 As regards cases at 19.19(d) above, the competent purchase officer is authorised to sanction alteration of the contract rates without reference to Finance or the Indenter in cases in which alteration of contract rates arose entirely from the bonafide clerical or typographical mistake on the part of the purchase organization in the original contract.

19.6.14 In all cases where an increase is accepted, the reasons for increase shall be recorded in the copies of the sanction letters endorsed to the indenting officer and the Controller of Accounts.

SCHEDULE
DELEGATION OF POWERS AT PRE-CONTRACT STAGE

Ref. to paragraph	Subject matter of the item.	Competent authority	Extent of power delegated	Whether Finance to be consulted.
1	2	3	4	5
3.8	Price preference to KVIC/ small scale Industrial Units upto 15% while competing with large scale private Sector, to be allowed on merits of each case.	Competent purchase officer.	Cases covered by their purchase powers	Yes
3.11.12	Imposition of ban on purchase preference to public Sector undertakings for a period of three years on account of default or unsatisfactory performance in the execution of the contract.	DOS		Yes
7.11.5	Purchase of stores to specification different from IS specification or additional to them, when asked for by the Indentor.	Competent purchase officer	Cases covered by their purchase powers	No
7.13.5	Planning of indents	DS DDG ADG	Cases covered by their purchase powers	No
		DG	All Indents of the value covered by his purchase powers and beyond that value. In case of indents of the value exceeding purchase powers of DG where at planning stage it is proposed to purchase by negotiation, approval of the Department of Supply will be	

			obtained.	
7.21	Exclusion of the operation of the grace period.	DS DDG ADG	Cases covered upto their purchase powers.	No
		DG	Full powers	
7.24	Incorporation of longer validity period in tenders.	DDG	Cases upto purchase powers of DDG.	No
		ADG	For his power cases.	
		DG	Full powers	
7.28.1	Change in the effective date of indent.	DS	Full powers	
7.28.5	Cancellation of indents(excepting indents from DDOs for items borne on RC)	DDG	Full powers	No
7.28.5	Re-instatement of indents	DDG	Full powers	No
8.17	Postponement of opening date of tenders on request from the tenderers.	DS	Cases covered by their purchase powers	No
		DDG ADG	Cases covered by their purchase powers	No
		DG	Full Powers	No
9.3.7	Admission of single Tenders(late or delayed) against STI.	Competent purchase officers not below the level of DD.	Purchase cases covered by their purchase powers.	Yes
9.3.7	Acceptance of unsolicited offers in very exceptional circumstances.	Competent purchase officer.	Cases covered by their purchase powers	Yes
9.6	Acceptance of post tender revision in the case where tenderer would have got the order without revision and at the same time it gives some benefit to the purchaser.	Competent purchase officer.	Cases covered by their purchase powers.	Yes
9.11	Reference of tenders to indentors for special reasons	DDG	Cases covered by the purchase powers of DDG/DG/DOS.	No
		ADG	For his power cases	
9.15	Waiver of the requirement of submission of valid	DG	Upto his power of purchase viz. Rs.5 crores.	Yes

	ITCC in suitable cases in respect of registered as well as unregistered firms			
9.16	Calling of capacity report.	AD/DD	Cases covered by their purchase powers.	No
		DS	Cases covered by his purchase powers and also cases covered by the purchase powers of DDG/ADG/DG Deptt. of Supply.	No
9.28.4	Approval for post tender negotiations/counter offers.	Competent purchase officers, but not below the level of DD	Cases covered by their purchase powers. Negotiation will be conducted by Competent Authority who approved the negotiation, following the guidelines of CVC.	Finance will be associated in conducting the negotiation.
9.29.3	Seeking extension of validity of offers from the tenderers.	Competent purchase officer upto the level of DS.	Cases covered by their purchase powers.	No
		DDG	Cases covered by the purchase powers of DDG/DG/Department of Supply.	No
		ADG	For his power cases	
10.2.1	Acceptance of offers on provisional prices subject to variation (i.e. with standard price variation clause)	Competent purchase officer	Cases covered by their purchase powers.	No
10.2.6	Framing and Finalization of price variation clauses where standard clause does not exist for Government controlled items.	Competent purchase officer with minimum level of DDG.	Cases covered by their purchase powers	Yes
10.2.6	Price variation on categories of items not controlled by the Govt.	DOS	DG, where the base for the price variation in respect of new items has been	Yes

			approved by the Department linked to price announced by PSUs.	
			DG will seek approval of DOS for fresh items with new base for new base for price variation.	
10.4.6	Acceptance of tenders asking for payment on account of fresh imposition and /or increase of customs duty, excise duty, sales tax on raw-material/components inspite of the clause to the contrary in the tender enquiry.	Competent purchase officer	Cases covered by their purchase powers.	Yes

DELEGATION OF POWERS AT POST-CONTRACT STAGE

The powers shall be determined by the gross value of the purchase and not the resultant contract or the estimated draws of individual rate contract and that the decision shall be taken by the competent purchase officer who decided the tender.

The Dy. Director General shall exercise the special delegated powers in respect of the cases exceeding Rs.4 crores i.e. cases falling within the powers of DG/Department of Supply, the cases for value above Rs.1.5 crores and upto Rs.4 crores shall be taken care of by the Additional Director Generals. For value upto Rs. 50 lakhs specific delegations given to DDGs may be exercised by Directors.

10.16.1	Admission of bonafide claims for Sales Tax when Sales Tax clause is not included in the contract due to a bonafide error on the part of the purchase officer.	Competent purchase officer	Cases covered by their purchase powers.	Yes
10.16.1	Admission of bonafide claims not included in the contract or due to a bonafide error on the part of the purchase officer in operation of any of the provisions of the contract i.e. claims legally derivable under the	DG	DG with full powers if the error is on the part of the purchase officer who has correctly evaluated the offers received but subsequently	Yes

	contract but are to be allowed under administrative discretion.		omitted certain provisions at the time of placement of contract.	
10.17	Acceptance of claims on octroi or local taxes where payment is made by the contractor on the insistence of the local authority.	Competent purchase officer DG	Cases covered by their purchase powers Full powers	No
11.14	Waiver of the inclusion of the transit insurance clause in the A/Ts where the tenderers do not agree to the clause.	Competent purchase officer	Cases covered by their purchase Powers	Yes
12.11	Refixation of delivery period	Competent purchase officer who decided the tender. ADG	For cases upto their purchase powers. DDG is competent for DG/DOS power cases. For his power cases.	Yes, where refixation is not obligatory in terms of contract provisions.
12.13	Extension of delivery period with provision to levy liquidated damages and also to deny increase in price, taxes, duties taking place during the extended period.	Competent purchase officer who decided the tender. ADG	For cases upto their purchase powers DDG is competent for DG/ DOS power cases. His power cases.	No Upto three months without consulting indentor for ordinary items.
12.29	Cancellation of contract at firm's risk and cost.	Competent purchase officer	Cases covered by their purchase powers	No
12.29	Cancellation of contract without financial repercussions.	-do-	-do-	Yes
12.29	Re-instatement of contract.	-do-	-do-	Yes
13.17	Extension of Rate Contract	(i) Authority competent to conclude RC	R/C may not be extended beyond 3 years Extension of R/C period is not necessary for supplies made after expiry of	Yes

			R/C if Supply order placed during R/C period	
13.32.2	Placing of supply order	Competent purchase officers. DG	Cases covered by their purchase powers Full powers	No
13.32.2	Return of indents for items borne on rate contract from declared DDOs.	Competent purchase officer Minimum level DS	Indent covered by their powers	No
13.32.4	Short-closure of RC.	Authority to conclude R/C.		Yes
14.4	Waiver of inspection either at the pre-A/T or post A/T stage.	DDG DG	Indents/contracts of value less than Rs.5 lakh. Inspection Authority is to be consulted	Yes
			Indents/contracts of value less than Rs.10 lakhs. Inspection Authority is to be consulted.	Yes
14.36.2	Entering into inspection agreements/contract with PSUs for inspection against non-departmental orders. a) with provision for advance payment of Inspection fee. b) Without provision for advance payment of Inspection fee	DG/ADG(QA)	Full powers	No These powers will not be delegated further.
		-do-	-do-	Yes
15.6	Determination of final price to be paid in terms of price variation clause:- (a) Increase in costs which are definitely ascertainable such as increase in freight (sea	Competent purchase officer who decided the tender. ADG	For cases upto their purchase powers. DDG is competent for DG/DOS power	No

	<p>and land), customs duty, sales tax, price of raw-materials, provided such increases are covered by the terms of the contract, and provided further that the extra amount to be allowed does not exceed the ceiling if any specified in the contract.</p> <p>(b)Allowing of variations in customs duty, excise duty and sales or purchase tax, provided such statutory increase or imposition takes place after the making of the contract and is payable in accordance with Section (64A) of the Sales of Goods Act, unless a different intention appears from the terms of the contract, such statutory variation can be allowed, even though no specific provision exists.</p>	Competent purchase officer who decided the tender.	<p>cases.</p> <p>For cases upto their purchase powers.</p>	Yes
15.7	<p>Waiver of pre-estimated liquidated damages.</p> <p>(a) Cases involving actual loss.</p> <p>Extra expenditure incurred on account of increase in or fresh imposition of Sales Tax, Customs/Excise Duty or other taxes and duties should be treated as actual loss. If suppliers are responsible for the delay.</p> <p>(b)Cases of potential loss (i.e. loss assessed on the basis of downward trend in the market price during</p>	<p>DG</p> <p>DDG</p>	<p>Loss upto Rs.2500 in cases covered upto his purchase powers Decision where the supplier is responsible for delay will be taken by the competent purchase officer.</p> <p>Loss upto Rs.500/- in cases upto his purchase powers</p>	<p>Yes</p> <p>Yes</p>

	the extended period of delivery), losses reported by the indenter such as earnings due to delays in supplies, payment of idle time, labour, issue of costlier stores to tide over emergency caused due to delay and other losses which cannot be demonstrably proved and legally recovered from the suppliers. (C)Revision of an earlier decision imposing liquidated damages and waiver of recovery thereof.	ADG DG Next higher authority to the one who decide the case.	His power cases for loss upto Rs.500. Loss upto Rs.10,000/- in all cases.	Yes Yes Yes
15.10.1	Decrease of quantity or deletion of certain items of the A/T at at the request of the indenter, provided that the contractor agrees not to claim any damages for such decrease or deletion.	Competent purchase officer who decided the tender. DDG ADG	Cases covered by purchase powers of DDG/DG/DOS His power cases.	No
16.8	Authorization of balance 5%/2% payments in cases where the automatic system of payment after 3 months. In case of adhoc contracts add 120 days. In case of R/C from the date of advance payment is not applicable.	Competent purchase officer not below the rank of DD	A/T/Supply Orders of the value covered by their purchase powers.	No
16.10	Authorisation of payment without the supporting documents subject to the conditions mentioned in the column 4	ADG DG	Upto his purchase powers Full powers conditions: (a)The Sanction letter will clearly specify the document	Yes

			<p>exempted from submission i.e. receipted note or the inspection note as a whole.</p> <p>(b)Circumstances necessitating relaxation should be indicated in the sanction letter.</p> <p>(c)It should be certified in the sanction letter that actual receipt by the consignee of the full quantity of acceptable stores as stipulated in the A/T or supply order has been established.</p>	
16.13.1	<p>Authorization for 100% advance payment of contractor's bill by waiving the condition of 95% advance payment on receipt of stores in good condition.</p>	DG/ADG	<p>All Cases upto their purchase powers where</p> <p>(i)Competitive conditions do not exist.</p> <p>(ii) Goods are in short supply or if monopoly supply with the result that contracts for such stores have to be placed only after negotiations monopoly supply with the result that contracts for such stores have to be placed only after negotiations with the contractors.</p>	Yes
18.5	<p>Administrative approval for reference of dispute to Arbitrator to be appointed</p>	DDG	<p>Cases falling upto his purchase powers.</p>	Yes

	by DG, or to Arbitrator of the Bureau of public Enterprise, or on the direction of a court of law	ADG DG	Cases falling beyond the purchase powers of DDG.	Yes
18.12	<p>Powers delegated to DGS&D officers to accept Arbitration Awards/Court decrees.</p> <p>(1)Where Government claim is admitted in full.</p> <p>(2)Where either Government claim is rejected or payment is awarded to be made to firms.</p>	<p>DDG</p> <p>DDG</p> <p>ADG</p> <p>DG</p>	<p>Full powers</p> <p>Government Claim rejected/ payment awarded not exceeding Rs.2 lakhs in consultation with Ministry of Law.</p> <p>Government Claim rejected/ payment awarded exceeding Rs.2 lakhs but not exceeding Rs. 5 lakhs in consultation with Ministry of Law.</p> <p>Government Claim rejected/ payment awarded exceeding Rs.5 lakhs but not exceeding Rs. 510lakhs in consultation with Ministry of Law.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
18.43	Powers of officers of DG DGS&D to sanction payment of Counsel's	DG	(i)Full powers for payment of fees as per the	Yes

	fees.	Zonal DDG	<p>standard scale laid down by the Ministry of law. (ii) Full powers for payment of fees to state Government Pleaders, if, engaged/ as per the state Govt. rules or under the High Court Rules, as the case may be</p> <p>Full powers to sanction payment of counsel fees, on the scale and terms laid down by Ministry of Law in respect of cases arising out of the contracts placed by the Regional offices at Calcutta Mumbai, Chennai Dir. Of Supplies (Textiles), Mumbai.</p>	Yes
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HEADQUARTERS

18.43	Sanction of payment of other legal charges and charges incidental to legal proceedings.	AD(Lit.) Dy. Director Addl. Legal Adviser(Lit.)/Dy. Legal Adviser (Contract officer) when discharging the duties of Addl. Legal Adviser.	Rs. 150/ in respect of each bill Rs. 500/ in respect of each bill Rs. 5000/ in respect of each bill
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REGIONAL OFFICES

		DS&D, Mumbai, Calcutta and Chennai and DS(Tex.) Mumbai.	Full powers to pay legal expenses/incidental expenses regarding typing charges, court fees, process fees, diet money for private witness etc. as may be certified or advertised by the Ministry of Law to be reasonable in respect of the court matters arising out of contracts placed by their office.
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DELEGATION OF AUTHORITY

Sl. No.	CATEGORY OF FIRMS APPLYING FOR REGISTRATION	OFFICE WHERE THE APPLICATION IS ACCEPTED	AUTHORITY TO FURNISH INSPECTION REPORT	AUTHORITY TO APPROVE		REMARKS
				INSPECTION REPORT	GRANT REGISTRATION	
I.	INDIGENOUS (a)MANUFACTURERS: (b)ASSEMBLERS: ©CONVERTERS: (d)SOLE SELLING AGENTS/AUTHORIZED AGENTS/DISTRIBUTORS OF INDIAN MANUFACTURERS	Registration centre in whose jurisdiction the Regd. Office of the firms falls. Where the Regn. Of the corresponding Indian Manufacturer is handled.	The QA office having jurisdiction over the works of the manufacturer. -N.A-	DQA having jurisdiction over the works of the firms. Deficiency letter also to be issued by him. -N.A-	DQA having jurisdiction over the Regd. Office of the firms. Regn. Letters may be issued directly by this authority or by the authority in col.3 if the approval is communicated to him. -do-	

	(e) STOCKISTS FOR INDIGENOUS STORES AND IMPORTED STORES	The Registration centre under whose jurisdiction the Regd. Office of the firm falls.	The QA office having jurisdiction over the stocking depot of the firm.	DQA having jurisdiction over the works of the firm. Deficiency letter also to be issued by him.	-do-	
II.	(a) FOREIGN MAUFACTURES WITH OR WITHOUT INDIAN AGENTS (b) STOCKISTS OF IMPORTED STORES (C) SUPPLIERS OF IMPORTED STORES	DQA(Regn.) at HQ. -do- -do-	Inspection Agency recognized by Govt. of the country or by the respective Merchant chamber of commerce & Industry The QA office having jurisdiction over the stoking deport of the firm The QA office having jurisdiction of works of the supplier	DQA(Regn.) at HQ DQA having jurisdiction over the stocking depot DQA having jurisdiction over the works	DQA(Regn.) at HQ. -do- -do-	
III.	MINISTRY OF FINANCE SCHEME OF COMPULSORY INLISTMENT OF INDIAN AGENTS.	-do-	-NA-	-NA-	-do-	

DELEGATION OF AUTHORITY

Sl. No.	FUNCTION	COMPETENT AUTHORITY	EXTENT OF POWER DELEGATED	TO CONSULT IF OR NOT	REMARKS
1	2	3	4	5	6
I	QUALITY ASSURANCE ACTIVITY:				
1	Inspection of stores (pre-despatch Inspection)	Examiner >5 years service	Carry out inspection of R/C items independently	-do-	Ist batch against the contract small be

		AD(QA)	and issue Inspection documents. Lot value: Rs.2 lakhs. All contracts.	-do-	inspected by AD(QA). Ist batch against the contract shall be inspected under the supervision of DDQA for new firms/items. Inspection Report of lot> Rs. 5 lakhs to be approved by DD(QA) before issue of Inspection documents. Inspection Report of lot>20 lakhs to be approved by D(QA) before issue of Inspection Documents.
2.	Final inspection of stores.	ADQA DDQA	Contract value: Upto Rs.10 lakhs >10 lakhs and upto Rs.50 lakhs		Assisted by ADQA.

		DQA	>50 lakhs		-Do- by DDQA.
3	Rejection of stores	DDQA DQA	Upto Rs. 20 lakhs > Rs.20 lakhs		
4.	Vendor Assessment Reports	ADQA DD(QA) of the Zone.	To furnish report DQA Appellate authority		Approval of report.
5.	Inspection of Advance sample	DDQA	3488		Assisted by ADQA.
6.	Drawal of Samples for testing at outside labs. For confirmatory & type testing	ADQA	No Limit		
7.	Acceptance of Test reports from outside labs. For confirmatory and type testing	DQA			
8.	Joint Investigation assisted by ADQA	ADQA	- 10% of cases by DDQA		
9.	Quality Audit	ADQA	- -do-		
10.	Vetting of Technical Particulars. (a)for R/C items	DQA DDG(QA)	Upto Rs. 1.5 Crores Drawals.	Assisted by ADQA/DDQA Assisted by ADQA/DDQA/DQA	

	(b) Adhoc Indents	DQA DDG(QA) ADG(QA)	>Rs.1.5 Crores Drawals upto Rs. 1.5 crore >Rs. 1.5 crores upto Rs.4 crore >Rs.Rs. 4 crores.	Assisted by ADQA/DDQA Assisted by ADQA/DDQA/DQA Assisted by ADQA/DDQA/DQA/DDGQA	
11.	Price reduction recommendation to the Purchase Authority				
	(a)Against R/Cs and A/Ts	DDG(QA) of the Zone ADG(QA)	Upto Rs. 1.5 crore Drawals/ contract value >Rs.1.5 crore Drawals/ contract value		
	(b)Non-Deptl. Orders.	DDG(QA) of the Zone	Full powers.		

CHAPTER-20

DEFINITIONS AND ABBREVIATIONS

20.1 DEFINITIONS

20.1.1 ACASH (ASSOCIATION OF CORPORATIONS AND APEX SOCIETIES OF HANDLOOM): It is a registered Society controlled by the Development Commissioner for Handlooms which acts as the nodal agency for the notified handloom units for supply of handloom goods to be purchased by the Central Government Departments/Agencies, whether directly or through the Directorate General of Supplies and Disposals.

20.1.2 ACCEPTANCE OF TENDER: This is a term for accepting the Tender of concluding the contract. The term “Purchase Order”, “Contract”, “Demand” or “Order”, will not be used.

20.1.3 ACCEPTED: This terms will be used in connection with the stores examined/ tested by the Inspecting officer and found to be in accordance with the contract. The term “PASSED” will not be used.

20.1.4 ACCOUNTING UNIT: This is the Unit of payment of stores as stated in the Acceptance of Tender or Supply Order viz. Number, Litre, Pair, Tonne, Metre, Kilogram, Aware Metre, Cubic Metre etc.

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

20.1.6 C.I.F. (COST INSURANCE AND FREIGHT) CONTRACTS: C.I.F. contracts are contracts for the sale of goods involving carriage by sea. In this type of contract, contractor’s liabilities are as follows:-

- (i) He ships goods of the contract description, quality and quantity at the port of shipment.
- (ii) He procures a contract of afreightment upto the destination mentioned in the contract and obtains a bill of lading.
- (iii) He takes out a policy of insurance.
- (iv) He makes out invoice describing the goods and charging to the purchaser the cost or agreed price, premium of insurance and the freight and crediting the purchaser with the amount of freight, if any to be paid to the ship owner on actual delivery of goods.
- (v) He tenders the bill of lading, policy of insurance and the invoice to the purchaser as soon as possible after shipment.

20.1.7 The purchaser’s liabilities are as follows:-

- (1) He pays the price on tender of the documents without waiting for the receipt of goods.
- (2) If the goods arrive, he takes deliveries, pays cost of dispatch, lighter age and landing at cost of dispatch in accordance with the bill of lading clauses.
- (3) He pays all import duties, customs and wharf age.

The remedy to the purchaser in case of loss or deterioration in transit is to recover such loss from the ship owner or from the insurer. If the goods are not in accordance with the contract, the purchaser can reject. The right to reject is lost by unreasonable delay or by dealing with the goods in a manner inconsistent with the ownership of the contractor.

20.1.8 COMPETENT AUTHORITY:- In respect of matters incidental to purchase of stores, powers have been delegated to officers at different levels in the DGS&D. The officers so empowered are defined as “Competent Authority”. Powers beyond those delegated in the schedule will rest with the Government in the Department of Supply.

20.1.9 **COMPETENT PURCHASE OFFICER:** He is the Purchase officer in the DGS&D empowered to approve a proposal for purchase of stores for placement of the contract on a contractor(s) of value not exceeding the specified limit, be it a case of purchase by placing fixed quantity contract (ad-hoc contract) or Rate Contract.

20.1.10 **COMPETENT SAMPLES:** Samples received in connection with investigation of complaints on quality of supplies made.

20.1.11 **COST PLUS PROFIT CONTRACT:** Under this type of contract, the contractor is paid a price computed by first ascertaining the total cost(including overheads) and then adding as profit a percentage of the cost, or preferably, a fixed amount of profit per unit or article whenever this is possible.

20.1.12 **DELIVERY NOTE:** This is the contractor's document accompanying each supply of the stores tendered for inspection against Acceptance to Tender whether in full or in part.

20.1.13 **DEPARTMENTAL ORDERS:** All contracts placed by the purchase wing of DGS&D and /or Supply orders placed either by DGS&D themselves or by Direct Demanding Officers authorized to operate the Rate contracts.

20.1.14 **F.A.S.(FREE ALONG SIDE SHIP) CONTRACTS:** When a contract is arranged of F.A.S. basis the contractor is understood to undertake to deliver the goods along side the ship at his own expenses.

20.1.15 **F.A.B. (FREE ON BOARD) CONTRACTS:** Where goods are purchased on F.O.B. basis, the duty of the contractor is to deliver the goods on board ship at his own expenses for carriage to the purchaser. The purchaser is liable for freight and other subsequent charges. When dealing with firms in U.S.A. the expression "Free on board a ship in (city) harbour" "F.O.B. (city)", as in America, the term F.O.B. frequently means free on board a railway wagon.

20.1.16 **F.O.R. (FREE ON RAIL) F.O.R. STATION OF DESPATCH** When a contract is arranged on F.O.R. station of despatch basis the contractor is understood to undertake to deliver the goods of the contract description within the time named in the contract into a railway wagon or at the stations (depending on the practice of the particular railway) at his own expense.

20.1.17 **F.O.R.DESTINATION:** When a contract is arranged on F.O.R. Destination basis, the contractor is understood to undertake to deliver goods of the contract description within the time name in the contract at the place of the consignee named in the contract at his own expenses.

20.1.18 **FINAL INSPECTION:** This is inspection carried out at the premises of the consignee after erection and commissioning as may be required. This is normally required in respect of items like plant and machinery.

20.1.19 **FIXED QUANTITY CONTRACTS:** This type of contract is generally entered into where firms are called upon to offer to supply a definite number or quantity by a

specified date. The tenderer has to quote a price in accordance with the purchaser's requirement as to place and time for delivery.

20.1.20 **INDENT:** The requisition for supply of specified stores which an Indenting Department places on DGS&D in prescribed form is known as 'INDENT'. The indent complete in all respects, accompanied by specified information and documents, gives the purchase officer in the DGS&D his authority to take necessary action to commence and effect the procurement of the stores.

20.1.21 **INSPECTING OFFICER:** Inspecting Officer is the officer nominated by the Inspection Authority and responsible for carrying out the actual inspection.

20.1.22 **INSPECTION NOTE:** This is the Form No. DGS&D(S)-84 for all stores purchased against DGS&D A/Ts, Rate Contracts. For Mechanically propelled Vehicles, Form No. DGS&D -84(MPV) shall be used by the Defence Inspectorates. For all stationery items Form S.O. -166 is used by Controller of Stationery. These forms will not DGS&D(S) -84 combine the Inspection Certificate and the Receipt Certificate. The Inspection Certificate portion will be completed by the Quality Assurance officer (or the consignee when he carries out his own inspection) the Receipt Certificate portion will be completed by the consignee or, the Quality Assurance officer when he acts also as the consignee.

20.1.23 **INSPECTION:** All the functions connected with the quality assurance of supplies being made against the contract at pre-depart stage at the works of the manufacturer. This includes examination of the lot/batch sampling, preparation of samples and testing in a so as to certify the conformance of the lot to the contract specifications.

20.1.24 **INSPECTION AUTHORITY:** Inspection Authority is the officer holding sealed particulars, samples, drawings, specs., governing the stores being procured. He is the competent authority in respect of all technical matters concerning the contract.

20.1.25 **INSPECTOR (QUALITY ASSURANCE OFFICER)** The Inspector means the person specified in the contract for the purpose of inspection of the stores or work under the contract and includes his authorized representative.

20.1.26 **KVIC (KHADI AND VILLAGE INDUSTRIES):** KVIC, a statutory organization established by an Act of Parliament is an agency engaged in uplifting the economic status of rural poor of the country by providing low cost gainful employment through Khadi and village Industries programme. To it are affiliated statutory Khadi and village Industries Boards set up by the respective state Governments and Union Territories, registered institutions and Co-operative Societies spread all over the country. Among its promotional activities the Commission provides marketing facilities for the products manufactured by its affiliated units.

20.1.27 **NON-DEPARTMENTAL ORDERS:** Contracts placed by all other Departments (other than DGS&D/DDOs) of Central or State Governments, PSUs, Purchase agencies etc. against which inspection work has been entrusted to the Quality Assurance Wing.

20.1.28 PERIODICAL TYPE TESTING: The type testing which is repeated periodically to check that the manufacture of the product is being made with materials, components, sub assemblies, process etc. in accordance with the parameters laid down in the design. This testing is got carried out on samples drawn from the regular production lots put up for acceptance inspection on an independent laboratory.

20.1.29 PUBLIC SECTOR UNDERTAKINGS:- These are undertakings which are wholly owned or controlled by the Government. Government managed companies and Joint ventures do not fall under the category of public Sector Undertakings.

20.1.30 AUALITY ASSURANCE CERTIFICATE (JUTE BAGS):- DGS&D QA Wing issues this certificate to signify acceptance of jute bags used for food grains against DGS&D contracts in the form DGS&D (QA) 24-A.

20.1.31 QUALITY ASSURANCE CERTIFICTE: For contracts placed by other purchasers, DGS&D Quality Assurance Wing issues Quality Assurance Certificate in form DGS&D (QA)-24

20.1.32 RATE CONTRACT: These are contracts for the supply of stores at specified rates ordered during the period covered by the contract. No fixed quantities are mentioned in the contract, and the contractor is bound to execute and order from the purchaser or other parties specified in the contract at the rates specified in the contract at the rates specified provided the order is placed within the contract period. The purchaser on his part is bound to order from the contractor all stores under the contract which are required to be purchased subject to certain reservations for submitting prices to competition and for dividing the contract between more contractors than one.

20.1.33 RECEIPT CERTIFICATE: This is the consignee's Certificate of Receipt for the stores received and the fact that they have been brought to account. This Certificate is given on the Inspection Notes:-DGS&D(S) 84, S.O. 166, DGS&D(MPV).

20.1.34 ROUTINE TESTING: This is the testing carried out by the manufacturer of 100% of the product as maybe required as per the governing specification/ statutory requirements, if any. E.g. pressure testing of galvanized mild steel tubes after the process and welding is completed.

20.1.35 SAMPLE: An articles or a set of articles used to give an indication the requirements of a purchaser or to govern supply against a contract or to serve as a reference for the quality offered by a tenderer or to represent a lot in the process of supply.

20.1.36 SEALED SAMPLES: Samples (Other than standard Samples) sealed either by indentors or by the DGS&D to guide supply and inspection. These may be either "Complete samples" or "Incomplete Samples".

20.1.37 SMALL SCALE ANCILLARY INDUSTRIES: These are units having investment in fixed assets in plant and machinery not exceeding the limit as fixed by the Ministry of Indudtry and engaged in:-

- (a) the manufacture of parts, components, subassemblies, toolings or intermediaries; or

- (b) the rendering or service and supply or rendering or proposing to supply or render 50% of their production or the total services, as the case may be, to other units for production of other articles, provided that not such unit shall be a subsidiary or, owned by or controlled by any other undertakings. In calculating the value of plant and machinery, the original price paid by the owner irrespective of whether the plant and machinery are new or second hand will be taken into account

20.1.38 **SMALL SCALE INDUSTRIAL UNITS:** These include such industrial units where investment in capital assets in plant and machinery does not exceed a limit fixed by Ministry of Industry. Only those small scale industrial units are eligible for preference under this category who are permanently registered as such with the State Governments.

20.1.39 **STAGE INSPECTION:** This is inspection carried out in the stages of manufacturer of a product as may be required to assure the manufacture of the produce to the contract specification. This is carried out in respect of such parameters, which may not be possible for examination after the completion of the manufacture of the product.

20.1.40 **STANDARD SAMPLE:** Samples sealed as a guide for all future supplies.

20.1.41 **SUB-LET ORDERS;** These are orders relating to components, parts, Accessories and Fasteners required for Complete manufacture and supply of the main items against A/T or S/Os which the main contractor intends to place on other manufacturers in India or abroad. Requests for such inspection at the source of origin are made to the Director(Auality Assurance) of the area concerned in the proforma DGS&D-120. Only Nominal Inspection Notes are issued by the Inspector for sublet items on the I/Notes Form DGS&D(S)-84. On the top of such Inspection Notes the words 'Nomial' shall be written in bold letters. No payments are made by the CCQA, Department of Supply against Nominal Inspection Notes.

20.1.42 **SUPPLY ORDER:** This is an order on a contractor to supply against Rate Contract. The term "Requisition" will not be used.

20.1.43 **SUPPLY SAMPLES:** Samples drawn for testing or for future reference, from supplies inspected and passed, from bulk supplies inspected against Rate Contract.

20.1.44 **TENDER ADVISORY COMMITTEE;** There are two Tender Advisery Committees set up in the Department of Supply whose function is to recommended to the Secretary, Department of supply and the Minister in-charge of the proposals of purchase of stores of value exceeding Rs.5 Crores and upto Rs. 10 Crores in the case of Secretary and beyond Rs.10 crores in the case of Minister in-charge of the Department of Supply.

20.1.45 **TENDER PURCHASE COMMITTEE:-** A Tender purchase Committee acts as a substitute to the competent purchase officer when it is decided to process the purchase proposal through Committee system, and exercises the same powers of purchase as are delegated to the competent purchase officer who acts as the Convenor of the Committee.

20.1.46 TENDER SAMPLE: The submitted by a Contractor alongwith his tender is called Tender sample.

20.1.47 TRANSITION SAMPLES: all newly received samples shall be entered in the Receipt register and be classified as “Transition Samples” till they are definitely classified otherwise.

20.1.48 TYPE TESTING: This is the testing carried out on a product for examining its conformance to the type test requirements to assure the designed quality of the product.

20.1.49 VALUABLE SAMPLES: Valuable sample is that the value of which is Rs. 1000 or more. Valuable samples will be classified by the officer-in-charge of the sample Room. The word “Valuable” shall be rubber stamped against the entry of the sample in the Sample register in the column “Class in which placed”.

20.2 ABBREIVATIONS:

ACASH	Association of Corporations and APEX Societies of Handlooms
ADG(S)	Additional director General (Supplies)
ADG(QA)	Additional director General (Quality Assurance)
AD(S)	Assistant Director(Supplies)
A/T	Acceptance of Tender
ATI	Advertised Tender Enquiry
A/L	Amendment Letter
BG	Bank Guarantee
CCA	Chief Controller of Accounts
CIF	Cost, Insurance & Freight
DD(S)	Dy. Director(Supplies)
DD(QA)	Dy. Director(Quality Assurance)
DDO	Direct Demanding Officer
DGOS	Director General of Ordnance Service
DG(S&D)	Director General of Supplies & Disposals
DGQA	Director General of Quality Assurance, Ministry of Defence
DGS&D	Directorate General of Supplies & Disposals
DOS	Department of Supply
DP	Delivery Period
ED	Excise Duty
EMD	Earnest Money Deposit
FAS	Free Alongside Ship
FOB	Free On Board
FOR	Free on Rail
HLPP	Highest Last Purchase Price
I/Notes	Inspection Notes
I/O	Indenting officer
KVIC	Khadi village Industries Commission
LC	Letter of Credit

LLPP	Lowest Last purchase Price
LPP	Last Purchase Price
LSI	Large Scale Industries
LTI	Limited tender Enquiry
MC Notes	Military Credit Note
NSIC	National Small Scale Industries
NTH	National Test House
PS	Performance Security
PSU	Public Sector Undertaking
QAMP	Quality Assurance Minotiring Programme
QA Wing	Quality Assurance Wing
R/C	Rate Contract
R/R	Railway Receipt
SSI	Small Scale Industries
SO	Section Officer
ST	Sales Tax
STI	Single Tender Enquiry
TAC	Tender Advisory Committee
TPC	Tender purchase Committee

