



भारत सरकार / GOVERNMENT OF INDIA
पत्तन, पोत परिवहन और जलमार्ग मंत्रालय
MINISTRY OF PORTS, SHIPPING AND WATERWAYS

नौवहन महानिदेशालय, मुंबई
DIRECTORATE GENERAL OF SHIPPING, MUMBAI



F. No. 14-29-2/2023-FA-DGS

Dated: 30.08.2023

DGS OFFICE ORDER No.12 of 2023

Subject: Contract Management Procedure – Reg.

- 1.1 It has been observed that a methodical compliance framework to the General Financial Rules, 2017 read with the Manual of Procurement of Goods, Manual of Procurement of Consultancy and Other services and Manual of procurement of works is a pre-requisite in the Directorate General of Shipping and this is being reiterated in specific light of the applicability of contract management in this office order to all aspects of procurement and contracts in the Directorate General of Shipping.
- 1.2 General Financial Rules (GFRs) are a compilation of rules and orders of Government of India to be followed by instructions to be observed by all Departments and Organisations under the Government and specified bodies except otherwise provided in these Rules. The GFRs facilitate efficiency rather than create impediments in smooth and timely implementation while following principles of accountability and procedures of financial discipline and administrative due diligence. The aim of any rule is to provide framework within which an organization manages its own business in a financially prudent manner without compromising its flexibility to deal with varied situations.
- 1.3 **Rule 21 (GFR) – Standards of financial propriety** – Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following:-
- (i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
 - (ii) The expenditure should not be prima facie more than the occasion demands.

[Signature]
30/08/23

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- (iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- (iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless –
 - (a) A claim for the amount could be enforced in a Court of Law, or
 - (b) The expenditure is in pursuance of a recognized policy or custom.

1.4 Rule 22 (GFR) Expenditure from Public Funds: No authority may incur any expenditure or enter into any liability involving expenditure or enter into any liability involving expenditure or transfer of moneys for investment or deposit from public funds (Consolidated Fund/ Contingency Fund and the Public Accounts) unless the same has been sanctioned by a competent authority.

1.5 Rule 23 -Delegation of Financial Powers – The financial powers of the Government have been delegated to various subordinate authorities vide Delegation of Financial Powers Rules as amended from time to time. The financial powers of the Government which have not been delegated to an subordinate authority, shall vest in the Finance Ministry.

1.6 Rule 37- Responsibility of losses. An officer shall be held responsible for any loss sustained by the Government through fraud or negligence on his part. He will also be held personally responsible for any loss arising from fraud or negligence of any other officer to the extent to which it may be shown that he contributed to the loss by his own action or negligence.

The departmental proceedings for assessment of responsibility for the loss shall be conducted according to the instructions contained in (Appendix 1- attached herewith as **Annexure 1**) and those issued by the Ministry of Personnel from time to time.

1.7 GFR Chapter 8 – Rule 225 – General Principles for contract and Rule 226 - Management of Contracts is to be complied and certified by the notified Contract Management Committee which should be specifically notified for each contract awarded in the Directorate General of Shipping. The Contract Management Committee ideally should be chaired by the Deputy Director General of the respective branch on whose file the contract has been processed for award and shall include the Deputy Director General (Shipping) , Administration and the Deputy Director General, (Finance & Accounts) or his representative and shall have specific terms of reference with context to the Service Level Agreement as per the award of contract and the contract management committee shall certify the satisfactory compliance of the service level agreement

1.8 Standard Contract formats:- The office of the Director General of Shipping should adopt standard contract formats for goods and services (consulting and non-consulting) awarded

post bidding on the E- Procurement portal and for GeM procurement the Service Level agreements generated on the portal shall be the mandatory contract conditions alongside the standard aspects to be covered.

1.9 **Contract Conditions (Generic):** - The conditions of contract in procurement shall provide an appropriate allocation of rights and obligations, risks and liabilities, informed by an analysis of which party is best placed to manage the risks, keeping in mind the costs and incentives o risk allocation. (Annexure IX [The World Bank – Procurement Regulations for IPF Borrowes – Procurement in Invest project financing – Good, works, Non-consulting and Consulting Services]– Contract conditions in International Competitive Procurement – a generic referral document is annexed as **Annexure 2**

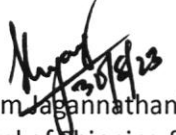
1.10 **Manual of Procurement of Goods: Chapter 9** – specific contract management for orders for supply of goods, these are guidelines for contract management and supplement the contract generated on GeM and should be carefully whetted by the Contract Management Committee for goods on delivery post issue of work order for supply. The contents of the Chapter are annexed at **Annexure 3.**

1.11 **Manual of procurement of Consultancy and Other Services** specifies in **Appendix 1** – Basic aims and fundamental Principles of Public Procurement (**Para 1.5, 1.6**) which encompasses the five R's of procurement – Right Quantity/ Right Quality/ Right Price/ Right Time and place/ Right Source and the concept of Value for money and fundamental principles of Transparency Principle, Professional principle, Broader obligation principles, extended legal responsibility principle and public Accountability principle. **Para 11** delineates Model clauses / certificates as mentioned in **Annexure 2 C** of the Manual of procurement of consultancy and Other services. **Appendix 2** – lists the Legal aspects of Public Procurement (**Para 1.3 and Para 1.20 and Appendix 3** – Electronic Procurement (E- Procurement) (**Para 4.5**) and **Chapter 8- Monitoring of consultancy/ Other services contract** mentions in **Para 8.2** of the Contract management Committee and **Chapter 3** lists out the types of contracts and systems of selection of consultants/ service providers wherein **Para 8.2** specifically mentions the Contract Management Committee. In addition **Para 1.13** lists out proactive Information disclosures, **Para 1.2** lists out the Law of Agency – applicable to procurement of Consultancy and other services and **Para 1.14** details the Public Procurement Cycle. The specific details are compiled and annexed at **Annexure 4** to this document.

1.12 **Manual of Procurement of Works:** Specifically for works **Para 5.7.6** – framing of contract, **Para 5.7.7** procurement record, **Para 5.8** – Evaluation of Bids and Award of contract – Risk and Mitigation, **Para 6.7** – Closure of contract, **Para 6.11-** Breach of Contract, Remedies

and Termination, **Para 7.1 – Contract Relationship Management, Para 7.4 – Development of New Sources and Registration/ Enlistment of Construction, Para 7.6.4- Capacity of Contractor, Para 7.6.4 – Capacity of Contractors, 7.6.6 – Structuring contract for timely completion** which are annexed herewith as **Annexure -5** to this document. Separately, the **CPWD Manual of works, 2019** specifies aspects related to contract management for works at **Chapter 5** and **Standard Operating Procedures for CPWD Works Manual, 2019** specifies aspects related to contract management for works at **Chapter 5**. Separately, the Department of Expenditure (DoE) vide **O.M No. F.1/1/2021-PPD dated 29.10.2021** had issued General Instructions on Procurement and Project Management which also needs to be referred for contract award and management.(Attached as **Annexure 6**)

2. For every award of contract in the Directorate General of Shipping there shall be a specific contract management committee notified as indicated herein above and for every periodic payment milestone as specified in the contract, the said contract management committee shall be responsible to ensure compliance of the contract, effective contract management, enforcement of the Service Level Agreement and recommendation of penalty as per provision for violation of contractual obligations or non-compliance to the service level conditions as specified in the contract. No payments towards existing contracts shall be released unless there if an effective contract management committee in place and the specific recommendation thereof shall be taken on record thereof.


(Shyam Jagannathan)
Director General of Shipping &
Addl. Secretary to the Govt. of India

Encl. As above.

To,

- 1 Chief Surveyor
- 2 Nautical Advisor
- 3 Chief Ship Surveyor
- 4 All DDGs
- 5 All Branches
- 6 Computer Cell – with a request to upload official website of DGS.

APPENDIX- 1

[See Rule 37]

INSTRUCTIONS FOR REGULATING THE ENFORCEMENT
OF RESPONSIBILITY FOR LOSSES, ETC.

1. The cardinal principle governing the assessment of responsibility is that, every Government officer should exercise the same vigilance in respect of expenditure from public fund generally as a person of ordinary prudence would exercise in respect of the expenditure and the custody of his own money. While, the competent authority may, in special cases, condone an officer's honest errors of judgement involving financial loss if the officer can show that he has acted in good faith and done his best up to the limits of his ability and experience, personal liability shall be strictly enforced against all officers who are dishonest, careless or negligent in the duties entrusted to them.
2. In cases where loss is due to delinquencies of subordinate officials and where it appears that this has been facilitated by laxity of supervision on the part of a superior officer, the latter shall also be called strictly to account and his personal liability in the matter carefully assessed.
3. (a) The question of enforcing pecuniary liability shall always be considered as well as the question of other forms of disciplinary action. In deciding the degree of an officer's pecuniary liability, it will be necessary to look not only to the circumstances of the case but also to the financial circumstances of the officer, since it should be recognized that the penalty should not be such as to impair his future efficiency.
- (b) In particular if the loss has occurred through fraud, every endeavour should be made to recover the whole amount lost from the guilty persons and if laxity of supervision has facilitated the fraud, the supervising officer at fault may properly be penalized either directly by requiring him to make good in money a sufficient proportion of the loss or indirectly by reduction or stoppage of his increments of pay.
- (c) It should always be considered whether the depreciated value of the Government property or equipment lost, damaged or destroyed by the carelessness of individuals entrusted with their care should be recovered from the delinquent official. The depreciated value of the stores may be calculated by applying the 20% of depreciation in the case of vehicles, including cycles, and 15% in the case of calculating machines, on the reduced balance every year. The amount to be recovered may be limited to the Government servant's capacity to pay.
4. When a pensionable Government servant is concerned in any irregularity or loss, the authority investigating the case shall bear in mind the provisions contained in Central Civil Services (Pension) Rules 1972 as amended from time to time and immediately inform the Audit Officer and/or the Accounts Officer, as the case may be, responsible for reporting on his title to Pension or Death-Cum-Retirement Gratuity, and the authority competent to sanction Pension or Death-Cum-Retirement Gratuity and it will be the duty of the latter to make a note of the information and see that the Gratuity or Death-Cum-Retirement Gratuity is not paid before a conclusion is arrived at as regards the Government servant's culpability and final orders are issued thereon.
5. The fact that Government servants who were guilty of frauds or irregularities have been demobilized or have retired and have thus escaped punishment, should not be made a justification for absolving those who are also guilty but who still remain in service.
6. It is of the greatest importance to avoid delay in the investigation of any loss due to fraud, negligence, financial irregularity, etc. Should the administrative authority require the assistance of the Audit Officer and/or the Accounts Officer, as the case may be, in pursuing the investigation, he may call on that officer for all vouchers and other documents that may be relevant to the investigation; and if the investigation is complex and he needs the assistance of an expert Audit Officer/Accounts Officer to unravel it, he should apply forthwith for that assistance to Government which will then negotiate with Audit Officer and/or the Accounts Officer concerned for the services of an investigating staff. Thereafter, the administrative authority and the Audit/Accounts authority shall be personally responsible within their respective spheres, for the expeditious conduct of the enquiry. In any case in which it appears that recourse to judicial proceedings is likely, the Special Police Establishment or the State Police should be associated with the investigation.
7. Depending upon the results of the inquiry, departmental proceedings and/or prosecution shall be instituted at the earliest moment against the delinquent officials concerned and conducted with strict adherence to the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and other instructions prescribed in this regard by Government.

Annex IX. Contract Conditions in International Competitive Procurement

1. Purpose

Annex - II

- 1.1 This Annex lists the minimum contract conditions required for international competitive procurement for Goods, Works, and Non-consulting Services in IPF operations.

2. Requirements

- 2.1 The contract conditions shall provide an appropriate allocation of responsibilities, risks and liabilities informed by an analysis of which party is best placed to manage the risks, taking into account the costs and incentives of risk allocation.
- 2.2 For international competitive procurement for Goods, Works, Non-consulting Services, and Consulting Services, the Borrower shall use the applicable Bank SPD, for example request for bids/request for proposals documents with minimum changes, acceptable to the Bank, as necessary to address any project-specific conditions.
- 2.3 For Goods, Works, and Non-consulting Services when the Bank has not issued an applicable SPD, the Borrower shall use other internationally recognized standard conditions of contract and contract forms acceptable to the Bank, and subject to the requirement in paragraph 2.27 of this Annex. If neither an applicable Bank SPD, nor other internationally recognized standard conditions of contract and contract form acceptable to the Bank are available, the Borrower shall at least include the following provisions in the contract.

Performance Security

- 2.4 Contracts for Works and Plant shall require security in an amount sufficient to protect the Borrower in case of breach of contract by the contractor. This security shall be provided in an appropriate amount, as specified by the Borrower in the request for bids/request for proposals document. The amount of the security may vary, depending on the type of security furnished and the nature and magnitude of the Works or facilities. Normally, the amount for bank guarantees should not exceed ten percent (10%) of the contract price unless the commercial practice for the industry recommends a different percentage. A portion of this security shall extend sufficiently beyond the date of completion of the Works or facilities to cover the defects liability or maintenance period up to final acceptance by the Borrower.
- 2.5 In contracts for the supply of Goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of Goods. To protect against nonperformance of the contract, firms may be required to provide a security in an appropriate and reasonable amount, specified by the Borrower in the request for bids/request for proposals document.
- 2.6 Performance securities shall be in an appropriate form, acceptable to the Bank, as specified by the Borrower in the request for bids/request for proposals document. Bidders/Proposers shall be allowed to submit a performance security directly issued by the reputable bank or financial institution (insurance, bonding or surety company), of their choice, located in any eligible country. However, if the performance security is issued by a financial institution that is located outside the

Borrower's country, if it is not enforceable, the financial institution shall have a correspondent financial institution located in the Borrower's country to make it enforceable.

Defaults

- 2.7 The contract includes provisions such as suspension and termination, addressing contractual defaults by either party.

Force Majeure

- 2.8 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract shall not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

Liquidated Damages and Bonus Clauses

- 2.9 Time for contract completion/ delivery period shall be specified. Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of Goods, completion of Works, or failure of the Goods, Works, and Non-consulting Services to meet performance requirements would result in extra cost or loss of revenue or other benefits to the Borrower. Provision may also be made for a bonus to be paid to contractors for completion of Works or delivery of Goods ahead of the times specified in the contract, when an earlier completion or delivery would be of benefit to the Borrower.

Value Engineering

- 2.10 For complex or high-value contracts, provisions may be included that allow for value engineering, that is, proposals by the contractor to reduce costs, increase performance, improve completion times, or create other benefits to the Borrower. The proposal is prepared at the contractor's cost, and the decision of whether or not to adopt the proposal rests with the Borrower. The contract shall specify how any benefits arising from the proposal shall be shared between the parties.

Contract Change Management

- 2.11 The contract shall clearly indicate the procedures to address change orders or contract variations.

Payments

- 2.12 Payment contract provisions shall be in accordance with the international commercial practices applicable to the specific Goods, Works and Non-consulting Services.
- 2.13 Contracts for Goods provide for full payment on the delivery and inspection (if required), of the contracted Goods, except for contracts involving installation and commissioning; for such contracts, a portion of the payment may be made after the contractor has complied with all its obligations under the contract. The Bank normally requires the use of letters of credit to assure prompt payment to the contractor. In major contracts for equipment and Plants, provisions shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.

- 2.14 In appropriate cases contracts for Works shall provide, for mobilization advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon the contractor's compliance with its obligations under the contract.
- 2.15 Any advance payment for mobilization and similar expenses, made upon signature of a contract for Goods, Works, and Non-consulting Services, shall be related to the estimated amount of these expenses and be specified in the request for bids/request for proposals document. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the Goods or Works, shall also be specified. The request for bids/request for proposals document shall specify the arrangements for any security required for advance payments.

Taxes, Duties and Levies

- 2.16 Contracts shall have provisions on the treatment of taxes, duties and levies, including the responsibilities of the contracting parties.

Price Adjustments

- 2.17 The contract shall state either that:
- a. contract prices shall be fixed; or
 - b. the contract price adjustments will be made to reflect any changes in major cost components of the contract, such as labor and materials.
- 2.18 Price adjustment provisions are usually not necessary in simple contracts involving delivery of Goods, or completion of Works and Non-consulting Services within eighteen (18) months, but are included in contracts that extend beyond eighteen (18) months. Contracts of shorter duration (less than 18 months), may also include similar provisions for price adjustments when local or foreign inflation is expected to be high. Prices are adjusted by using applicable official price indices. Where such indices are not available, they may be derived from appropriate documented sources.
- 2.19 The formula, the applicable price indices, and the base date for application shall be clearly defined in the contract. The contract shall also have appropriate provisions for treatment of the impact on a contract change in laws and regulations in the Borrower's country, if after 28 days prior to the date of Bid/Proposal submission, that subsequently affects the contract completion period/delivery date and/or the contract price.

Incoterms

- 2.20 The applicable version of Incoterms shall be used in the contract for Goods.

Insurance

- 2.21 Contracts shall include types and terms of Insurance to be provided by contractors. Normally, an 'all risk' type of insurance policy shall be specified. For Goods and for single responsibility contracts, the indemnity payable under transportation insurance shall be at least 110% (one hundred ten percent), of the CIP price of the Goods to be imported in the currency of the payment or in a freely convertible currency to enable prompt replacement of lost or damaged Goods.

2.22 If a Borrower does not wish to obtain insurance coverage through the contract, and wishes to make its own arrangements or to reserve insurance to national firms or other designated sources, it provides evidence satisfactory to the Bank that:

- a. resources are readily available for prompt payment, in a freely convertible currency among the currencies of payment of the contract, of the indemnities required to replace lost or damaged Goods and Works; and
- b. risks are adequately covered.

Copyright and Patent Indemnity

2.23 The conditions of contract shall include appropriate provisions on copy rights and patent indemnity.

Applicable Law and Settlement of Disputes

2.24 The conditions of contract for international competitive procurement shall include provisions dealing with the applicable law and the forum for the settlement of disputes. All international competitive procurement contracts are required to include appropriate mechanisms for independent dispute resolution either, Dispute Review Experts or Dispute Review Boards.

2.25 International commercial arbitration in a neutral venue shall also be required unless the national regulations and arbitration procedures are acceptable to the Bank in terms of equivalence to international commercial arbitration and the venue is neutral, or the contract has been awarded to a Bidder/Proposer/Consultant from the Borrower's country.

2.26 The Bank shall not be named arbitrator or be asked to name an arbitrator. It is understood, however, that officials of the International center for Settlement of Investment disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.

Fraud and Corruption

2.27 The Bank requires application of, and compliance with, the Anti-Corruption Guidelines, including without limitation the Bank's right to sanction and the Bank's inspection and audit rights. For details see Annex IV, Fraud and Corruption.

Chapter 9: Contract Management

9.1 Contract Management

9.1.1 The Purpose of Contract Management

The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that *"we get what we pay and contract for and pay for only for what we get"*. Normally, the following issues are handled during this phase:

- i) Amendments to the contract;
- ii) Operation of the option clause;
- iii) Safeguards for handing over Procuring Entity materials/equipment to contractors;
- iv) Payments to the contractor and handling of securities;
- v) Monitoring of supplier performance;
- vi) Delays in performance of the contract;
- vii) Breach of contract, remedies and termination of contract;
- viii) Dispute resolution;
- ix) Contract closure upon completion;
- x) Goods receiving;
- xi) Quality assurance;
- xii) Accountal and payment of bills; and
- xiii) Storage and issue of Inspected goods.

9.1.2 Costs of delay In Contract Management Decisions: Delays

Payments and decisions in contract management requested by the suppliers should be made within a reasonable time. An atmosphere of lackadaisical dilatory

functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in supplies and disputes in the contract.

9.2 Amendment to the Contract

Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/ inescapable, any modification will be carried out with the prior approval of the CA with the Associated/ integrated Finance's concurrence.

Requests for such changes and modifications mostly emanate from the supplier. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The indenter may be consulted regarding the technical implications. Financial concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

An amendment can concern any of the clauses of the contract but, in supply contracts, amendments often relate to the following:

- i) Increase or decrease in the quantity required, exercise of quantity option clause;
- ii) Changes in schedule of deliveries and terms of delivery;
- iii) Changes in inspection arrangements;
- iv) Changes in terms of payments and statutory levies; and
- v) Change due to any other situation not anticipated.

Post contract variation carried out in the form of an amendment shall be published by the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry. No change in the price quoted shall be permitted after the purchase order has been issued, except on account of price variation, ERV and statutory variations.

9.3 Operation of Option Clause

9.3.1 Option Clause

Under this clause, the purchaser retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract. This clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 25-30%. Approval should be taken from the CA (who originally approved the tender decision) to exercise the option clause based on the value of the contract with the increased quantity. In case the recalculated value of the contract goes beyond the delegation of powers of the original CA, approval of the CA for the enhanced value may be taken.

Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees fifty) lakh should invariably include this clause. However, the CA may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in continuity of supplies. The clause may be framed along following lines:

"The purchaser reserves the right to increase/decrease the ordered quantity by up to [25]per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)."

9.3.2 Conditions Governing Operation of Option Clause

Additional demands should be available for coverage and over-provisioning may be avoided by keeping the officers concerned with provisioning/tender evaluation for the next cycle of procurement informed. The following points must be kept in mind while operating the option clause:

- i) In case of decrease in the ordered quantity, it would be fair to allow the firm to supply work-in-progress or goods already put up for inspection;
- ii) There should be no declining trend in the price of the stores as evidenced from the fact that no order has since been placed at lower rates and no tender has been opened since the time offers have been received at lower rates – even if not finalised;
- iii) If the option clause exists, during provisioning of the next cycle and during tender evaluation in the next cycle of procurement, application of the option

clause must be positively taken into account. The contract management authority must also keep a watch on delivery against contract, if other conditions are satisfied, the option clause must be exercised;

- iv) The option clause is normally exercised after receipt of 50 (fifty) per cent quantity but if the delivery period is going to expire and other conditions are fulfilled, it can be exercised even earlier;
- v) The option clause shall be exercised during the currency of the contract such that the contractor has reasonable time/notice for executing such an increase and can be exercised even if the original ordered quantity is completed before the original last date of delivery. If not already agreed upon, the delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order. This will satisfy the requirement of giving reasonable notice to the supplier to exercise the option clause;
- vi) The quantum of the option clause will be excluded from the value of tenders for the purpose of determining the level of CA in the original tender;
- vii) There should be no option clause in development orders;
- viii) This provision can also be exercised in case of PAC/single supplier OEM cases; and
- ix) However, where parallel contracts on multiple suppliers are available, care should be taken in exercising the option clause, so that the original tender decision of splitting quantities and differential pricing is not upset or vitiated. Other things being equal, the supplier with the lower rate should first be considered for the option quantity.

9.4 Safeguards for Handing over Procuring Entity Materials/Equipment to Contractors

For performance of certain contracts, Procuring Entity may have to loan stores, drawings, documents, equipment and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis. As a measure of transparency, the possibility of provision of such resources by Procuring Entity should have been announced in the tender document or at least requested by the contractor in the tender and written in the

contract. Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/contractor for guidance in fabrication, these should be issued against an appropriate bank guarantee. In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary. Before the final payment or release of PBG/SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities and assets loaned, including all ID cards and gate passes, and so on, in good condition. Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs. 1,00,000 (Rupees One Lakh), or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

9.5 Payments to the Contractor and Handling of Securities

9.5.1 It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Before the payment is made, the invoice should be cross-checked with the actual receipt of material to ensure that the payment matches the actual performance.

9.5.2 Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 6 has more details in this regard. Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure 21) may be insisted upon from the supplier to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

9.5.3 **Delay in payment to the contractors:** Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest of General Provident Fund.

In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers. There should have a system to monitor delays in payments and to identify such unwarranted delays including an

online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors bills to be entered into the system with date of submission and date of payment.

9.6 Monitoring of Supplier Performance

As soon as the order is issued, entry shall be made in the progress of supply order register (Annexure 17) recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted. A sound system for monitoring the performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials. Purchase order-wise data will be maintained in this register regarding execution by and performance of the supplier. The register shall form the basis for the Management Information System report on unexecuted purchase orders beyond scheduled deliveries, reports on performance of suppliers, and so on.

9.7 Delays in Performance of Contract

9.7.1 Delivery Period

The period for delivery of the ordered goods and completion of any allied service(s) thereof (such as installation and commissioning of the equipment, operators' training, and so on) are to be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract. The delivery period stipulated in contracts should be specific and practical. Vague and ambiguous terms such as 1,000/5,000 (one to five thousand) numbers per month, 2 to 16 (two to sixteen) weeks from the date of receipt of order, 'immediate', 'ex-stock', 'as early as possible', 'off the shelf', 'approximately' and the like should be scrupulously avoided as these will not be legally binding.

In case of items such as raw material which is delivered throughout the year, a delivery schedule of the monthly rate of supply should be specified. It is usual in

such cases that there is a slight deviation from such monthly rate of supply. It should be clarified in such cases that the variation in the periodic rate of supply beyond ± 10 (ten) per cent in any calendar month; or ± 7 (seven) per cent cumulative in any calendar quarter; or ± 5 (five) per cent cumulative in any calendar year would be considered as delay in delivery attracting imposition of LD.

Unless otherwise agreed, the buyer of goods is not bound to accept the delivery thereof in instalments.

9.7.2 Terms of Delivery

Terms of delivery (FOR, FOB, CIF, and CFR, and so on), inter alia, determine the delivery point of the ordered goods from where the purchaser is to receive/collect the goods. It also decides the legally important issue of when the 'titles of the goods' have passed to the purchaser. The delivery period is to be read in conjunction with the terms of delivery, therefore the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms. Chapter 6 has more details in this regard.

9.7.3 Severable and Entire Delivery Contracts

Such contracts, where instalments are not specified or not intended, are known as entire contracts. In such cases, even non-delivery of a part quantity can lead to a breach of contract. However, a variation of five per cent of the contract quantity is usually exempted in the contract conditions. In the case of an entire contract, even if providing a delivery schedule, it is not necessary to grant an extension in the delivery period in the case of delay in intermediate instalments. Such extension would be necessary only in case of a delay beyond the final date for the completion of the delivery.

Contracts with clearly laid out instalment deliveries mentioning the exact dates and where each instalment is paid for separately are known as severable contracts. In effect, each of such instalments is a separate independent contract by itself. In severable contracts, delay or breach of one instalment does not affect other instalments, since each instalment is considered as a separate contract. In the case of severable contracts, extension in the delivery period is necessary for each instalment separately.

The legal position, however, is not very straightforward, since the mere mention of monthly/ quarterly rate of delivery, called delivery schedule, is not sufficient to make it a severable contract. However, instalments specifying exact dates, that is, 310 (three hundred and ten) numbers by June 20, 2016 would be amounting to a severable contract.

The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

9.7.4 Extension of Delivery

Suppliers shall be required to adhere to the delivery schedule specified in the purchase order and, if there is delay in supplies, LD shall be levied wherever there is failure by the party. Extension of the delivery date amounts to amendment of the contract. Such an extension can be only done with the consent of both parties (that is, the purchaser and supplier). No extension of the delivery date is to be granted suo motu unless the supplier specifically asks for it. However, in a few cases, it may be necessary to grant an extension of the delivery period suo motu in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.

No correspondence should be entered into with the supplier after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: *"This letter is issued without any prejudice to Procuring Entity's rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation."*

If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier's communication, the procuring

entity shall examine the proposal (refer to Annexure 18) and, on approval from the CA, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 9.7.8 below), for completion of the contractor's contractual obligations, provided:

- i) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
- ii) That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the purchaser's interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.

When it is decided to extend the delivery period subject to recovery of LD for delay in supplies, contractors must be given a warning to this effect in writing at the time of granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted "without prejudice to the rights of the purchaser under the terms and conditions of the contract" as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing in the laid down format given in Annexure 19.

Organisations may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

9.7.5 Delay in Supplies for which Supplier is not Responsible

Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier:

- i) Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time;
- ii) Where extension in the delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier; and
- iii) Cases where the purchaser controls the entire production.

9.7.6 Performance Notice

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for extension of the delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on, along identical lines as in para 9.7.4 above. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to the Annexure 19.

9.7.7 Force Majeure Clause

A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrongdoing, predictable/seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is

prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

9.7.8 Denial Clause

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period. The format of the denial clause is available in Annexure 19.

9.7.9 Liquidated Damages

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [MallaBaux Vs. UOI (1970)].

9.7.10 Quantum of LD

While granting extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after expiry of the original delivery period, the CA may recover from the contractor, as agreed, the LD a sum equivalent to 0.5 (half) per cent of the prices of any portion of stores delivered late, for each week or part thereof of delay. The total damages shall not exceed 10 (ten) per cent of the value of delayed goods. The LD cannot exceed the amount stipulated in the contract [NC Sanyal Vs. Calcutta Stock Exchange (1971)].

In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of delayed supplies. Where or in so far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

Government establishments/Departments, as distinct from PSUs, that execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the HOD or the Government Department concerned.

Relaxations allowed to Government establishments/Departments, as above, will not apply to PSUs as a matter of course. Each case should be decided on merits and the decision to waive the recovery of LDs or risk purchase expenditure should be taken on merit.

In the case of development/indigenisation contracts, LDs are not levied. However, the nature of such contracts should be declared at the time of placing them.

In case of entire (non-severable) contracts, even where staggered deliveries have been indicated, it may happen that supplies are not received according to the delivery schedule. In such cases, keeping in mind the fact that the deliveries indicated under the contract are non-severable, no question of LDs or enforcement of risk purchase would arise so long as there has been no delay in the completion of supplies with reference to the total delivery period.

9.7.11 Waiver of LD

There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the, CA with consultation of associated Finance may be taken and justifications recorded.

9.7.12 Handling Deliveries after the Expiry of Delivery Period

As per law, if stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period having being given, duly reserving our rights to levy LD, it amounts to voluntary abrogation of our legal rights under the contract to claim LDs or other remedies.

If the contractor makes supplies locally after the expiry of delivery period, the supplies may be provisionally retained under a franking clause reserving rights and the contractor may be asked to obtain an extension of the delivery period from an authorised officer with or without any LD/denial clause.

"Please note that materials have been supplied after the expiry of contracted delivery date and its provisional retention does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. You may apply for an extension of delivery date from the procuring entity. The goods are being retained without prejudice to the rights of the Government of India under the terms and conditions of the contract."

As regards supplies coming from outside contractors, if the contractor dispatches the stores after expiry of the delivery period, the consignee should, after the receipt of the railway receipt or lorry receipt or goods consignment note or airway bill, send an intimation to the contractor stating that the action taken by him in dispatching the goods after expiry of delivery date is at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage and deterioration of goods at the destination station and, in his own interest, the contractor should get an extension of the delivery period from the purchasers. A copy of the communication sent to the contractor should also be sent to the purchaser.

In case of imports, the contractor must not dispatch the consignment after expiry of the delivery period without taking prior extension of the delivery period. In any case, the terms of LC should be such that if there are dispatches beyond the delivery period, payment should be denied without levy of full LD and without formal extension of the delivery period by the purchaser.

9.8 Breach of Contract, Remedies and Termination

In case the contractor is unable to honour important stipulations of the contract, or gives notice of his intention of not honouring or his inability to honour such a

stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position after expiry of the delivery period is given at Annexure 20. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately. The CA may terminate a contract in the following cases.

9.8.1 Cancellation of Contract for Default

Without prejudice to any other remedy for breach of contract, such as removal from the list of registered supplier, by written notice of default sent to the supplier, the contract may be terminated in whole or in part:

- i) 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; and
- ii) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted;
- iii) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
 - a) Forfeiture of the performance security;

- b) Upon such terms and in such manner as it deems appropriate, goods similar to those undelivered may be procured and the supplier shall be liable for all available actions against him in terms of the contract (popularly called risk purchase); and
- c) However, the supplier shall continue to fulfil the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

9.8.2 Termination of Contract for Insolvency

If the supplier becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the supplier, without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

9.8.3 Termination of Contract for Convenience

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the supplier for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from which the termination will to become effective. This is not Procuring Entity's legal right— the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be to be incorporated in the tender document as well as in the resultant contract.

9.9 Dispute Resolution

Normally, there should not be any scope for dispute between the purchaser and supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the purchaser and supplier. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such

disputes or differences binding on both parties. The mode of settlement of such disputes/differences should be through arbitration. However, when a dispute/difference arises, both the purchaser and supplier should first try to resolve it amicably by mutual discussion, mediation, and conciliation⁷⁹. If the parties fail to resolve the dispute within 21 (twenty-one) days, then, depending on the position of the case, either the purchaser or supplier should give notice to the other party of its intention to commence arbitration. When the contract is with a domestic supplier, the applicable arbitration procedure shall be as per the Indian Arbitration and Conciliation Act, 1996 [Amended 2015⁸⁰ and 2021⁸¹]. While processing a case for dispute resolution/litigation/arbitration, the procuring entity is to take legal advice, at appropriate stages.

9.9.1 Arbitration Clause

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. The venue of arbitration should be the place from where the contract has been issued.

Arbitration and dispute resolution

- i) During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.
- ii) Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc.

⁷⁹As notified under para 16 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

⁸⁰ <https://lawmin.gov.in/sites/default/files/ArbitrationandConciliation.pdf>

⁸¹ <https://egazette.nic.in/WriteReadData/2021/225832.pdf>

are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

- iii) The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration / court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.
- iv) Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with.
- v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open a escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity⁸².

⁸² As notified under para 16.1 to 16.5 of OM No.F.1/1/2021-PPD Issued by Department of Expenditure dated 29.10.2021.

Chapter 9: Contract Management

9.9.2 Foreign Arbitration

The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.

When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

9.9.3 Arbitration Awards

- i) In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department should the subsequent court order require refund of the said amount.
- ii) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.⁸³

⁸³ New rule 227A of GFR, 2017 notified vide OM No. F.1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

9.10 Closure of Contract

While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released a "no claim certificate" may be taken from the contractor as per the format given in Annexure 21. At least in large contracts [above Rs. 25(Rupees twenty-five)lakh], it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across Departments involved in the execution of the contract:

9.10.1 Materials Reconciliation

The stores and/or the indenter should confirm that all materials ordered in the contract and paid for have been received in good condition and there is no shortfall. Full reconciliation of all raw material, part, assembly provided to the contractor should be done including wastages and return of scrap/off-cuts.

9.10.2 Reconciliation with the User Department

Besides material reconciliation, the user Department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the Department's satisfaction, as per the contract:

- i) Achievement of performance standards of material/equipment supplied;
- ii) Installation and commissioning;
- iii) Support service during the warranty period which has ended on _____;
- iv) Training of operators/maintenance staff;
- v) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor; and
- vi) Support during annual maintenance contract (if it was part of the contract) which has ended on _____.

9.10.3 Payment Reconciliation

The indenting/materials management Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

- i) LD;
- ii) Price reduction enforced on account of shortfall in performance of material/equipment;
- iii) Variations/deviations from the scope of the contract;
- iv) Overpayments/duplicate payments, if any;
- v) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on;
- vi) Demurrage, insurance premiums or claims, customs duties, and so on;
- vii) Material reconciliation;
- viii) Price and exchange rate variations;
- ix) Statutory duties paid on behalf of the contractor by Procuring Entity; and
- x) Inspection charges or loss of material in testing.

On satisfactory reconciliation and against a "no claim certificate" from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the CA. However, Procuring Entity, at its discretion, may retain important records for future reference.

9.11 Goods Receiving

9.11.1 Transportation of Goods

Where critical equipment of high value is involved, suitable special instructions shall be conveyed to the supplier about the mode of transport, loading, avoidance of transshipment and, if necessary, provision of escorts. In case of chemicals, powdery materials, liquid materials, and so on, parties may be advised on proper packaging to avoid spillage en route, so as to avoid pollution problems and also to conform to the ISO 14001 standard. In case transport is arranged by Procuring Entity, suitable instructions may be incorporated in the transportation contract accordingly.

Wherever the items make a full truck load, the suppliers should be advised to dispatch such items in a full truck direct to the consignee on a door delivery basis to the site. In such cases, Procuring Entity shall advise the supplier to send a

consignee copy of the lorry receipt to the consignee along with the consignment and the consignment shall be booked to Procuring Entity and not "self". The supplier shall be specifically asked to dispatch the consignments to the designated consignee. All dispatch documents, that is, railway/lorry receipt, goods consignment note, airway bill, invoices, packing list, freight memos, test certificate, and so on, shall be sent to the Associated/ integrated Finance which will arrange to make the payment. If the payment is to be made through the bank, all original documents are to be sent through the designated bank.

9.11.2 Distribution of Dispatch Documents for Clearance/Receipt of Goods

The supplier shall send all the relevant dispatch documents well in time to the purchaser to enable the purchaser to clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. Within 24 (twenty-four) hours of dispatch, the supplier shall notify the purchaser or consignee (others concerned), the complete details of dispatch and also supply the following documents by registered post/ speed post/air mail/courier (or as instructed in the contract).

The supplier should submit five copies of his invoice. The invoices must be pre-stamped and shall indicate the details of the lorry receipt or railway receipt number, as the case may be, and also the details of the packing list and items dispatched. The invoice must also indicate the purchase order number and date, unit rate and net total price; the packing list shall include the total weight of the consignment and items dispatched. All documents are to be duly signed by the supplier's representative. Bank charges towards processing of the bills for payment shall be as per terms and conditions of the purchase order.

9.11.3 Receipt of Consignment

At the time of the delivery at the stores, the storekeeper should receive the goods on a "subject to inspection" basis and should issue the preliminary receipt after a preliminary inspection as an acknowledgement of having received the claimed quantity (not the quality) of consignment.

i) Preliminary Inspection on Receipt

On opening the packages (if applicable), the storekeeper should initiate preliminary inspection of the goods received. This should include checks for any obvious damage in transit and other physical or visual checks specific to the functional characteristics of the product. The quantity of the goods received should also be verified at this stage against the purchase order and the supplier's invoice. When goods are supplied in boxes, bundles or coils as in the case of tools, rope, canvas, barbed wire, and so on, each of which is required to contain a specified quantity, a reasonable number of such packages should be opened up and checked for quantity per package. The quantity received should also be mentioned in the preliminary receipt to be given to the supplier. Any discrepancies in packages or quantity should be mentioned therein.

ii) **Detailed Inspection on Receipt**

Before accepting the ordered goods, the storekeeper must ensure that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve this, the tender document and the subsequent contract should include references to standards or specifications that specify the details of inspection and tests to be carried out and stages and manner of carrying out these tests.

The required inspections and tests should be carried out by technically qualified and competent personnel. If the procurement agency does not have such qualified personnel, it may engage competent professionals from other Departments or even outside agencies.

9.12 Quality Assurance and Inspection

In the context of procurement of goods, the Quality Assurance (QA) process is needed to provide adequate confidence that a procured product will satisfy the laid down standards of quality and serve the purpose for which it is being procured. QA consists of three components:

- i) Defining quality standards;
- ii) Planning assurance of quality; and
- iii) Measurement of quality.

The description and TS define the quality standards expected from the product.

Planning for QA is done by way of specifying the qualifications criteria for the suppliers to ensure that they do have the technical, infrastructure and financial capabilities to meet the required quality standards. Specifications also lay down quality control requirements to indicate parameters, target values, tolerances and method of measurement of various parameters that constitute the standards of quality. This also involves laying down the type of inspection, agency for inspection.

Measurement of quality is done through a scheme of inspections at the contract management stage and laying down the actual process of inspection.

9.12.1 Inspections – Measuring Quality Standards

The stages and modes of inspection may vary depending on the nature of the goods, total value of the contract, location of the supplier, location of the user, and so on. Depending on the nature of goods being procured, usually, the following types of inspection may be adopted:

9.12.2 Types of Inspection

i) Pre-dispatch Inspection

A pre-dispatch inspection may be conducted either during various stages of the production process (which is known as stage inspection) or on production of the finished products, but before dispatch of the goods from the supplier's premises. Stage inspection may be used for highly technical goods whose quality of the manufacturing process is likely to have considerable effect on the final quality and durability of the goods. Even after pre-dispatch inspections, these materials should be inspected again on receipt, as a matter of abundant precaution.

Inspection of the materials before dispatch shall be carried out by the inspection agency nominated in the contract or by its representative at the premises of the supplier in accordance with the inspection procedure laid down and incorporated in the purchase order.

The testing charges for samples should be borne by the supplier and this should be made clear at the enquiry stage itself to avoid claims at a later date/or effect on his position in comparative statement of offers. Any special testing involving financial implications shall be settled prior to placement of the order and such cost should form part of the evaluation.

In case of offshore supplies, the inspection clause shall be incorporated in the purchase order wherever required:

- a) Procuring Entity may depute its representative or a third party inspection agency to the supplier's manufacturing premises to carry out/witness inspection and testing, performance testing at its discretion;
- b) Alternatively, Procuring Entity shall retain an option to waive the above and accept the material based on the supplier's internal test report, guarantee and fitment certificate. In this regard, the written approval of the HOD of the Indenting Department should be obtained recording the reasons for it; and
- c) Whenever the inspection is carried out at the supplier's manufacturing premises, an inspection on receipt of goods at Procuring Entity shall also be carried out by an officer of the Indenting Department or a third party inspection agency, as the case may be, on receipt of the goods.
- d) It has been brought to the notice of Department of Expenditure that in the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials. This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that inspections are not compromised. Necessary steps may be taken to strictly avoid such provisions in the contracts with suppliers/ vendors⁶⁴.

ii) **Inspection of Goods on Receipt at Consignee/User's Site**

Post-delivery inspection is carried out on receipt of goods before accepting them. This should be typically done for goods that are available off-the-shelf and are BIS marked. All final goods that may be directly consumed or utilised on delivery (excluding machinery installations, and so on) and for which

⁶⁴ Notified vide OM No.F.11/13/2017-PPC issued by Department of Expenditure dated 24.10.2017

detailed inspection of the manufacturing process is not required and only a physical inspection regarding their physical characteristics is required, may be inspected using this method. On receipt of goods at stores, the storekeeper should immediately notify the officer nominated for inspection, requesting to schedule an inspection. The inspecting officer should then fix a date for inspection.

The consignee has the right to reject the goods on receipt during the final inspection on delivery even though the goods have already been inspected and cleared at the pre-dispatch stage by Procuring Entity's inspector. However, such rejection should be strictly within the contractual terms and conditions and no new condition should be adopted while rejecting the goods during final inspection.

Goods accepted by the purchaser at the initial and final inspections, in terms of the contract, shall in no way dilute the purchaser's right to reject them later, if found deficient in terms of the warranty clause of the contract.

In case of rejection of goods at this stage, the material rejection advice/rejection memo should be issued. In case of pre-inspected goods, a joint inspection of the rejected lot of goods should be held with the pre-inspecting agency and firm. In case of failure of the firm to associate with a joint inspection, it should be held with the pre-inspecting agency.

In case of rejection of the pre-inspected supply of goods at the consignee end, the material rejection advice/rejection memo should be sent to all concerned, which is, the firm, purchaser, pre-inspecting agency, paying authority, associate bill paying authority, and so on, without fail. The concerned paying authority as per the contract and associate bill paying authority should note the rejection advice details in its recovery register for effecting recovery of payments made, as the case may be. In case of replacement supply against the rejected lot of goods, the process should remain exactly the same in terms of sequence of pre-inspection/inspection as laid down in the contract, prior to acceptance by the consignee. In case of acceptance of the replacement supply/rejected supply after rectification, the

earlier issued material rejection advice/ rejection memo should be withdrawn under advice to all concerned.

iii) **Manufacturer's Quality Self-certification**

Reputed manufacturers could be relied upon with respect to certain goods for quality products. These may not be subjected to physical inspection and the materials may be accepted under the firm's quality self-certification. The physical inspection clause stipulating the inspection authority and inspecting officer in such cases should not be included in the contracts entered into. Waiver of pre-dispatch inspection and acceptance of materials under the firm's quality self-certification may be considered where:

- a) The user Departments indicate, in their indent, that physical inspection is not necessary and that the materials can be accepted on the firm's quality self-certification;
- b) The user Department requests for a waiver of inspection to meet urgent requirement and where the firm is agreeable to 100 (hundred) per cent payment against the consignee's receipt and acceptance. In such cases, the user Departments themselves should be responsible for ensuring the quality of goods supplied;
- c) In case of goods to be imported from abroad, pre-dispatch inspection of goods at the supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-dispatch inspection by its own inspector with manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, and so on, should also be kept in view and appropriate decision taken. For checking the reputation and background of the supplier, the purchase organisation may also request the Indian embassy located in that country for a report on the technical and financial competence of the firm. Further, trustworthy publications such as Thomas Register, Dun and Brad Street Register, and so on, are also available in the USA and Europe which provide authentic technical and financial data and details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose; and

- d) However, the right of waiver of inspection may be reserved only for specific requirements. Justification for the waiver should be recorded. Also, a suitable clause may be incorporated in the conditions of contract.

iv) **Inspection on Installation and Commissioning**

This method is adopted to check the performance and output of equipment or machinery after it is commissioned and operational at site.

9.12.3 Types of Inspection Agencies

Normally, inspection modalities or agencies for inspections specified in the contract should not be changed. In rare cases, when this becomes inescapable, it should be done with the approval of the CA, justifying the rare circumstances, ensuring that no undue benefit accrues to the contractor.

i) **Internal Inspection Authorities**

Wherever there is technical expertise available in-house, an internal officer of the Indenting Department is nominated for inspection. The consignee should be the final authority for acceptance of goods.

ii) **External Inspecting Authorities**

In case Procuring Entity does not have technical expertise or for other relevant reasons, inspection may also be entrusted to a third-party inspection authority. The procuring entity, however, retains the right to reject the consignment, even if it is cleared by third party inspection authorities.

Sometimes, it becomes necessary to conduct a type test, acceptance test or special test at external laboratories, when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. The Procuring Entity should draw up a list of approved laboratories for this purpose, to which the samples drawn from the lots offered by the supplier can be sent for tests. The list should also contain approved laboratories, which can be used as referral/appellate laboratories for retest, when samples tested at one laboratory are decided to be re-tested. The following guidelines should apply to such cases:

- a) External testing may invariably be done by national accredited or reliable laboratories, preference being given to National Test House (NTH). For testing the samples drawn from the lots offered by the supplier, an inspection agent qualified to conduct random sampling in accordance with Quality Assurance requirements should do the selection of samples;
- b) Test reports must contain the values obtained in the tests besides fail/pass results. The laboratory must preserve the sample and test records for a period of three years;
- c) The Department should lay down a liability statement for costs expended on tests, dispatch of samples, transportation costs, test charges, and so on., in respect of samples tested at outside laboratories as may be applicable; and
- d) In cases where the samples are to be tested at the supplier's cost because of non-availability of his own testing arrangements, the responsibility of depositing the testing fees would rest with the supplier.
- e) Normally unless otherwise intended in the contract, charges of routine testing prior to dispatch of materials are to be borne by the supplier and charges of testing of materials after receipt by consignee are to be borne by the procuring agency. Contract should be clear about responsibility of cost of materials expended in tests and charges of special tests e.g. type test or tests at external labs. Even where procuring entity is responsible for testing charges, if the material fails in the test, the charges would become the responsibility of the seller.

iii) Joint Inspection on Complaint

In case a written complaint is received from the supplier disputing the rejection of goods by the Procuring Entity's inspecting officer, it should be jointly investigated by a team consisting of an authorised representative of the Procuring Entity, a senior representative of the inspecting agency who is conversant with the goods and an authorised representative of the supplier.

9.12.4 Issue of Inspection Report

After satisfactory inspection and tests, the acceptable goods shall be stamped, labelled, marked or sealed, in such a way as to make subsequent identification and tally with the inspection report of accepted lots easy for the consignee/user. The following guidelines should be used for inspection reports to be issued:

- i) Each inspecting officer shall be supplied with acceptance stamps, lead seals, pliers, rubber stamps, stencils, labels, stickers, holograms, and so on, according to requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safekeeping of these articles and shall ensure that they are not misused by unauthorised persons. Unserviceable seals, pliers, stamps, stickers, holograms, and so on, shall be returned to the concerned issuing official. The procuring entity shall lay down detailed guidelines covering all these aspects. For reasons of security and to avoid irregular or incorrect issue, inspection notebooks should be machine numbered and, wherever possible, different coloured copies marked for each user. An account of the inspection notes issued with serial number-wise details shall be maintained in an appropriate register. Procuring Entity should also develop a fool proof system to avoid any fraudulent and unauthorised use of the inspection notes;
- ii) There should not be any initial provisional acceptance at a lower level. A time limit shall be fixed for the issue of inspection documents. The inspection note shall also indicate the validity period, by which period the supplier must dispatch the accepted goods to the consignee in terms of the contract. The number of copies of the inspection notes and their distribution for different types of inspections will be as prescribed by the procuring entity/indenter Department;
- iii) Inspection reports should be prepared detailing the inspection done, samples examined, requirements as per the relevant specification/contract and the observations jointly with the representative of the firm. Each inspection note copy issued should invariably bear the individual's name, stamp along with his designation and code number of the officer authorised to sign and issue inspection documents. Facsimiles of the inspection stamps and their position should be put on the inspected material to help identify the inspected goods at the consignee's end. Inspection note copies meant for payments should be

attested with full signature in ink by the inspecting officer. The Accounts Department will make payments only against copies so attested, not against any other copy. Corrections, if any, on the inspection note should be duly authenticated by the officer issuing it. Similarly, each continuation sheet, if attached to the inspection note, should be signed by the inspecting officer at the relevant places and any correction duly authenticated;

- iv) Departmental instructions should invariably prescribe that paying authorities will keep a record of specimen signatures of authorised inspecting authorities for verification with the signature in the inspection note while authorising payment;
- v) A separate inspection report must be prepared for each consignment. In the case of large consignments, the issue of the inspection report may not be held up until the inspection of the full consignment is completed. These must be issued for lots inspected every day or every two days. If the contract is in terms of 'sets' or 'number' and materials are such that they comprise a number of components or accessories, the inspection report should be issued only when all parts, components and accessories forming a set are inspected and accepted. When plant and equipment are ordered with spares, the inspection report for spares should not be issued before acceptance of the main equipment. In the case of contracts for imported materials that involve initial inspection in the country of origin and final inspection in India, the final inspection note should be issued giving reference of the certificate issued abroad;
- vi) In respect of materials which have been rejected by the inspecting officer, the rejection inspection report should be issued immediately following the completion of inspection. In case of total rejections, no copies meant for payments or the accounts office should be issued. All the reasons for rejection and deviations against the governing specifications, drawings or other particulars should invariably be noted in detail in the "remarks" column of the rejection inspection note. The rejected material should be given a yellow paint mark to avoid it being submitted again for inspection or supplied to other customers. Such copies should be cancelled across by the inspecting officer

with his signature and retained in the inspection file along with the office copy of the rejection inspection note; and

- vii) No 'certified true copy' of the lost original payment copies should be issued until a 'non-payment certificate' has been received from the accounts officer concerned or stating that payment has not been made and should not be made against the original inspection report even if received subsequently. This copy must be endorsed as "certified copy". This endorsement should be attested in full in indelible ink by the officer proving a cross reference to the accounts officer's non-payment certificate with the name stamp with the designation and code number of the officer issuing the duplicate copy.

9.12.6 Material put up for Inspection towards the End of Delivery

As far as possible, the inspection should be commenced and finished and the inspection report issued during the validity period of the contract. In cases where the supplier offers materials for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the inspecting officer to commence the inspection before the expiry of the delivery period.

In cases where it is not possible to commence or conclude the inspection before the expiry of the delivery period, the inspecting officer should, immediately, on receipt of the intimation or request for inspection of the materials, bring this to the notice of the supplier orally as well as in writing. He must mention that the materials have been submitted for inspection at a very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.

The supplier should also be informed that the goods offered for inspection should, however, be inspected until the completion of the inspection which can be after the expiry of the delivery period and that such an inspection continuing after the expiry of the delivery period is neither intended nor to be construed as condoning the delay or keeping the contract alive.

In such cases, the inspection note, whether accepting or rejecting the goods, should be duly franked as per the franking clause given below:

9.12.7 Franking Clause on Acceptance and Rejection

"The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. The goods are being passed/ rejected without prejudice to the rights of the Government of India under the terms and conditions of the contract."

This clause may also be incorporated in conditions of the contract.

9.12.8 Approval of Acceptable Deviations

Under no circumstances will the inspecting officer have the authority to modify the governing specifications, approved drawings or samples during inspection without reference to the CA that approved the tender. For all cases of acceptance with deviation, the nature of deviation along with a justification for acceptance against such deviation should be duly documented. The CA that approved the tender should have the final decision on deviations.

Deviations from the contract specifications or requirements not affecting price, quality, performance and other terms of the contract may be allowed at the level of the CA in consultation with the user Department on merits or nature of deviations.

In all other cases, the goods should be rejected giving all reasons by issuing a rejection inspection report. Rejections should not be made in a piecemeal manner.

9.13 Storage and Issue of Inspected Goods

After satisfactory inspection and tests, the accepted materials should be stamped, labelled, marked, or sealed and stored in a systematic manner. This is to facilitate easy retrieval at a later stage. As all goods needed or procured cannot be consumed at one point of time, storage is an inevitable process. The storage system forms the key component of any materials management system. It should be ensured that the goods are stored in such conditions that they are protected against unauthorised removal and deterioration.

9.14 Accounting and Payment of Received Materials

9.14.1 Goods Receipt and Inspection Report

If the received material successfully passes the quantity and quality checks, accounting of material received shall be on the basis of the Goods Receipt and Inspection Report (GRIR) (Annexure 22) prepared after inspection and acceptance of the material which will be signed by the concerned officers. This includes cases

where payment is made to the supplier on proof of dispatch, for which inspection at the suppliers' premises is conducted by an authorised officer of Procuring Entity prior to dispatch by suppliers. This excludes cases of imported materials where accounting will be done on completion of certain further formalities as per regulations and practices. While preliminary receipt is only an acknowledgement of quantity received, GRIR is an acknowledgement of receipt of the correct quantity as well as quality of goods. GRIR is a voucher which forms the basis for the supplier to claim payment as per the contract. It also is a voucher for accountal of the received material in the inventory accounts. Along with the GRIR, material is handed over to the warehouse where it is to be stored.

In case the received material fails to pass quantity and quality checks, a rejection GRIR is issued, noting the reasons for rejection. If feasible, a yellow paint mark should be put on the rejected material to prevent its resubmission by the supplier. The associated Finance/ FA should be asked to recover any advance payment or freight charges paid for the rejected quantity. The rejection GRIR contains instructions for the supplier to take back the rejected goods within a stipulated number of days (usually 21). Such removal should be permitted only after the advance payment/freight paid is recovered. Lots that are under inspection, accepted, or rejected should be properly tagged, segregated and identified.

9.14.2 Passing of Supplier's Bills

After the GRIR is issued, the invoice is received from the supplier, supported by relevant documents evidencing award of purchase orders/contracts and receipt of materials/services. Based on contractual terms where payments are made based on proof of dispatch against a purchase order, bills shall be passed and accounted based on the GRIR of approved materials. The invoice submitted by the supplier will be verified and signed by the indenting officer, and pay order form (Annexure 23) or any other relevant forms will be prepared by the procuring entity and signed by an officer authorised to sign pay-orders. All correspondence with the supplier will be handled by procuring entity Department.

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

In case of part supply, the payment will be released by deducting 10 (ten) per cent of the bill value which will be released once the entire supply is made. Deduction of applicable taxes at source from payments to suppliers will be done as per the existing law in force during the currency of the contract.

9.15 Contract Management - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
Advance payments: This is an area of risk in public procurement with undue and unintended benefits to the contractor, which vitiates the original selection criteria.	Any mobilisation or other advance payments should be interest bearing and should be only for justifiable cases. Terms of such advances should be expressly stated in the NIT/bid documents. The advance payment may be released in not less than two stages depending upon the progress of the contract. Advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.
Contract changes and renegotiations: This is also a risk area, where the procuring entity may not get what it contracted and paid for or may pay for what it has not received. On the other hand, the contractor may not get timely or proper amendments due to changes asked by the procuring entities.	Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiate the basis of the selection of the contractor. It should not give undue or unintended benefits to the contractor. However, for any changes caused by the procuring entity, the contractor should be adequately and timely compensated within the contractual terms.
Supervising agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment and characteristics go unnoticed.	A contract management manual or operating procedure should be prepared for large value contracts. There should be inbuilt systems of checks and balances.
Contractor's claims are false or inaccurate and are protected by that in-charge of revising them.	All large contracts should be formally reconciled for closure to ensure that the scope of the work and warranty/defect

9.15 Contract Management - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Payment to the contractor is delayed intentionally or otherwise.	liability period is completed. This should include the dispute resolution forum for resolving disputes in a fixed timeframe with provision of escalation level.
Contractor gets final payment , but contract closure has not been formally done. As a result material/assets loaned to him are not accounted for.	All payments/recoveries should also be reconciled. It should also be ensured that material/assets loaned to him including security passes are accounted for.
Every dispute lands up in arbitration or court cases, since the procuring entity is reluctant to grant compensation for its own lapses to the contractor.	
Agents/ Sub-contractors and partners, chosen in a non-transparent way, are unaccountable or are used to channel bribes.	Agents should only be as per the terms of the contract. Sub- contracting of the contract should normally not be allowed in procurement of goods.