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 +/- seven per cent cumulative in any calendar quarter; or +/- 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/coll ect 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.
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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:
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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
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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 conciliation. 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 2015 and 2021]. 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 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.

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79 As 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

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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 entity\textsuperscript{82}.

\textsuperscript{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
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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.]

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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 transhipment 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
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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 win 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/ vendors\textsuperscript{84}.

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

\textsuperscript{84} Notified vide OM No.F.11/13/2017-PPD 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
Manual for Procurement of Goods

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
Chapter 9: Contract Management

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
Chapter 9: Contract Management

“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
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

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<th>Risk</th>
<th>Mitigation</th>
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<td><strong>Advance payments</strong>: This is an area of risk in public procurement with undue and unintended benefits to the contractor, which vitiates the original selection criteria.</td>
<td>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.</td>
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<td><strong>Contract changes and renegotiations</strong>: 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.</td>
<td>Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiates 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.</td>
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<td><strong>Supervising</strong> agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment and characteristics go unnoticed.</td>
<td>A contract management manual or operating procedure should be prepared for large value contracts. There should be inbuilt systems of checks and balances.</td>
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<td><strong>Contractor’s claims</strong> are false or inaccurate and are protected by that in-charge of revising them.</td>
<td>All large contracts should be formally reconciled for closure to ensure that the scope of the work and warranty/defect</td>
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### 9.15 Contract Management - Risks and Mitigations

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<th>Risk</th>
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<td>Payment to the contractor is delayed intentionally or otherwise.</td>
<td>liability period is completed. This should include the dispute resolution forum for resolving disputes in a fixed timeframe with provision of escalation level. All payments/recoveries should also be reconciled. It should also be ensured that material/assets loaned to him including security passes are accounted for.</td>
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<tr>
<td>Contractor gets final payment, but contract closure has not been formally done. As a result material/ assets loaned to him are not accounted for.</td>
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<td>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.</td>
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<tr>
<td>Agents/ Sub-contractors and partners, chosen in a non-transparent way, are unaccountable or are used to channel bribes.</td>
<td>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.</td>
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Chapter 10: Disposal of Scrap Goods

10.1 Scrap for Disposal
There accumulates, in every organisation, a large quantity of material which is neither usable for the purpose for which it was originally procured nor of any other operational value. Such material is generally called "scrap" and should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the organisation or its sister organisations and may command a fair price in the market not normally associated with scrap.

10.2 Classification and Categorisation
It is very important to categorise the scrapped items under different trade groups based on the use to which the scrap purchaser can put it for commercial use, for example, melting, re-rolling, burning, recycling, and so on. Properly grouped and sorted scrap is likely to attract better value and help in keeping historical data of prices and facilitates fixing of reserve prices.

10.3 Survey of Materials for Classifying as Scrap for Disposal
10.3.1 Competent Authority to declare and dispose off Scrap Material may be laid down in the SoPP, based on the 'Book Value' or 5% (five percent) of the Original/Market Value of new goods, if Book value is either not available or has become negligible. Before any item of stores can be sold as 'scrap', it should be declared as such by the Survey Committee (SC) appointed by the Head of Office and the sanction of the CA obtained for such a sale. The CA may relax this need for survey by SC, as a standing order, in the case of a list of known items of scrap like Newspapers, containers etc. of small value (Rs. 5,000 – Rupees Five Thousand). Lots of small value may also not require to be condemned by SC, on which the Head of Office may be given powers to declare such materials as scrap without survey committee. However, this dispensation is subject to furnishing of a certificate by the concerned Departmental officer as laid down in the SoPP that the items
being offered have been inspected by him personally and found unserviceable and unfit for any further use.

10.3.2 **Survey of Scrap**: Generally, items may be identified as scrap in any of the following cases:

i) Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost; norms for utilisation of such equipment; usability in the organisation or any other office must also be considered before deciding on scrapping the equipment; and

ii) The item has a limited shelf life, exists in surplus quantities and there is likely to be no future use of the item during the remaining period of its useful life.

iii) The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the SC. A standard format for SC’s recommendations for disposal of goods is provided in Annexure 24.

iv) SC may seek the approval of the CA with the concurrence of the Associated/ integrated Finance.

10.4 **Modes of Disposal**

The mode of disposal may be determined by the CA, keeping in view the necessity to avoid accumulation of such goods, consequent blockage of space and also deterioration in valueof goods to be disposed of. The usual modes of disposal of scrap are:

i) Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of Rs. 5,000 (Rupees Five thousand) in each case may be sold directly to the local scrap dealers on a summary quotation basis; and

ii) Scrap uptoRupees two Lakh may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category.

iii) Sale through the e-auction portal, ora tender for disposal or traditional public auction may be resorted to for scrap value above Rupeestwo lakh. E-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC, Indian Railways or any other appropriate portal;

iv) Certain useable machinery/ spare may still be useable by other Ministries/ Departments/ PSUs; these should be disposed at book value plus 20 (twenty)
per cent (7.5 (seven and a half) per cent freight +12.5 (twelve and a half) per cent handling charges) directly to the concerned organisation.

v) **Sales by Submission of Tenders:** Disposal may also be done by submitting bids in response to public invitations for tenders for supplying materials, whether such invitations are issued by Government Departments, PSUs or by private bodies. This method of sale is particularly suitable where it is proposed to dispose of its 'overstocks' and surplus stores' which are in fit to use condition.

vi) Scrap which is a security or safety risk (stamps, negotiable instruments, money value documents, security press items) may be destroyed suitably in an eco-friendly manner in accordance with guidelines of Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) in the presence of a committee after obtaining CA's approval. The committee should issue a certificate of having destroyed these. Video recording may also be done of such disposal.

vii) **Sale of hazardous waste items** would be governed by the following procedures in addition to guidelines/notifications issued by the Central Pollution Control Board (CPCB)/Ministry of Environment and Forests (MoEF) from time to time:

   a) Sale of old batteries/lead acid batteries will be governed by the Batteries (Management & Handling) Rules, 2001 or as amended from time to time;

   b) Sale of other categories of hazardous waste items will be governed by the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 or as amended from time to time;

   c) Sale of e-waste shall be governed by E-Waste (Management) Rules, 2016 or as amended from time to time;

   d) Bidders must submit a notarized copy of the valid registration certificates issued by the State (or Union Territory) Pollution Control Board (SPCB) and produce it at the time of taking delivery of the materials, failing which their bid will be liable for rejection. In case of lead acid batteries, used/waste oils and nonferrous metal wastes, in
addition to submitting necessary valid registration from the SPCB, the bidder must also submit a notarized copy of the valid registration certificate from CPCB (or MoEF); and
e) In case of a sale involving inter-state movement of goods, the buyer shall also submit an NOC from the concerned SPCB, with whom the buyer is registered, to the seller before taking delivery, failing which the buyer will be responsible for the consequences and the seller shall take further decision as may be deemed fit.

10.5 Preparation for Disposal
10.5.1 Scrap recommended for disposal should be segregated from other materials into an identifiable lot. It should be marked as such with a board, indicating the lot number and brief description. Valuable scrap such as non-ferrous metals should be secured in lockable rooms.

10.5.2 Determining Reserve Price
In any mode of disposal, material should not be sold at rates per lot but bids should be registered by rate per unit (number, length or weight) so that a complete check on the quantity delivered can be exercised, at any time. The Head of Office holding the stock may determine the reserve price with the concurrence of the Associated/ integrated Finance and approval of CA. In case of large value disposals a Reserve Price Committee may be appointed to recommend the reserve price. The use of external costing experts, price databases, price indices and data sharing may be done in the same manner as detailed in Chapter 2, para 2.1.1 (f) relating to the reasonableness for procurement prices. Large newspapers and economic dailies have dedicated sections dealing with rates in the scrap market. The reserve price should be recorded on a page numbered register in advance of the date of disposal. This register should be sealed immediately after the reserve prices of all lots are recorded in the register, and kept in safe custody. The sealed register should be opened just before the e-auction creation/tender opening. Some methods for determining reserve prices are:
i) Book value with depreciation. In case the Book value is not available or has become insignificant, the reserve price may be based on 5% of the Original or Market cost of the new item;

ii) Last sale price moderated by quantity, quality, location, market condition, price trend of various metals, and so on;

iii) Prevailing market price ascertained through a market survey; and

iv) Costing analysis based on costs of various elements of the item (discounted for melting losses) labour charges and transportation cost, etc.

v) In cases where the reserve price cannot be fixed as per the laid down procedure an Insurance Regulatory and Development Authority (IRDA)-approved valuer may be engaged for valuation of such material and the Reserve Price Committee will take into account the valuation given by the valuer while recommending the reserve price.

10.6 Conditions of Disposal Applicable to all Modes of Disposal

10.6.1 ‘As-Is-Where-Is’ basis

Notwithstanding anything contained in the e-auction or advertisement issued on the description and particulars of material for sale, the sale is on 'as-is-where-is' basis only and the principle of caveat emptor (let the buyer be aware) will apply. As is where is means that the description/quality/quantity indicated are approximate and the seller does not give any assurance or guarantee that the material will strictly adhere to the advertisement or e-auction. All items shall be taken delivery of from the site by the successful bidders, with its faults and errors in description, if any. Neither can the sale be invalidated nor the bidder make any claim/compensation, whatsoever, on account of any defect in description or deficiency in the quantity and quality. No plea of misunderstanding or ignorance of conditions put forth subsequent to a confirmation of sale shall be accepted.

10.6.2 Inspection by Bidders

In view of the ‘as-is-where-is’ condition, bidders are advised to quote rates only after inspection of items at the site. The bidder or his authorised representative may inspect the materials as per the inspection schedule mentioned in the auction details, between 11 am to 4 pm (excluding lunch hours) on any working day at the location
specified against each lot with the prior permission from the contact person, as given in the auction details. The detailed description of all lots, including the list of spare parts, if any, is available at the site.

10.6.3 **Right to Reject all Bids**
The seller reserves the right to accept/reject and cancel any bid, amend the quantity under any lot or withdraw any lot at any stage before or after acceptance of bid/issue of acceptance letter/sale order/delivery order/deposit of the full sale value by the bidder, without assigning any reason thereof and the value of such material, if paid for, shall be refundable. The seller shall not be responsible for damage/loss to bidders on account of such withdrawal at any stage from the sale.

10.6.4 **Excise Duty and Taxes**
Any statutory variations in the rate of taxes/duties are to be borne by the purchaser. VAT/excise duty rates indicated in the e-auction catalogue or Tender advertisement are only indicative and the actual VAT rates as applicable on the date shall be payable by the successful bidders directly to the seller at the time of taking delivery of materials. Form ‘C’ will be accepted. In order to avoid the imposition of penalty, the amount deposited by the successful bidder towards taxes and duties will be immediately deposited with the concerned tax authorities without waiting for the actual delivery.

**10.7 Disposal through Tender**
Disposal through tender could take place through the e-procurement portal or normal tendering. In the bidding documents, General Conditions of Sale (GCS, in place of GCC in procurement tenders) may be laid out.

The broad steps to be adopted for this purpose are:

1. Preparation of bidding documents;
2. Invitation of tender for the surplus goods to be sold;
3. Opening of bids;
4. Analysis and evaluation of bids received;
5. Selection of the highest responsive bidder;
6. Collection of sale value from the selected bidder;
7. Issue of sale release order to the selected bidder;
viii) Release of the sold surplus goods to the selected bidder; and
ix) Return of bid security to the unsuccessful bidders.
x) Any special conditions of contract for each lot may also be given. Important aspects to be kept in view while disposing the goods through an advertised tender are:

a) The basic principle for sale of such goods through an advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold;

b) All required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. The applicability of taxes, as relevant, should be clearly stated in the document. The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding;

c) Bidders should be asked to furnish bid security (EMD) along with their bids. The amount of bid security should ordinarily be five per cent of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the bidding document. The EMD shall be forfeited if the tenderer unilaterally withdraws, amends, impairs or derogates from his offer in any respect within the period of validity of his offer;

d) Late bids, that is, bids received after the specified date and time of receipt should not to be considered;

e) The bid of the highest acceptable responsive bidder should normally be accepted and an acceptance/sale order be issued. However, if the price offered by that bidder is not acceptable, a negotiation may be held only with that bidder;

f) In case the selected bidder does not show interest in depositing the balance sale value or in lifting the goods, the bid security should be forfeited and other actions initiated including resale of the goods in question at the risk and cost of the defaulter;

g) In case the total quantity to be disposed cannot be taken up by the highest acceptable bidder, the remaining quantity may be offered to the
next higher bidder(s) at the price offered by the highest acceptable bidder. The minimum quantity to be accepted shall be indicated in the tender;

h) If the tenderer’s offer is not accepted, the tenderer’s EMD shall be refunded to him. No interest shall be payable on such refunds. The EMD deposited by the successful tenderer shall remain with the disposing Department till payment of the SD money has been made. It may be adjusted as part of the total SD money at the discretion of disposing Department;

i) The offer should be examined by the competent level of Tender Committee as per SoPP and TC recommendations should be accepted by the Competent Authority as per the laid down SoPP;

j) The acceptance letter/sale order would be issued to the successful bidder(s) notifying the amounts and schedule of submission of SD and Balance Sale Value (BSV);

k) Successful tenderers, herein after referred to as purchasers, shall have to submit a SD @ 25 (twenty-five) per cent of the total sale value of the contract within seven calendar days of the issue of the acceptance letter/sale order (excluding the date of issue). The SD shall be deposited in the form of bank draft/pay order, drawn on any of the commercial bank in favour of officer concerned as mentioned in the NIT;

l) BSV: The successful bidder in an e-auction or tender sale may be allowed 15 (fifteen) calendar days (including the date of acceptance letter/sale order) for payment of BSV. The Head of Office (or the Officer delegated by an order as per SoPP) after taking into consideration the prevailing market rates and trends, may grant an extension of time for the payment of BSV with late payment charges @ one per cent per week or part thereof up to two weeks only and, thereafter, the SD will stand forfeited without notice. Extensions should not be granted as a matter of routine. The date of submission of the demand draft in the cash office is the date of payment for all purposes. No interest will be paid to the purchaser for the amounts paid or deposited and
subsequently found refundable to the purchaser under any of the conditions of the contract; and;
m) Delivery Order: Delivery Order is an essential document required to be produced to take delivery of the material from the custodian and therefore after depositing BSV, the Delivery Order should be issued and the delivery should be made to purchaser or his agent on the strength of the Delivery Order and after verifying cashier’s receipt.

10.8 Disposal through Auction

i) A ministry or Department may undertake auction of goods to be disposed of either directly or through approved auctioneers;

ii) The basic principles to be followed here are similar to those applicable for disposal through the advertised tender so as to ensure transparency, competition, fairness and elimination of discretion. The auction plan including details of the goods to be auctioned and their location, applicable terms and conditions of the sale, and so on, should be given wide publicity in the same manner as is done in case of the advertised tender;

iii) While starting the auction process, the condition and location of the goods to be auctioned, applicable terms and conditions of sale, and so on, (as already indicated earlier while giving wide publicity to it), should be announced again for the benefit of the assembled bidders;

iv) During the auction process, acceptance or rejection of a bid should be announced immediately on the stroke of the hammer. If a bid is accepted, SD (not less than 25 (twenty-five) per cent of the bid value) should immediately be taken on the spot from the successful bidder either in cash or in the form of deposit-at-call-receipt, drawn in favour of the FA of the disposing organisation. The goods should be handed over to the successful bidder only after receiving the balance payment as in case of sale through tenders;

v) The composition of the auction team will be decided by the CA. The team should preferably include an officer of the internal finance wing of the Department and a representative of security staff.

10.9 Disposal at scrap value or by other modes
If a ministry or Department is unable to sell any surplus or obsolete or unserviceable item at the reserve price, in spite of its attempts through an advertised tender or auction, it may dispose it off at its scrap value with the approval of the CA in consultation with the Associated/ integrated Finance. In case the ministry or Department is unable to sell the item even at its scrap value, it may adopt any other mode of disposal including destruction of the item in an eco-friendly manner.

10.10 Delivery of Sold Material

10.10.1 Free Delivery Time and Ground Rent

Delivery has to be taken within 30 (thirty) calendar days (called free delivery period) from the date of the acceptance letter/sale order (excluding the date of issue of acceptance letter/sale order). The delivery of material will be given only after realisation of the demand draft/pay order. If the purchaser is not able to lift the material within the free delivery period, he may request for an extension. Such extensions are generally granted after levying a ground rent @ 1/2 (half) per cent of the sale value per day. But, in some genuine cases, the levy of ground rent may be waived. An accounts representative will be responsible for seeing that when the ground rent has become due, it is recovered by the stock-holder before delivery of the stores. The amount realised as ground rent should be noted in the issue note by the stock holder and certified by the stock verifier. The stock-holder will be responsible for remitting the cash to the cashier and obtaining a receipt.

10.10.2 All Risks to the Buyer

The items shall remain, in every aspect, at the risk of the buyer from the time of acceptance of his offer. The seller will not undertake any liability whatsoever for the safe custody, protection or preservation after the sale has been confirmed. Lots are put up for sale, subject to change by nature’s wear and tear. No complaint regarding the quality or description of the materials sold will be entertained once the bid has been accepted.

10.10.3 Terms of Delivery

No picking, choosing, sorting, welding, cutting or breaking of goods or materials sold will be permitted unless otherwise specified. In used/waste oil, separation of oil and water, and so on, shall not be allowed at the site. If these actions are allowed, there
is possibility of leakages. In mixed lots, the buyer may take undue advantage by leaving cheaper components behind. If whole machinery is sold and cutting and breaking is allowed, it would be difficult to ensure that the purchaser is taking out only his own cut material and not other unsold material or from other scrap lots. If any foreign materials are found to be mixed in the lot, other than the items included in the auction catalogue and acceptance letter/sale order, the seller reserves the right to remove them at the time of delivery. The buyer shall not be entitled to re-sell an item, lot or part of a lot while the goods are still lying within the premises of the seller and any such sale or assignment of the buyer’s right to the material sold in an auction will not be recognised. All documents for releasing materials will be made out in the name of the buyer only.

The material will be delivered only to the successful bidder or his authorised representatives against the presentation of the buyer’s identity proof. If the successful bidder desires to authorise a representative or an agent to accept delivery, the bidder shall produce a suitable power of attorney or authorisation letter for each lot separately, duly attested, by a notary public authorising his representative or agent to lift the material from the seller.

10.10.4 Default by Seller

The seller will not be, in any way, responsible for failure to deliver the material due to causes beyond his control such as a strike, lockout, cessation of work by labourers, shortened hours, act of God or other causes or other contingencies whatsoever. The buyer shall not be entitled to cancel the contract and the period of delivery shall automatically be extended proportionately.

10.10.5 Default by Buyer

Materials sold but not removed within the specified date will become the property of the seller and it will have the right to dispose of such goods in any manner as he deems fit without any notice.

10.10.6 Witnessing Delivery

All materials sold shall be weighed or counted before delivery, this being supervised by the:

i) Stock-holder’s representative;
ii) Accounts representative – stock-verifier;

iii) Representative of the security force of a rank not less than constable; and

iv) Representative of the purchaser (if he wants to be present).

10.10.7 **Deliveries of Scrap**

At the time of delivery of scrap material to the purchaser, the weighment is to be done in the presence of the stockholder’s representative, so nominated by the Head of Office. The stockholder’s representative and accounts representative will sign a joint statement indicating the type of scrap, name of the party to whom scrap is delivered and quantity as per the weighment slip. The stock-holder should arrange for the deliveries to be affected according to the agreement and terms and conditions of sale. He should take every possible step to expedite delivery of the auctioned materials. The stock verifier should count, measure or weigh each lot or part of a lot after comparison of the description and quantity shown in the sold lot to ensure that only such kinds and quantities of materials as have been shown in the sold lot are being issued; he should sign the gate passes and issue notes in token of such a check. In giving delivery of scrap of non-ferrous items, the material should be weighed on electronic weighing scales and the weight of each consignment should be recorded in detail by the stock verifier in his field book. All deliveries should be done through Electronic Weigh Bridges. All the Weigh Bridges should have valid certificate from Weight & Measurement Department of the State Government. He should sign the issue note after fully satisfying himself that entries made therein agree with those in the field book. The field book should be attested by the other representatives making delivery of the goods in token of their having accepted the correctness thereof.

The empty and loaded trucks or carts should be weighed and particulars of the gate pass issued recorded. The issue note and gate pass should be countersigned by the stock verifier.

The loading of the sold materials should be done under the supervision of the stockholder and be witnessed by other representatives. The stock-holder will be responsible for realising the loading charges, if any, from the purchaser.

10.10.8 **Variation in Available Quantity**
At the time of delivery, the actual quantity may vary from the quantity mentioned in the delivery order. In case of excess available material, the seller reserves the right to retain material in excess of quantity in the lot at its discretion. The purchaser may be allowed to lift the additional quantity after making the requisite additional payment to the seller.

If the quantity in a lot on actual weighment or count is less than the announced quantity, the seller will not make good the deficiency under any circumstances. The purchaser thereof will be entitled to obtain a refund for the undelivered quantity at the quoted rate. No interest will be paid on the amount of short delivered quantity. The reasons for shortfall should be recorded by the stock-holder and the Head of Office (or any other officer as per SoPP) should also record his opinion. Any refund in this regard will be made with the Head of Office’s (or any other officer as per SoPP) recommendation, the Associated/ integrated Finance’s concurrence and CA’ approval. Copies of the weighment slip will be the base for determining the refund amount. It may be necessary to look into the ledgers for the total quantity held by the stock-holder and particularly so in the case of non-ferrous scrap; the item concerned may have to be processed for special stock verification. In case of a short delivery of the material, the refund of taxes will be the responsibility of the successful bidder only.

10.10.9 Conclusion of Delivery

The seller’s responsibility ends after the consignment has been loaded and handed over to the representative of the purchasers. The seller will be no party to any dispute that may arise after the loading has been completed. At the conclusion of the delivery of the lot or lots, pertaining to the item of scrap, any stock, left over should be verified by the Accounts Department with the book balance and any discrepancies adjusted. Such “left over” stock may be transferred to fresh scrap of similar description. At the conclusion, a report of sale account of goods disposed has to be submitted to the CA and FA, to show that only the material paid for (and nothing else) has been disposed of and that all payments due (and nothing less) have been credited to the relevant accounts. A format of the report is shown in Annexure 25.
10.11 Procedure for Adjustment of Sale Proceeds in the Books of Accounts

The following procedure may be followed for adjustment of sale proceeds in the books of accounts:

a) If the realised price is more than the book value, the sale proceeds should first be applied towards the ‘head of account’ in which the book value is lying, and the remaining portion should be treated as “profit on sale of capital asset”; and

b) If the realised price is less than the book value, it should be apportioned in the ratio of the reserve price of the equipment and that of the spares. In this case, the CA’s sanction to write off the difference between the book value and the realised price would be necessary.
Annexures
## Annexure 1: Procurement Guidelines

(Refer Para 1.1)

| Hierarchy Level | 
|-----------------|--------------------------------------------------|
| **I – Statutory Framework** | The Constitution of India |
| | Indian Contract Act, 1872; Sale of Goods Act, 1930 and Mercantile Laws |
| | Laws relevant to Public Procurement (Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988) |
| | Delegation of Financial Power Rules |
| | Any other financial, vigilance, security, safety, counter- trade and other regulatory aspects; orders and guidelines of the Government on the subject of Public Procurement |
| **IV – Procuring Entities’ Codes/ Manuals and Standard Bidding Documents** | More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by ‘Procuring Entities’ for their own use |
| | Standard Bidding Documents for Procurement of Goods/ Works/ Consultancy Services etc. |

**Remarks:** The documents at Hierarchy Levels I and II above are of fundamental and generic nature. Documents at lower levels of hierarchy must conform to the Documents higher up in hierarchy. Relationships of Bidders /Suppliers / contractors /service providers with procuring entities are solely governed by the law of the land and the relevant bid/ contract/registration document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standi in such relationships.

(Excerpts from DFPR, 1978, Refer Para 1.4.1)

<table>
<thead>
<tr>
<th>DFPR Rule 21 of the Delegation of Financial Power Rules, 1978**</th>
<th>DFPR Rule 21(a) Minister in Charge of the Department</th>
<th>DFPR Rule 21 (b) Secretary of the Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>For open or limited tender contracts</td>
<td>Full Powers</td>
<td>Rs. 20 crore@@</td>
</tr>
<tr>
<td>For single tender including resultant single offer or proprietary contracts</td>
<td></td>
<td>Rs. Five crore</td>
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<tr>
<td>For agreements or contracts for technical collaboration and consultancy services</td>
<td></td>
<td>Rs. Two crore</td>
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</tbody>
</table>

** DoE, Ministry of Finance No.F.1(17)-E.II(A)86-No.F.1(15)-E.II(A)88 Dated: 16th September, 2003

@@ Secretary, D/o Commerce would have powers to approve rate contracts of DGS&D of value upto Rs.100 (Rupees hundred) crore in each case (DoE, Ministry of Finance No.1 (5)/E.II(A)/2009 Dated: the 24th December, 2009)

Notwithstanding anything as above, in cases where the award of contract or purchase or consultancy is inseparably linked with the project or scheme and forms a part of the proposals for Standing Finance Committee (SFC) or Committee on Non-Plan Expenditure (CNE) or Expenditure Finance Committee (EFC) or Cabinet, the same will be processed as per the financial limits laid down for sanction of such schemes or projects by the Competent Authority.

Explanation-In this rule, the word "contract" includes miscellaneous contracts, such as handling contracts and leases. Leases for hiring accommodation for office, residential and other purposes shall, however, be regulated under item 16 of the Annexure to Schedule V. If a contract extends over a period of time, the total value over the entire period of currency shall be taken for the purpose of applying the limit. Further a limited or open tender which results in only one effective offer shall also be treated as a single tender contract."
Annexure 2B: Powers for Incurring Contingent Expenditure

(Excerpts from DFPR Rule 13 (3), Schedule V, Refer Para 1.4.1)

<table>
<thead>
<tr>
<th>Authority (1)</th>
<th>Extent of power¥&amp; (2)</th>
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<tbody>
<tr>
<td></td>
<td>Recurring</td>
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<tr>
<td>Departments of the Central</td>
<td></td>
</tr>
<tr>
<td>Government: (i) Vice-President's</td>
<td>Full powers</td>
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<tr>
<td>Secretariat.</td>
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<tr>
<td>(ii) Other Departments</td>
<td>Full powers</td>
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<tr>
<td>Administrators</td>
<td>Full powers</td>
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<tr>
<td>Heads of Department</td>
<td>¥¥The Departments of</td>
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<td></td>
<td>the Central Government</td>
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<td>shall, in consultation</td>
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<td>with the Financial</td>
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<td>Adviser of the</td>
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<td>Department concerned,</td>
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<td>have full powers for</td>
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<td>deciding the financial</td>
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<td>limit up to which they</td>
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<td>can delegate powers</td>
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<td></td>
<td>to Heads of Departments</td>
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<td>and also to what extent</td>
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<td>these powers may be</td>
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<td>exercised by such</td>
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<td></td>
<td>HODs without consultation with FA of the Department.</td>
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<tr>
<td>Heads of Offices other than</td>
<td>Rs. 1000 per month in each case</td>
</tr>
<tr>
<td>Under Secretaries</td>
<td></td>
</tr>
<tr>
<td>Under Secretaries in the</td>
<td>Rs. 2000 per month in each case</td>
</tr>
<tr>
<td>Departments of the Central</td>
<td></td>
</tr>
<tr>
<td>Government declared as Heads of</td>
<td></td>
</tr>
<tr>
<td>Offices.</td>
<td></td>
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</tbody>
</table>

& Expenditure on indents, Contracts and Purchases is included under contingent expenditure (except where it is treated otherwise, e.g., stores relating to works).


Explanation The powers delegated to the Departments of the Central Government are to be exercised by the issue of formal sanctions in the name of the President, such sanctions being authenticated by the officers authorised to do so under Article 77 of the Constitution.

The Under Secretaries in the Departments of the Central Government who are declared as Heads of Offices under Rule 14 of DFPR may sanction contingent expenditure up to the extent indicated in the Table above without issuing formal sanctions in the name of the President.
Annexure 2C: Suggested Structure of Schedule of Procurement Powers (SoPP)

(Refer Para 1.4.1, 2.3 and 7.2)

A suggested structure of SoPP\textsuperscript{85} is given below. However individual threshold values (wherever not given in GFR/ DFPR) would depend on the respective circumstances of various Organisations.

| Indents initiation, approvals and Signing: Including formulation of Technical Specifications | Threshold Value in Rupees (Lakh) |
|---|---|---|---|---|---|
| Levels of Powers -
Level 1 is entry level and Level 5 is highest e.g. Secretary | Level-1 | Level-2 | Level-3 | Level-4 | Level-5 |
| Technical Approval | | | | | |
| Administrative, Budgetary Approval | | | | | |
| Initiation, Signing & Submission | | | | | |
| Approval and Signing of PAC | | | | | |
| Approval and Signing of Urgency Certificate for SLTE or for acceptance of Single offer received against LTE | | | | | |
| Approval & Justification for STE without PAC | | | | | |
| Approval for Floating of Tenders of Various Types including Selection of Mode of Procurement and Bidding System, Short List of Bidders for LTE/ SLTE, Bid Documents Preparations, including parameters of SBD and variation there-from in AITB, SCC, Eligibility/ Pre-Qualification Criteria, Decisions of Bid Cost, EMD/ PBG; Quantity, Slicing/ Packaging of requirements; non-standard payment terms, Advance Payment, Stage Payments, Proforma invoice payment, Exchange Rate Variations, Price Variations Clauses, LC payments etc | | | | | |
| OTE/ LTE/ PAC tenders as per Norms | | | | | |
| STE without PAC Tender | | | | | |
| GTE Tenders | | | | | |
| Single Stage Two Envelop System | | | | | |
| Prequalification Tender Two Stage or Single Stage three Envelops | | | | | |
| Eol Tenders | | | | | |

\textsuperscript{85} indicate value threshold above which consultations with/ concurrence/ vetting from IFD would be required
Annexures

<table>
<thead>
<tr>
<th>Approval of Retendering of a discharged tender after second attempt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competent Authority (CA) for Evaluation and Acceptance of Tenders</td>
</tr>
<tr>
<td>Procurement without calling Quotation</td>
</tr>
<tr>
<td>Procurement Through a Purchase Committee</td>
</tr>
<tr>
<td>Direct Approval of Tenders Without Tender committee</td>
</tr>
<tr>
<td>To accept Single Tender Purchase of Steel Items from Steel PSUs or Petroleum Products from Petroleum PSUs</td>
</tr>
<tr>
<td>Tender Committee Composition (including Member Secretary thereof) as well as designated level of CA for Acceptance of TC Recommendations for Various Slabs of Estimated Tender Value. Normally there should be standing Tender Committees</td>
</tr>
<tr>
<td>Slab 1 (Rs 10 Lakh to 30 Lakh) – Level 2 officers’ TC, Acceptance by Level 3 Officer</td>
</tr>
<tr>
<td>Slab 2 (Rs 30 Lakh to 2 Crore) – Level 3 Officers’ TC acceptance by Level 4 Officer</td>
</tr>
<tr>
<td>Slab 3 (Rs 2 Crore 25 Crore) – Level 4 officers’ TC acceptance by Level 5 Officer</td>
</tr>
<tr>
<td>Higher levels and other type of TC to suit local requirements, Acceptance at Sec level</td>
</tr>
<tr>
<td>Approval of acceptance of Single Offer against GTE/OTE/LTE and acceptance of unsolicited Offers in LTE against urgency certificate by the indenter</td>
</tr>
<tr>
<td>Formulation and Placement of Contracts</td>
</tr>
<tr>
<td>Contracts after following Tendering Process</td>
</tr>
<tr>
<td>Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/CA</td>
</tr>
<tr>
<td>Acceptance of 100% Payment against Proforma Invoice</td>
</tr>
<tr>
<td>Other Variations demanded by Suppliers in special circumstances</td>
</tr>
</tbody>
</table>
### Post Contract Powers, including
Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with or without LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award

<table>
<thead>
<tr>
<th>Waiver of Liquidated Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Write off of Losses due to impossibility of recovery of Risk Purchase, General Damages, Liquidated Damages, Rejected Goods</td>
</tr>
<tr>
<td>Acceptance of Goods by Consignee after expiry of delivery period for small value/ marginal delays</td>
</tr>
<tr>
<td>Acceptance of Excess or Short deliveries upto 5% of total quantity and to treat contract as closed</td>
</tr>
<tr>
<td>Allowing release of Time-barred claims</td>
</tr>
</tbody>
</table>

### Disposal of Scrap
Approval of Declaration of Materials as Scrap, with and without formality of Survey Committee. (Includes nomination of Survey Committee)

| Decision of Mode of Procurement, Preparation of Catalogues for Auction and Bid Documents for Tenders |
| Approval of Reserve Price Fixation. (Includes nomination of officers/ committee to decide the Reserve Price) |
| Acceptance of Tender Committee Recommendation/ Conduct of Auctions (including acceptance of bids) |
| Extension of period to deposit Balance Sale Value or Date of Delivery of Materials |
Annexure 2D: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores

[Refer para 4.3.3]

(i) Every page should be attested by Administrative Ministry

(ii) Proposals are to be simultaneously sent to the following:

   a) Cabinet Secretariat, email: ca4-cabsec@gov.in
   b) Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in&rajesh.gupta66@gov.in
   c) Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

<table>
<thead>
<tr>
<th>S.No</th>
<th>Particulars</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Name of the Ministry:</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Name of the Department:</td>
<td></td>
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<tr>
<td>3</td>
<td>Name of the sub-ordinate office (if applicable):</td>
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<tr>
<td>4</td>
<td>Detailed Description of the Item</td>
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<tr>
<td>5</td>
<td>Use of the Item</td>
<td></td>
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<tr>
<td>6</td>
<td>Life time of the item proposed (in years)</td>
<td></td>
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<tr>
<td>7</td>
<td>Whether item is procured regularly?</td>
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<tr>
<td></td>
<td>[If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year] inclusive</td>
<td></td>
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</tbody>
</table>
### Annexures

<table>
<thead>
<tr>
<th>S.No</th>
<th>Particulars</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)</td>
<td></td>
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<tr>
<td>9</td>
<td>Estimated procurement price along with basic of such estimation (International Price comparison chart)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Justification to be submitted as under</td>
<td></td>
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<tr>
<td></td>
<td>a. Detailed justification for Global Tender and essentially of import (item wise)</td>
<td></td>
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<tr>
<td></td>
<td>b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?</td>
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<tr>
<td></td>
<td>c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)</td>
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<tr>
<td></td>
<td>d. Capacity of all domestic local suppliers as per the domestic tender floated, if any</td>
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<tr>
<td>11</td>
<td>What are technical alternatives available within country and whether they can be used <em>(substituted)</em> for the proposed item under GTE?</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Consequences of non-procurement of the item through GTE.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Whether the department had published procurement plan for next 5 years, for the item under discussion?</td>
<td></td>
</tr>
</tbody>
</table>
Annexures

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15th May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: ca4-cabsec@gov.in), D/o Expenditure (via Email ID: GTEnquiry-200@gov.in) and to DPIIT, for their consideration.

Stamp and Signature of the
Authorized officer of the proposing Department

Name
Designation
Contact Number
Email ID

Table-2

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

<table>
<thead>
<tr>
<th>Year of contract</th>
<th>Item</th>
<th>Contract No. &amp; date</th>
<th>Supplier</th>
<th>Quantity of supply with unit</th>
<th>Rate per unit</th>
<th>Completion date of contract</th>
<th>Country of Origin of goods</th>
<th>Local content in %</th>
</tr>
</thead>
</table>
Annexure 2E: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)

[Refer para 4.3.5 (e)]

<table>
<thead>
<tr>
<th>S.No</th>
<th>Name of Medical Device/ Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Intra-aortic balloon Pump (IABP)</td>
</tr>
<tr>
<td>2</td>
<td>Video Assisted Thoracic Surgery (VATS) and Minimally Invasive Cardiac Surgery instrument set</td>
</tr>
<tr>
<td>3</td>
<td>Flow Track Cardiac Output Monitoring (EV1000)</td>
</tr>
<tr>
<td>4</td>
<td>Sander's Jet Ventilator for Emergency Airway</td>
</tr>
<tr>
<td>5</td>
<td>ENT Coblator system with standard set of wands</td>
</tr>
<tr>
<td>6</td>
<td>Automated Identification and antibiotic susceptibility system</td>
</tr>
<tr>
<td>7</td>
<td>Automated Semen Analyzer</td>
</tr>
<tr>
<td>8</td>
<td>Histopathology fully automated H&amp; E slide Stainer</td>
</tr>
<tr>
<td>9</td>
<td>Fully Automated IHC Stainer</td>
</tr>
<tr>
<td>10</td>
<td>Auto PAP cervical cancer screening system with HPV</td>
</tr>
<tr>
<td>11</td>
<td>Automatic components preparation machine</td>
</tr>
<tr>
<td>12</td>
<td>Visual Field Analyzer</td>
</tr>
<tr>
<td>13</td>
<td>Cystoscope paediatric cystoscope</td>
</tr>
<tr>
<td>14</td>
<td>Flow Cytometer</td>
</tr>
<tr>
<td>15</td>
<td>Flexible cysto-nephroscopy</td>
</tr>
<tr>
<td>16</td>
<td>T Piece Resuscitator</td>
</tr>
<tr>
<td>17</td>
<td>CO2 Fraction Laser</td>
</tr>
<tr>
<td>18</td>
<td>Diode Laser</td>
</tr>
<tr>
<td>19</td>
<td>Q-Switched ND YAD Laser</td>
</tr>
<tr>
<td>20</td>
<td>Video Bronchoscope set Adult, Paediatric, and Neonatal</td>
</tr>
<tr>
<td>21</td>
<td>Surgical Opera</td>
</tr>
<tr>
<td>22</td>
<td>Cavitation /Cavitron - Ultrasonic Surgical Aspirator (CUSA)</td>
</tr>
<tr>
<td>23</td>
<td>Endobronchial Ultrasound System</td>
</tr>
<tr>
<td>24</td>
<td>Rotary Microtome</td>
</tr>
<tr>
<td>25</td>
<td>Magnifying surgical loupes</td>
</tr>
<tr>
<td>26</td>
<td>Endoscopic Saphenous Vein Harvesting (EVH) System</td>
</tr>
<tr>
<td>27</td>
<td>Intra operative Imaging and TTFM for CT Surgery</td>
</tr>
<tr>
<td>28</td>
<td>DEXA Scan</td>
</tr>
<tr>
<td>29</td>
<td>Radio surgery equipment</td>
</tr>
<tr>
<td>30</td>
<td>Near Infrared Spectroscopy</td>
</tr>
<tr>
<td>31</td>
<td>Fluid therapy</td>
</tr>
<tr>
<td>32</td>
<td>Near Infrared Spectrometer (NIRS)</td>
</tr>
<tr>
<td>33</td>
<td>Electro Physiology (EP) System</td>
</tr>
<tr>
<td>34</td>
<td>TOF Monitor/Watch for Neuro Muscular block</td>
</tr>
<tr>
<td>35</td>
<td>Transcranial Doppler</td>
</tr>
<tr>
<td>36</td>
<td>Low Temperature Hydrogen Peroxide Gas Steriliser</td>
</tr>
<tr>
<td>37</td>
<td>Mannequins (Laerdal) for training of CPR for COVID Preparedness</td>
</tr>
<tr>
<td></td>
<td>a) Intubation</td>
</tr>
<tr>
<td>S.No</td>
<td>Name of Medical Device/Equipment</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>b)</td>
<td>Cardio Pulmonary Resuscitation (CPR)</td>
</tr>
<tr>
<td>c)</td>
<td>Peripheral, Central and Arterial Cannulation</td>
</tr>
<tr>
<td>d)</td>
<td>Front of neck Access (Cricothyroidotomy and tracheostomy)</td>
</tr>
<tr>
<td>38</td>
<td>Image Analysis Tools/Trinocular Compound Phase Contrast Microscope for Andrology Lab</td>
</tr>
<tr>
<td>39</td>
<td>Gas Analysis Apparatus Halden’s Student Type</td>
</tr>
<tr>
<td>40</td>
<td>Gas Analyzer Automatic for CO2,O2 and N2</td>
</tr>
<tr>
<td>41</td>
<td>High end Operating Microscope</td>
</tr>
<tr>
<td>42</td>
<td>Plasma Coblation System</td>
</tr>
<tr>
<td>43</td>
<td>Stroboscope</td>
</tr>
<tr>
<td>44</td>
<td>ENT Skull Base Navigation System</td>
</tr>
<tr>
<td>45</td>
<td>Automated Microbial Identification and Sensitivity System</td>
</tr>
<tr>
<td>46</td>
<td>NAT Analyzer</td>
</tr>
<tr>
<td>47</td>
<td>Cryostat</td>
</tr>
<tr>
<td>48</td>
<td>Vitek2-Automated Microbiology Susceptibility Testing Analyser</td>
</tr>
<tr>
<td>49</td>
<td>FFR Machine (Fractional Flow Reserve)</td>
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<tr>
<td>50</td>
<td>VIDAS</td>
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<tr>
<td>51</td>
<td>Kingfisher Flex</td>
</tr>
<tr>
<td>52</td>
<td>ACL Elite</td>
</tr>
<tr>
<td>53</td>
<td>Cytoprep Centrifuge with Vortex Mixer</td>
</tr>
<tr>
<td>54</td>
<td>Antigen Retrieval System</td>
</tr>
<tr>
<td>55</td>
<td>Trans Oesophageal Echo Cardiograph</td>
</tr>
<tr>
<td>56</td>
<td>IVUS - Volcano</td>
</tr>
<tr>
<td>57</td>
<td>STERRAD-100 NX All Clear</td>
</tr>
<tr>
<td>58</td>
<td>Minimally Invasive Cardiac Instruments</td>
</tr>
<tr>
<td>59</td>
<td>Impella</td>
</tr>
<tr>
<td>60</td>
<td>Endourology set</td>
</tr>
<tr>
<td>61</td>
<td>Cystoscope Karl Storz</td>
</tr>
<tr>
<td>62</td>
<td>Video Endoscopy Systems</td>
</tr>
<tr>
<td>63</td>
<td>Floppy wire with extra support 0 Coronary Angioplasty</td>
</tr>
<tr>
<td>64</td>
<td>Fully Automated Non-Contact Tonometer</td>
</tr>
<tr>
<td>65</td>
<td>Optical Biometer</td>
</tr>
<tr>
<td>66</td>
<td>Phaco Machine with Posterior and Anterior Vitrectomy</td>
</tr>
<tr>
<td>67</td>
<td>Portable Ultrasound Machine for Anaesthesia and Vascular Access</td>
</tr>
<tr>
<td>68</td>
<td>Activated Clotting Time Machine</td>
</tr>
<tr>
<td>69</td>
<td>Thromboelastogram (TEG)/ Thromboelastometer/ ROTEM</td>
</tr>
<tr>
<td>70</td>
<td>Bone Anchored Hearing Aid (BAHA) Sound Processor with Soft Band.</td>
</tr>
<tr>
<td>71</td>
<td>CI Speech Processor for Cochlear Implant</td>
</tr>
<tr>
<td>72</td>
<td>Bi-Ventricular Pacemaker with Quadripolar LV Lead</td>
</tr>
<tr>
<td>73</td>
<td>DDDR with Matching Electrodes Pacemaker</td>
</tr>
<tr>
<td>74</td>
<td>MRI Conditional Automatic Implantable Cardioverter Defibrillator (AICD)</td>
</tr>
<tr>
<td>75</td>
<td>MR1 Conditional Cardiac Resynchronisation Therapy - Pacing (CRT-P)</td>
</tr>
<tr>
<td>76</td>
<td>Single Chamber (SSI) MRI Compatible Pacemaker</td>
</tr>
<tr>
<td>77</td>
<td>Single Chamber Temporary Pacemaker</td>
</tr>
<tr>
<td>78</td>
<td>Non-complain / semi complain / CTO coronary balloon.</td>
</tr>
<tr>
<td>79</td>
<td>Vacuum Heart Stabilizer System for off Pump CABG</td>
</tr>
<tr>
<td>80</td>
<td>Expandable Corpectomy device</td>
</tr>
<tr>
<td>81</td>
<td>Biomimetic Synthetic Absorbable Dural substitute of sizes</td>
</tr>
<tr>
<td>82</td>
<td>AO TRS Modular Drive for Drill/Reamer</td>
</tr>
<tr>
<td>83</td>
<td>AO TRS Modular Sagittal saw system</td>
</tr>
<tr>
<td>84</td>
<td>Battery Oscillator</td>
</tr>
<tr>
<td>85</td>
<td>Arthroscopy Systems</td>
</tr>
</tbody>
</table>

271
<table>
<thead>
<tr>
<th>S.No</th>
<th>Name of Medical Device/ Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>86</td>
<td>Navigation System for Neurosurgery &amp; Orthopaedic Surgery</td>
</tr>
<tr>
<td>87</td>
<td>Time Lapse Embryo Imaging System</td>
</tr>
<tr>
<td>88</td>
<td>Portable Mobile Endoscopy Unit</td>
</tr>
<tr>
<td>89</td>
<td>Cryoprobe</td>
</tr>
<tr>
<td>90</td>
<td>Isothermal Calorimeter (ITC)</td>
</tr>
<tr>
<td>91</td>
<td>Electrical Impedance Tomography</td>
</tr>
<tr>
<td>92</td>
<td>FNIRS (Functional Near Infra-Red Spectroscopy) System</td>
</tr>
<tr>
<td>93</td>
<td>Automated Hand-Held Analyzer</td>
</tr>
<tr>
<td>94</td>
<td>Automated High Throughput Liquid Based Cytology (LBC) System</td>
</tr>
<tr>
<td>95</td>
<td>Automated IHC (Immunohistochemistry Stainer)</td>
</tr>
<tr>
<td>96</td>
<td>Automated Slide Stainer for Histopathology</td>
</tr>
<tr>
<td>97</td>
<td>3T Digital PET/MR</td>
</tr>
<tr>
<td>98</td>
<td>Dual Particle Cyclotron on buyback basis</td>
</tr>
<tr>
<td>99</td>
<td>Sweat Collection and Chloride Estimation</td>
</tr>
<tr>
<td>100</td>
<td>Automated Bronchoscope Cleaning Equipment</td>
</tr>
<tr>
<td>101</td>
<td>Electronics and console for the existing 700 MHz NMR Spectrometer</td>
</tr>
<tr>
<td>102</td>
<td>Video bronchoscope with mobility of tip in four directions</td>
</tr>
<tr>
<td>103</td>
<td>Freeze Facture System</td>
</tr>
<tr>
<td>104</td>
<td>Cryo Plunge Freezing Unit</td>
</tr>
<tr>
<td>105</td>
<td>Biological High- Resolution Atomic Force Microscopy</td>
</tr>
<tr>
<td>106</td>
<td>Carbon Coater (Evaporator) for grids</td>
</tr>
<tr>
<td>107</td>
<td>Hemostasis Analyzer System</td>
</tr>
<tr>
<td>108</td>
<td>Auricular Reconstruction Set</td>
</tr>
<tr>
<td>109</td>
<td>Thin Layer Chromatography Liner Analyser for lipid analysis</td>
</tr>
<tr>
<td>110</td>
<td>Digital Slide Scanner System</td>
</tr>
<tr>
<td>111</td>
<td>Full Endoscopic Lumbar IT &amp; ED set</td>
</tr>
<tr>
<td>112</td>
<td>Rapid Blood/Fluid Flow warmer</td>
</tr>
<tr>
<td>113</td>
<td>Fully Automated Computerized Archival System for Histopathology &amp; Cytology Slides</td>
</tr>
<tr>
<td>114</td>
<td>Vacuum Assist Drainage Controller Device</td>
</tr>
<tr>
<td>115</td>
<td>VAP Care System</td>
</tr>
<tr>
<td>116</td>
<td>Cryoablation Unit</td>
</tr>
<tr>
<td>117</td>
<td>3D Printer Hardware with SLA (LFSJ TM Technology and Machine interface software</td>
</tr>
<tr>
<td>118</td>
<td>Transcutaneous Oxygen Monitor</td>
</tr>
<tr>
<td>119</td>
<td>Non-Invasive Jugular Oximetry Monitor</td>
</tr>
<tr>
<td>120</td>
<td>Dedicated Solid-state cardiac SPECT Camera</td>
</tr>
<tr>
<td>121</td>
<td>Hemodynamic Recorded for Cardio Vascular Lab</td>
</tr>
<tr>
<td>122</td>
<td>Gel Documentation System</td>
</tr>
<tr>
<td>123</td>
<td>Automatic Colony Counter</td>
</tr>
<tr>
<td>124</td>
<td>Droplet Digital Polymerase Chain Reaction System (PCR)</td>
</tr>
<tr>
<td>125</td>
<td>Multi-block PCR Machine</td>
</tr>
<tr>
<td>126</td>
<td>Integrated Automated Charting System upgradable for ICU Monitoring System</td>
</tr>
<tr>
<td>127</td>
<td>Viscoelastic Global coagulation Testing Device</td>
</tr>
<tr>
<td>128</td>
<td>Robotic Surgery System with accessories</td>
</tr>
</tbody>
</table>
Annexure 2F: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

[Refer para 1.7 (iii) (e)]

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

II. “Bidder” (including the term ‘tenderer’, ‘consultant’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder from a country which shares a land border with India" for the purpose of this Order means:

a. An entity incorporated, established or registered in such a country; or

b. A subsidiary of an entity incorporated, established or registered in such a country; or

c. An entity substantially controlled through entities incorporated, established or registered in such a country; or

d. An entity whose beneficial owner is situated in such a country; or

e. An Indian (or other) agent of such an entity; or

f. A natural person who is a citizen of such a country; or
g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The beneficial owner for the purpose of (iii) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who

   exercises control through other means.

   Explanation—

   a. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;

   b. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of

   capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen
percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:
Annexures

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"
Annexure 3: Purchase Requisition (Indent) for Goods (Non-stock)

Name of Indenting Office ____________________________

**Purchase Requisition for Goods (Non-stock)**
(Send in duplicate and separate requisition to be furnished for each Trade Group)
(Refer Para 4.4.2 and 5.1.1)

<table>
<thead>
<tr>
<th>NO.</th>
<th>Dept:</th>
<th>Date:</th>
<th>Office:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**Category of stores/ trade group**
In case of equipment spares - details of equipment/ assembly where fitted:

<table>
<thead>
<tr>
<th>Goods are required by Date</th>
<th>Consignee and place of delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Details of items**

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Description/Specification/ Drawing/ Sample</th>
<th>Unit</th>
<th>Past Consumption Yr-3</th>
<th>Yr-2</th>
<th>Yr-1</th>
<th>Available Stock if any</th>
<th>Total Indented</th>
<th>Qty.</th>
<th>Estimated/Past Purchase Rate</th>
<th>Last Purchase Reference</th>
<th>Total Estimated Cost</th>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

**Estimate name/ number**

**Allocation : No**

Is proprietary certificate attached: ☐ Yes, reference/ ☐ No

It is certified that all

i) Description and technical specification and quantity are in conformity with the guidelines in this regard in the Procurement Manual for Goods.

1. Technical and financial approvals at appropriate levels as per DPFR have been obtained.
2. Funds are provisioned for, in the budget.
3. The quantity indented does not exceed any sales, consumption or usage limits of requirements, if any laid down by competent authority.

<table>
<thead>
<tr>
<th>Signatures Office Superintendent</th>
<th>Signature Indenting officer</th>
</tr>
</thead>
</table>

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Annexure 4A: Purchase Requisition Register for Indenters

(Name of Indenting Office)

Purchase Requisition (PR) Register for Indenters
(Refer Chapter 2 Para 2.1.2)
(To be prepared and maintained by the intending divisions)

Name of Procuring Entity to whom PRs

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Description</th>
<th>Qty.</th>
<th>PR No. And date</th>
<th>Date of submission</th>
<th>Ascertained from Procuring Entity</th>
<th>Date of Receipt of Material</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tender No: and opening date</td>
<td>Contract Ref &amp; Date</td>
<td>Qty.</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
</tr>
</tbody>
</table>
Annexures

Annexure 4B: Purchase Requisition Register for Procuring Entity

Name of the Procuring Entity

Purchase Requisition (PR) Register for Procuring Entity

(Refer Chapter 2 Para 2.1.2)

(To be prepared and maintained by the Procuring Entity)

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Tender File No.</th>
<th>PR No. and Date</th>
<th>Description</th>
<th>Qty.</th>
<th>Date of Receipt of PR</th>
<th>Indenter</th>
<th>Tender Type/ Date of Floating</th>
<th>Date of Tender Opening</th>
<th>Contract Number and Date</th>
<th>Supplier</th>
<th>Qty.</th>
<th>Delivery Date</th>
<th>Sr. No. of Contract Progress Register</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td>14</td>
<td></td>
</tr>
</tbody>
</table>

Office Superintendent

Procuring Officer

Note:

1) The register will be reviewed and signed by Head of Office every month.
2) A summary will be prepared and submitted to HOD every quarterly.
Annexures

Annexure 5: Limited Tender Form
(Refer Para 4.4.3 and 5.5.1)

Name of the Procuring Entity: ____________________________

<table>
<thead>
<tr>
<th>Firm's Reference</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm Registration No. (if any)</td>
<td>PAN (attach photocopy)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TIN/VAT/CST No.</th>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone</td>
<td></td>
</tr>
<tr>
<td>Fax</td>
<td></td>
</tr>
<tr>
<td>Email</td>
<td></td>
</tr>
</tbody>
</table>

M/s: Enquiry No. and Date

The tender would be opened at three pm on the date of tender opening above, at the address mentioned above.

Please submit on or before 3:00 pm on the date of tender opening, your quotation for the following goods, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top with — Enquiry No; Date of Tender Opening.

Yours Sincerely
Procurer Officer

Tender Schedule: All Rates in Figures and in Words in Rupees

<table>
<thead>
<tr>
<th>Sr No.</th>
<th>Description and Specification</th>
<th>Qty</th>
<th>Unit</th>
<th>Delivery Terms</th>
<th>Rate per Unit</th>
<th>Taxes &amp; Duties</th>
<th>Packing/forwarding</th>
<th>Total Rate per Unit</th>
<th>Total Value</th>
</tr>
</thead>
</table>

Delivery Schedule:

Enclosed Specifications/Drawings/Special Conditions of Contract:

Item/Tender Specific Conditions of this Tender:

1. We engage to supply the material(s) to your office and comply the following:
2. Item/tender specific conditions for this tender.
3. Terms and conditions printed overleaf.
4. General conditions of contract signed by me at the time of supplier registration (for registered suppliers).
5. We confirm that set off for the ED, VAT, etc. Paid on the inputs have been taken into consideration in the above quoted price and further agree to pass on such additional duties as sets offs as may become available in future under VAT, etc.
6. This offer is valid for 90 (ninety) days from the date of opening of the tender.
7. That we have not been debarred by any Government/Undertaking.
8. That the rates quoted are not higher than the rates quoted for same item to any Government/Undertaking.
9. That the bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement.

Signature & Seal
Place & Date: ____________________________
Name of Authorised Signatory: ____________________________
Address: ____________________________
Tel. No./Fax. No./Mobile No. Email Id: ____________________________

TERMS AND CONDITIONS OF LIMITED TENDER

i) The quotation must be in the form furnished by procuring entity and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly
Annexures

attested. If not the quotation will not be considered. Quotation written in pencil will not be considered.

ii) Quotation will be opened on due date at 3,00 pm at the indicated venue in presence of the tenderers or their representatives who may wish to be present.

iii) The Government of India reserves the right to accept the offer by individual items and reject any or all tenders without assigning any reason thereof and does not bind itself to accept lowest quotations.

iv) Participation in this tender is by invitation only and is limited to the selected procuring entity’s registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may bring it to the notice of procuring entity and apply for registration as per procedure. Note: to get registered as an approved supplier with the procuring entity, please download supplier approval form from and submit.

v) Manufacturer’s name and country of origin of materials offered must be clearly specified. Please quote whether your organisation is large scale industry or small scale industry. If you have NSIC/ MSE/ MSI Certificate, please attach it to the quotation. Mention your registration details.

vi) Complete details and ISI specification if any must accompany the quotation. Make/ brand of the item shall be stated wherever applicable. If you have got any counter offer as suitable to the material required by us, the same may be shown separately.

vii) Samples must be submitted where specified along with the quotations. Samples must be carefully packed, sealed and labelled clearly with enquiry number, subject and sender’s name for easy identification. Rejected samples will be returned at your cost if insisted.

viii) All drawings sketches and samples, if any, sent along with this enquiry must be returned along with quotations duly signed.

ix) All supplies are subject to inspection and approval before acceptance. Manufacturer/supplier warranty certificates and manufacturer/ Government approved lab test certificate shall be furnished along with the supply, wherever applicable.

x) The Government of India reserves the right to modify the quantity specified in this enquiry.

xi) The prices quoted should be firm till the supplies are completed. Please quote the rates in words and figures. Rates quoted should be free delivery at destination including all charges otherwise the quotation is likely to be rejected. Prices quoted for free delivery at destination will be given preference. If there is no indication regarding the FOR, in the quotation, then it will be considered as FOR destinations. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.

xii) Payment of sales tax is primarily the responsibility of the seller and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding CST/ST is recorded in the quotation, the CST/ST will be considered as included.

xiv) Delivery period required for supplying the material should be invariably specified in the quotation.

xv) In case your quotation is accepted and order is placed on you, the supply against the order should be made within the period stipulated in the order. The Government of India reserves the right to recover any loss sustained due to delayed delivery by way of penalty. Failure to supply the material within the stipulated period shall entitle Procuring Entity for the imposition of penalty without assigning any reasons @ 1/2% (half percent) of the total value of the item covered in order as penalty per day subject to a maximum of 5% (five percent) unless extension is obtained in writing from the office on valid ground before expiry of delivery period.

xvi) If the deliveries are not maintained and due to that account Procuring Entity is forced to buy the material at your risk and cost from elsewhere, the loss or damage that may be sustained there by will be recovered from the defaulting supplier.

xvii) Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at [indicate Place] only.

xviii) Our normal payment terms are 100% (hundred percent) within 30 (thirty) days on receipt and acceptance of material at our site in good condition.
Annexure 6: Proprietary Article Certificate
Valid for the Current Financial Year
(Refer Para 4.6.1)

<table>
<thead>
<tr>
<th>File Number and Date Reference</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Description of article</td>
</tr>
<tr>
<td>2</td>
<td>Forecast of quantity/annual requirement</td>
</tr>
<tr>
<td>3</td>
<td>Approximate estimated value for above quantity</td>
</tr>
<tr>
<td>4</td>
<td>Maker’s name and address</td>
</tr>
<tr>
<td>5</td>
<td>Name(s) of authorised dealers/stockists</td>
</tr>
<tr>
<td>6</td>
<td>I approve the above purchase on PAC basis and certify that: -- Note- Tick to retain only one out of (b), (c-1) or (c-2) whichever is applicable and cross out others. Please do confirm (a) by ticking it — without which PAC certificate will be invalid.</td>
</tr>
<tr>
<td>6(a)</td>
<td>This is the only firm who is manufacturing/stocking this item. AND</td>
</tr>
<tr>
<td>6(b)</td>
<td>A similar article is not manufactured/sold by any other firm, which could be used in lieu</td>
</tr>
<tr>
<td></td>
<td>OR</td>
</tr>
<tr>
<td>6(c-1)</td>
<td>No other make/brand will be suitable for following tangible reasons (like OEM/ warranty spares):</td>
</tr>
<tr>
<td></td>
<td>OR</td>
</tr>
<tr>
<td>6(c)</td>
<td>No other make/brand will be suitable for following intangible reasons (if PAC was also given in the last procurement cycle, please also bring out efforts made since then to locate more sources):</td>
</tr>
<tr>
<td></td>
<td>OR</td>
</tr>
<tr>
<td>7</td>
<td>Reference of concurrence of finance wing to the proposal:</td>
</tr>
</tbody>
</table>

History of PAC purchases of this item for past three years may be given below

<table>
<thead>
<tr>
<th>Name of the Supplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Order/ Tender Reference &amp; Date</td>
</tr>
</tbody>
</table>

Signature of Approving Authority---------------------------------------------

Date ---------------------- Designation of Officer ----------------------

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Annexure 7: Purchase without Quotation Format
(Refer Para 4.9.2)

Ref No: ________________________________
Place: ______________ Date: ______________

“I, ____________________, am personally satisfied that the goods (described below) purchased are of the requisite quality and specification and have been purchased from a reliable supplier/contractor at a reasonable price.”

<table>
<thead>
<tr>
<th>Item:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantity:</td>
<td></td>
</tr>
<tr>
<td>Indenter:</td>
<td></td>
</tr>
<tr>
<td>Unit Rate:</td>
<td></td>
</tr>
<tr>
<td>Taxes/Duties:</td>
<td></td>
</tr>
<tr>
<td>Other Charges:</td>
<td></td>
</tr>
<tr>
<td>Total Unit Price:</td>
<td></td>
</tr>
<tr>
<td>Total Price:</td>
<td></td>
</tr>
<tr>
<td>Purchased from:</td>
<td></td>
</tr>
<tr>
<td>M/S</td>
<td></td>
</tr>
<tr>
<td>Vide Bill No.:</td>
<td></td>
</tr>
<tr>
<td>Justification:</td>
<td></td>
</tr>
<tr>
<td>Cheque may be drawn in favour of</td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Designation:</td>
<td></td>
</tr>
<tr>
<td>Signature:</td>
<td></td>
</tr>
</tbody>
</table>
Annexure 8: Purchase Committee Certificate Format

(Refer Para 4.10.2 and 4.11.2)

Ref No:  
Place: Date:  

“Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier/contractor recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Commerce or Ministry/Department concerned.” The details of recommended purchase are:

<table>
<thead>
<tr>
<th>Item:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantity:</td>
</tr>
<tr>
<td>Indenter:</td>
</tr>
</tbody>
</table>

### Details of Prices Ascertained

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Unit Rate:</th>
<th>Taxes/Duties:</th>
<th>Other Charges:</th>
<th>Total Unit Price:</th>
<th>Total Price:</th>
<th>Recommendations &amp; Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Selected Quotation

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Unit Rate, Taxes/ Duties/ Other Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Unit Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Value of Purchase</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Cheque may be drawn in favour of

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Signature:</th>
<th>Signature:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name 1:</th>
<th>Name 2:</th>
<th>Name 3:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Designation:</th>
<th>Designation:</th>
<th>Designation:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annexure 9: Sample Prequalification Criteria  
(Refer Para 4.15.2)

Criteria 1 - Experience and Past Performance:

i) The bidder (manufacturer or principal of authorised representative — hereinafter referred simply as ‘The Bidder’) should have regularly for at least the last [three\textsuperscript{86}] years, ending 31\textsuperscript{st} March (or any other year ending followed in relevant country) of the previous financial year (hereinafter called ‘The relevant Date’), manufactured and supplied (/ erected/ commissioned\textsuperscript{87}[Name of Requirement], with the same or higher specifications[having/with – parameters\textsuperscript{88}](hereinafter called ‘The Product’), and

ii) The bidder should have manufactured and supplied (/ erected/ commissioned\textsuperscript{87}) at least [_____\textsuperscript{89}]numbers (herein after referred as ‘The Qualifying Quantity’) of ‘The Product’ in at least one of the last five years ending on ‘The relevant Date’, and out of which

iii) (At least [one\textsuperscript{90}] numbers of offered version/model of ‘The product’ should be in successful operation for at least [two\textsuperscript{90}] years on the date of bid opening.)\textsuperscript{97}

Criteria 2 - Capability- Equipment & manufacturing Facilities:

‘The bidder’ must have an annual capacity to manufacture and supply (/ erected/ commissioned\textsuperscript{97}) at least ‘The Qualifying Quantity’.

Note: In case of multiple products in a tender, this criterion shall be applicable product wise. For example, in case of Printing Paper of different specifications/sizes, it shall be applicable to quantity of paper manufactured and supplied specification/size wise.

Criteria 3 - Financial Standing – under all conditions

a) The average annual financial turnover of ‘The bidder’ during the last three years, ending on ‘The relevant Date’, should be at Rs. [---------] millions\textsuperscript{91} (or equivalent in foreign currency at exchange rate prevalent on ‘The Relevant Date’) as per the annual report

\textsuperscript{86} Change number of years if needed  
\textsuperscript{87} Add text within bracket in case of Plant and Machinery only and delete for others  
\textsuperscript{88} Insert the defining parameters like Speed or defining technology here  
\textsuperscript{89} Fix the quantity as 40 – 80 % or any other % of the quantity in the Bid Documents rounded upto next whole number. In case of uncommonly large quantity procurements, a lower percentage would ensure that otherwise capable suppliers do not get ruled out. In case of smaller procurements, a higher percentage would ensure that low capability vendors do not vitiate competition.  
\textsuperscript{90} Fill up a reasonable number. In a new technology product, the Manufacturer is not likely to meet the requirements number of products or of number of years’ operating successfully; hence these can be reduced in such cases.  
\textsuperscript{91} Fix the value as 40 – 80 % or any other % of the estimated cost of the quantity in the Bid Document. Please note that Rs 1 Cr = Rs 10 million.
Annexures

(audited balance sheet and profit & loss account) of the relevant period, duly authenticated by a Chartered Accountant/ Cost Accountant in India or equivalent in relevant countries.

b) (Deleted)\textsuperscript{92}

The net worth of the Bidder firm (manufacturer or principal of authorised representative) should not be negative on ‘The Relevant Date’ and also ii) should have not eroded by more than 30\% (thirty percent) in the last three years, ending on ‘The Relevant Date’.

\textit{Note: In case of Indian Bidders/ companies (manufacturer or principal of authorised representative) who have been restructured by Banks in India, under the statutory guidelines, they would be deemed to have qualified the Financial standing criteria considering the institutional financial backing available to them.}

\textbf{Applicability in Special Cases:}

a) Applicability to ‘Make in India’ : Bidders (manufacturer or principal of authorised representative) who have a valid/ approved ongoing ‘Make in India’ agreement/ program and who while meeting all other criteria above, except for any or more of sub-criteria in Experience and Past Performance above, would also be considered to be qualified provided:

1) their foreign ‘Make-in-India’ associates meets all the criteria above without exemption, and

2) the Bidder submits appropriate documentary proof for a valid/ approved ongoing ‘Make in India’ agreement/ program.

3) the bidder (manufacturer or principal of authorised representative) furnishes along with the bid a legally enforceable undertaking jointly executed by himself and such foreign Manufacturer for satisfactory manufacture, Supply (and erection, commissioning if applicable) and performance of ‘The Product’ offered including all warranty obligations as per the general and special conditions of contract.

\textbf{b) Authorized Representatives:} Bids of bidders quoting as authorised representative of a principal manufacturer would also be considered to be qualified, provided:

1) their principal manufacturer meets all the criteria above without exemption, and

2) the principal manufacturer furnishes a legally enforceable tender-specific authorisation in the prescribed form assuring full guarantee and warranty obligations as per the general and special conditions of contract; and

\textsuperscript{92} Notified vide OM No.F.1/16/2020-PPD issued by Department of Expenditure dated 11.02.2021
Annexures

3) the bidder himself should have been associated, as authorised representative of the same or other Principal Manufacturer for same set of services as in present bid (supply, installation, satisfactorily commissioning, after sales service as the case may be) for same or similar ‘Product’ for past three years ending on ‘The Relevant Date’.

c) For Existing successful Past Suppliers: In case the bidder (manufacturer or principal of authorised representative) who is a successful past supplier of ‘The Product’ in at least one of the recent past [three] procurements, who do not meet any or more of requirements above, would also be considered to be qualified in view of their proven credentials, for the maximum quantity supplied by him in such recent past.

d) Joint Ventures and Holding Companies: Credentials of the partners of Joint ventures cannot (repeat cannot) be clubbed for the purpose of compliance of PQC in supply of Goods/ Equipment, and each partner must comply with all the PQC criteria independently. However for the purpose of qualifying the Financial Standing Criteria, the Financial Standing credentials of a Holding Company can be clubbed with only one of the fully owned subsidiary bidding company, with appropriate legal documents proving such ownership.

NOTE FOR BIDDERS:

a) **Doctrine of Substantial Compliance**: The Pre-Qualification Bidding (PQB) and Pre-Qualification Criteria (PQC) are for shortlisting of sources who are competent to perform this contract to ensure best value for money from expenditure of Public Money. This process is neither intended to bestow any entitlement upon nor to create any rights or privileges for the Bidders, by way of overly hair-splitting or viciously legalistic interpretations of these criteria, disregarding the very rationale of the PQB and PQC. Keeping this caveat in view, interpretation by Procuring Entity would be based on common usage of terminologies and phrases in public procurement in accordance with the ‘Doctrine of Substantial Compliance’ and would be final.

b) Along with all the necessary documents/ certificates required as per the tender conditions, the bidder should furnish a brief write-up, backed with adequate data, explaining his available capacity (both technical and financial), for manufacture and supply of the required goods/equipment, within the specified time of completion, after meeting all their current commitments.

c) Supporting documents submitted by the bidder must be certified as follows:

i) All copy of supply/work order; respective completion certificate and contact details of clients; documents issued by the relevant Industries Department/ National Small Industries Corporation (NSIC)/ manufacturing licence; annual report, etc., in support of experience, past performance and capacity/capability should be authenticated by the by the person authorised to sign the tender on behalf of the bidder. Original Documents must be submitted for inspection, if so demanded.

ii) All financial standing data should be certified by certified accountants, for example, Chartered Accountants/ Cost Accountants or equivalent in relevant countries; and
Annexures

Indian bidder or Indian counterparts of foreign bidders should furnish their Permanent Account Number.

Note for Purchaser

 Portions in italics are for your decision/ guidance; these are not to be printed in the bid documents. Portion within [] brackets are to be filled without brackets. Footnotes are for internal guidance and should not be part of the bid documents.
Annexure 10: Bid Opening Attendance Sheet cum Report

(Refer Para 5.3)

[Name of Procuring Entity]

Bid Opening Attendance Sheet cum Report

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Bidder's Name</th>
<th>Bidder's Address</th>
<th>Bidder's Authorisation and Date</th>
<th>Represented by</th>
<th>Contact No.</th>
<th>Signature of Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Bid Opening Report

<table>
<thead>
<tr>
<th>Tender No</th>
<th>Title</th>
<th>Date of Opening</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer No.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bidder's Name</td>
<td>Bidder's Ref and Date</td>
<td>Submission of Requisite EMD (Y/N)</td>
</tr>
<tr>
<td>--/--</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--/--</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--/--</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total no. of regular tenders taken out from the tender box to be opened as mentioned above........................................ (in figures and in words)

Signature, Date and Time
Name and Designation of Tender Opening Officer

Signature, Signature, Date and Time
Name and Designation of Tender Opening Officer

Received total regular tenders.......................... (In figures/words) as above
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Signature, Date and Time</strong></td>
<td><strong>Signature, Signature, Date and Time</strong></td>
</tr>
<tr>
<td>**Name and Designation of Procuring</td>
<td>**Name and Designation of Procuring</td>
</tr>
<tr>
<td>Entity Officer**</td>
<td>Entity Officer**</td>
</tr>
</tbody>
</table>

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**Annexure 11: Tender Committee Minutes Format**

(For Techno-Commercial/Financial Bids)

(Refer Para 7.4.3 and 7.5.12)

<table>
<thead>
<tr>
<th>Organisation: ___________________________</th>
</tr>
</thead>
</table>

**Minutes of Tender Committee Meeting**

(Techno-commercial/Financial Bids)

### Section I: Top Sheet

<table>
<thead>
<tr>
<th>Description</th>
<th>Estimated Cost:--</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tender Published In</td>
<td>Date of Publication</td>
</tr>
<tr>
<td>Bid Validity</td>
<td>Bid Opening Date</td>
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</table>

### Past Procurements

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Supplier</th>
<th>Order Reference &amp; Date</th>
<th>Quantity</th>
<th>Basic Rate (Rs.)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

### Members of the Tender Committee

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name</th>
<th>Designation</th>
<th>Sr. No.</th>
<th>Name</th>
<th>Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
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<td>2</td>
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<td>3</td>
<td></td>
<td></td>
<td>4</td>
<td></td>
<td></td>
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</tbody>
</table>

### Section II: Salient Feature of the Tender

Review background of indent; technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project

Review mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)

Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)

### Section III: Preliminary Evaluation
Review handling of any complaints received
Review/confirmation of quantity and period of delivery required
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications

Section IV: Evaluation of Responsive Bids

Bid-wise deliberation should be recorded

In case of evaluation of Financial Bids
i) Start with review of techno-commercial evaluation
ii) Insert a summary table of evaluated price in the order of L1, L2, etc.
iii) Deliberations should be in the sequence of L1, L2, etc.

Section V: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

a) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.

b) Also mention that the rates recommended are considered reasonable (and basis for such determination).

c) Total value of the recommendations for determining level of acceptance authority.

d) Mention that none of the TC members have any conflict of interest with the parties recommended for award.

e) Request acceptance of recommendations by competent authority and that it’s within his powers of acceptance as per SoPP/ DFPR.

<table>
<thead>
<tr>
<th>Signature Name and Designation of the Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>Date:</td>
</tr>
<tr>
<td>(Name &amp; Designation)</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>Date:</td>
</tr>
<tr>
<td>(Name &amp; Designation)</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>Date:</td>
</tr>
<tr>
<td>(Name &amp; Designation)</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>Date:</td>
</tr>
<tr>
<td>(Name &amp; Designation)</td>
</tr>
</tbody>
</table>

Remarks by the Accepting Authority:

Signature: __________________________ Date: __________________________

Name & Designation of Accepting Authority __________________________

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Annexure 12: Invitation and Declaration for Negotiations

(Refer Para 7.5.7)
Invitation for Negotiations
(On letterhead of the procuring entity)

No: _______________________________ Dt: ______________

To M/s _____________________________ Registered A/D

Sub: Tender No __________ opened on _________for the supply of __________

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on............. (date) at.......... (time) at............. (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Enclosure:

(Authorised Officer)

i) Form of Declaration

ii) Form of Revised Offer

FORM OF DECLARATION
(To be signed and submitted before start of negotiations)
(On company letterhead)

No: _______________________________ Dt: ______________

To _____________________________

Sub: Tender No __________ Opened on _________for the supply of __________

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I _______________ duly authorised on behalf of M/s. _______________ do declare that in the event of failure of the contemplated negotiations relating to Tender No. _______________ opened on _______________ my original tender shall remain open for acceptance on its original terms and conditions.

Yours faithfully,

Place: ______________________________ Signature of bidder, or officer authorised
to sign the bid documents
Date: ______________________________ on behalf of the bidder
Annexure 13: Format of Revised Offer in Negotiations

(Refer Para 5.5.7)

Revised Offer in Negotiations
(On company letterhead)

From ...........................................................................................................

Full address .................................................................................................

To ..............................................................................................................

Sir,

Sub: Tender No ------------ opened on -----------for the supply of -----------

Ref: Your invitation for negotiations no: dated:
1. On further discussions with your representatives on ......................in response to your letter no .................., dated ............... We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to .........................

Or
1. I / we reduce my/our rates as shown in the enclosed schedule of items.
2. I / we am/are aware that the provisions of the original bidding document remain valid and binding on me.
3. I/we undertake to execute the contract as per following Schedule........
4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, i. e., up to ......................... and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or officer authorised to sign the bid documents on behalf of the bidder
Annexure 14: Letter (Notification) of Award (LoA) of Contract

(Refer Para 7.6.1)
Name of the procuring entity

Letter of Award of Contract

Confidential

Contract No: [Insert date]

Contract Title:

To,

M/s. [Insert name & address]

Sub: Award of contract for contract no: [insert contract number] and contract title: [insert contract title]

REF. Your offer no. [insert offer number] against our tender no. [insert tender no] opened on [insert date of opening of tender]

Dear Sir/ Madam

I am directed to inform you that after evaluating the bid documents submitted by you on ---- [enter date] -------[Enter Name of Procuring Entity] is pleased to inform you that you have been selected as the successful bidder for the supply of [enter description]. The total purchase price shall be [enter amount] as indicated in your financial bid submitted on [enter date], in accordance with the procedures intimated in the relevant bid documents. You/your authorised representative(s) are requested to be personally present at [insert address] for the signing of the contract by [enter date].

In this respect, we also request you to submit the performance security of [insert amount of Rupees in words] by [insert date]. Security deposit being 10% (ten percent) of the total cost = Rs.______________.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 (Rupees Ten) and revenue stamp of Rupee one shall be affixed on the enclosed agreement form. Treasury receipts of EMD and SD shall be deposited in office within the stipulated time limit as above.

This notification concludes the legally binding contract between you and the Government of India, till issue of a formal contract.

Yours truly,
[Authorised Officer]

Enclosure: Agreement Form along with the schedule of delivery
Annexure 15: Example of Formula for Price Variation

Clause

(Refer Para 6.6)

(The formula for price variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five percent). That portion of the price represented by the fixed element and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation.)

The formula for price variation will thus be:-

\[ P_a = P_0 \left( \frac{F + a \left( \frac{M_1}{M_0} \right) + b \left( \frac{L_1}{L_0} \right)}{100} \right) - P_0 \]

Where: -

\( P_a \) is the adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

\( P_0 \) is the contract price on the base date (which is taken as the date on which tender is due to open).

\( F \) is the fixed element (as the percentage of the total price) not subject to price variation.

\( a \) is the assigned percentage to the material element in the contract price.

\( b \) is the assigned percentage to the labour element in the contract price.

\( F, a \) and \( b \) being percentages should total 100.

\( L_0 \) and \( L_1 \) are the average wage indices for the quarter before the quarter in which base month falls and for the quarter before the quarter in which date of supply falls; respectively. For example for a tender opening on March 17, 2016 (base date), \( L_0 \) would be average wage index for the quarter of Oct-Dec 2015.

\( M_0 \) and \( M_1 \) are the material prices/indices as average of the month, two month prior to the month in which base month falls and average of the month, two month prior to the month in which date of supply falls, respectively. For example, for a tender opening on March 17, 2016 (base date), \( M_0 \) would be prices/index as average of the month of January 2016. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes and duties and Octroi.

If more than one major item of material is involved, the material element can be broken up into two or three components such as \( M_x, M_y, M_z \).

The following conditions would be applicable to price adjustment:
Annexures

- Base dates shall be due dates of opening of bids (technical bid in two or three envelop/cover system).
- Date of supply shall be the date of calculation/determination of the price variation.
- No price increase is allowed beyond original delivery period.
- No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
- Total adjustment will be subject to maximum ceiling of ____%.
- No price adjustment shall be payable if this is less than or equal to 2% (two percent) of Po.
- Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
- In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, \( \left( \frac{M_1}{M_0} \right) \) and \( \left( \frac{L_1}{L_0} \right) \) should be multiplied by a correction factor of exchange rates \( \left( \frac{E_0}{E_1} \right) \), where \( E_0 \) is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in $, then \( E_0 \) is Number of Rs. in a $ on base date and \( E_1 \) is the exchange rate on determination date.
- Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

  "It is certified that there has been no decrease in the price of price variation indices and in the event of any decrease of such indices during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate."
## Annexure 16: Incoterms

(Refer Para 6.9)

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Warehouse storage at point of origin</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Warehouse labour at point of origin</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Export packing</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Loading at point of origin</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Inland freight</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Port receiving charges</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
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</tr>
<tr>
<td>Forwarders fee</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
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</tr>
<tr>
<td>Loading on ocean carrier</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
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<tr>
<td>Ocean/air freight charges</td>
<td>Buyer</td>
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<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Insurance charges for transit risk of the buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Charges at foreign port/airport</td>
<td>Buyer</td>
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<td>Buyer</td>
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</tr>
<tr>
<td>Customs, duties &amp; taxes abroad</td>
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<td>Buyer</td>
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<tr>
<td>Delivery charges to final destination</td>
<td>Buyer</td>
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<td>Buyer</td>
<td>Buyer</td>
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<td>Buyer</td>
<td>Buyer</td>
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</tr>
</tbody>
</table>
Annexure 17: Progress of Supply Order Register

(Refer Para 9.6)

Progress of Supply Order Register

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Supply Order No. and Date</th>
<th>Brief Description of Material</th>
<th>Name of the Supplier &amp; Registration No.</th>
<th>Quantity &amp; Due Date of Delivery Qty, Date</th>
<th>Quantity &amp; Actual Date of Delivery Qty, Date</th>
<th>Whether Delay was Attributable to the Supplier or Procuring Entity?</th>
<th>Whether Penalty is Imposed or not?</th>
<th>Status of Security Deposit</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>4</td>
<td>5, 6</td>
<td>7, 8</td>
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<td>11</td>
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</tr>
</tbody>
</table>

Office Superintendent

Procuring Officer

Note:
1. The register will be reviewed and signed by Head of Office every month.
2. A summary will be prepared and submitted to HOD every quarterly.
Annexure 18: Proposal for Extension of Delivery Period

(Refer Para 9.7.4)

Proposal for Extension of Delivery Period

<table>
<thead>
<tr>
<th>Department</th>
<th>Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Contract value</td>
</tr>
<tr>
<td>Contract No.:</td>
<td>Date:</td>
</tr>
<tr>
<td>Variations applicable</td>
<td>PVC/ ERV/ Statutory Variations</td>
</tr>
<tr>
<td>Contractor &amp; Regn. No.:</td>
<td>Quantity on order</td>
</tr>
<tr>
<td>Quantity already supplied</td>
<td>Quantity remaining</td>
</tr>
<tr>
<td>Details of earlier extensions granted</td>
<td>Is it a contract:</td>
</tr>
<tr>
<td>Reference and date of request for extension</td>
<td>Reasons cited for extension</td>
</tr>
<tr>
<td>Original/extended delivery period/ date</td>
<td>Proposed extension of period/ date</td>
</tr>
</tbody>
</table>

Signature of Procuring Officer | Date

Remarks of Indenter:
Regarding the proposed extension of delivery period/date, the following remarks are given regarding loss and inconvenience due to delay:

Loss: (strike out options not applicable): No loss would be incurred/ loss is incurred but cannot be quantified/ loss to the extent of Rs. _____________ would be incurred

Inconvenience: (strike out what is not applicable): No inconvenience would be incurred/inconvenience would be incurred

Proposed extension in delivery is recommended with above remarks.

Signature of Indenting Officer and Date

Proposal by Procuring Entity
It is certified that:

a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery;

b) 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 has been opened where such rates have been received even though tender is not yet decided.

It is proposed to grant extension of delivery period/date up to ________________, (strike out options not applicable) with recovery of liquidated damages/ with recovery of token liquidated damages/ without any liquidated damages and with/without denial clause, in view of justifications recorded below:

__________________________________________________________________________

In view of value of the contract and proposal regarding liquidated damages, this would require approval of _____________ (competent authority). This would/ would not require financial concurrence.

Signature of Procuring Officer and Date

Head of Office recommendations/approval
Signature of Superintending Engineer/date
Annexure 19: Format for Extension of Delivery

Period/Performance Notice

(Refer Para 9.7.4, 9.7.6 and 9.7.8)

Name of the Procuring Entity

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No --------------- dated ---------------for the supply of ---------------

------------

Ref: Your letter no. --------------- dated: ---------------

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date).

2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to......................% (...............per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.

3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.

4. The above extension of delivery date will also be subject to the following Denial Clause.

1) That no increases in price on account of any statutory increase in or fresh imposition of customs duty, excise duty, Sales Tax, CST, VAT or on account of any other taxes/duty, including custom duty), leviable in respect of the Stores
specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and.

2) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.

3) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, Sales Tax, VAT/ CST or on account of any other Tax or duty or on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the above mentioned date namely (insert the original delivery date)

5. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers’ rights under the terms and conditions of the subject contract.

6. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,
(Authorised Officer)
Duly authorised, for and on behalf of
The President of India

Note: Select one option within { } brackets; delete portion within [ ] brackets, if not applicable; fill in ( ) brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice.

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding quantity) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.
Annexure 20: Model Format for Correspondence with Supplier after Expiry of Delivery Date

(Ref Para 9.8)

Registered Acknowledgement Due

To

M/s ______________________________________
________________________________________
________________________________________

Sub : Contract No........................................... dated ......................... for supply of ...........................................................

Dear Sirs,

The date of delivery of the subject contract expired on ___________. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity supplied so far and, also, the quantity inspected so far, but not yet dispatched and the quantity ready but so far not tendered for inspection before the expiry of the date of delivery.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(---------------------)

for......................................
Annexure 21: No Claim Certificate

(Refer Para 9.5 and 9.10)

(On company letterhead)

To,

(Contract Executing Officer)

Procuring Entity________________________

NO CLAIM CERTIFICATE

Sub: Contract Agreement no. -------------- dated -------------- for the supply of

We have received the sum of Rs. (Rupees____________________ only) in full and final settlement of all

the payments due to us for the supply of

under the abovementioned contract agreement, between us and Government of India. We here by unconditionally and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or

officer authorised to sign the contract documents

on behalf of the contractor

(company stamp)

Date:_______________

Place:______________
Annexure 22: Goods Receipt and Inspection Report

(Refer Para 9.14.1)

<table>
<thead>
<tr>
<th>Purchase Order No.</th>
<th>RR/GC No. &amp; Date</th>
<th>Procuring Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Supplier M/s.</td>
<td>Date of Clearance from Transporter</td>
<td>GOODS RECEIPT AND INSPECTION REPORT</td>
</tr>
<tr>
<td>Indenter.</td>
<td>Date of Inspection and Acceptance/Rejection</td>
<td>ACCEPTANCE/REJECTION</td>
</tr>
<tr>
<td>Materials procured for Project/ Scheme</td>
<td>Earlier GRIR No. for Part Supply</td>
<td>GRIR No.</td>
</tr>
<tr>
<td>Allocation</td>
<td>Code No.</td>
<td>Date</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nos.</th>
<th>Description of Materials</th>
<th>Code No.</th>
<th>Invoice No.</th>
<th>Qty. as per S.O.</th>
<th>Qty. Recd.</th>
<th>Qty. Inspected Accepted</th>
<th>Rate Unit</th>
<th>Amount</th>
<th>Taxes/ Duties</th>
<th>Packing/ Forwarding</th>
<th>Total Amount</th>
</tr>
</thead>
</table>

Copy To
A/c Officer
Indenting Officer
Procuring Officer
Book-Keeping
Inspecting Officer

In case of rejected quantity: replacement required/not required

Reason for not accepting the material
Received above material of correct quantity and Quality
sign
Indenting/ Receiving Officer
(Not below the Rank of Supervisor)

Rejected materials of local firms will normally be delivered at the designated consignee. Firms are required to arrange collection within 14 (fourteen) days from the date of rejection failing which Procuring Entity's responsibility will cease and after that time they will remain at supplier's entire risk and if not removed before a further period of seven days, Procuring Entity shall have the right to dispose of such stores as deemed fit at the supplier's risk and account without further reference to them and to recover thereafter from the supplier's as ground rent or demurrage at the rate of Rs........ per day for consignments occupying less that 0.2 (point two) cubic meters, or 50 (fifty) kilograms in weight and up to Rs........ per day for articles bulkier or heavier than above. Rejected materials of firm from outstation if not removed within 21 (twenty one) days of the rejection will be dispatched to them by goods train freight to pay at public tariff rate. A/c Officer may please recover any advance payment or freight charges paid for such rejected quantity.
Annexure 23: Pay Order Form

(Refer Para 9.14.2)

**Pay Order Form**

Name of Procuring Entity

- Indenter
- Sub-office
- Allocation
- Name of work
- Estimate No., etc.
- Name of the Supplier
- P.O No. & Date, etc.
- Whether full payment or part payment
- Ref. to GRIR No. Page No., etc.
- No. of enclosures (Sub- voucher etc.)
- Ref. to Materials at Site A/c
- Consumable Register Page/Item No.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Particulars</th>
<th>Ref. to Item No. of PO</th>
<th>Qty.</th>
<th>Unit</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Certificate:-**

1. Certified that the materials have been received on ____________ in accordance with the specifications of the PO and good condition.

2. Certified that the terms and conditions prescribed in the PO have been duly observed by the supplier and payment can be made in full (other certificates where necessary may be given on reverse)

Passed for Rs. ____________
Office Superintendent (__________) Accounts Officer (__________) Head of Office (__________)

Passed for Payment of Rs. ____________ Rupees

Pay Rs. ____________ Rupees

Auditor (__________) DA / Supdt, (__________) AAO (__________)

Bill paid/cheque issued No. ____________ Date ____________
Pay Order No. ____________ Cashier (__________)
Annexure 24: Survey Committee’s Report

(Refer Para 10.3.2)

Name of the Organisation

---

**SURVEY COMMITTEES REPORT**

<table>
<thead>
<tr>
<th>Sr No.</th>
<th>Code No.</th>
<th>Description of Stores</th>
<th>Quantity No.</th>
<th>Wt.</th>
<th>Rate</th>
<th>Unit</th>
<th>Amount</th>
<th>Total Est Scrap Value</th>
<th>Total Est Loss</th>
<th>User Dept.</th>
<th>Reason of Survey</th>
<th>Recommendation of Survey Committee</th>
<th>Remarks by the Competent Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td>14</td>
</tr>
</tbody>
</table>

(Signature) (Signature) (Signature)

Committee Member Designation Committee Member Designation Committee Member Designation

Date and Place:

Signature

Competent Authority
Annexure 25: Sale Account for Goods Disposed
(Refer Para 10.10.9)

Name of the Organisation

---

**Sale Account for Goods Disposed**

<table>
<thead>
<tr>
<th>Lot No.</th>
<th>Particulars of Stores</th>
<th>Quantity/Weight</th>
<th>Name and Full Address of Purchaser</th>
<th>Highest Bid Accepted (Name of bidder &amp; bid value)</th>
<th>Amount and Date Earnest Money/ Security Deposit Realised</th>
<th>Amount &amp; Date on which the Complete Amount is Realised and Credited with Cashier and Reference thereof</th>
<th>The Actual Date of handing over of the Articles with Quantities with Reference of Issue Notes and Gate Pass</th>
<th>Signatures of the Purchaser</th>
<th>eAuction Service Provider’s Commission and Acknowledgement for its Payment</th>
<th>Book Value</th>
<th>Profit/ Loss w.r.t Book Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

(Signature)  
(Auction Disposal Officer)  
Accounts Representative  
(Signature)  
(Signature)  
(Signature)  
(Security Staff)
## Annexure 27: List of Medicines Reserved for procurement from Pharma CPSEs

<table>
<thead>
<tr>
<th>SI No.</th>
<th>CAPSULES</th>
<th>TABLETS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>AMOXYCILLIN IP</td>
<td>12. ACECLOFENAC + PARACETAMOL</td>
</tr>
<tr>
<td>2.</td>
<td>AMOXYCILLIN IP + CLOXACILLIN IP</td>
<td>13. ACECLOFENAC 100 MG</td>
</tr>
<tr>
<td>3.</td>
<td>AMPICILIN IP</td>
<td>14. ALBENDAZOLE</td>
</tr>
<tr>
<td>4.</td>
<td>B-COMPLEX + VIT.- C &amp; ZINC</td>
<td>15. AMLODEPIN</td>
</tr>
<tr>
<td>5.</td>
<td>CEPHALEXIN IP</td>
<td>16. AMOXYCILLIN+CLAVALANIC ACID</td>
</tr>
<tr>
<td>6.</td>
<td>DOXYCYCLINE IP</td>
<td>17. ASCORBIC ACID IP</td>
</tr>
<tr>
<td>7.</td>
<td>FLUCONAZOL</td>
<td>18. ATENOLO</td>
</tr>
<tr>
<td>8.</td>
<td>OMEPRAZOLE IP</td>
<td>19. ATROVASTATIN</td>
</tr>
<tr>
<td>9.</td>
<td>OMEPRAZOLE+DOMPERIDONE</td>
<td>20. AZITHROMYCIN</td>
</tr>
<tr>
<td>10.</td>
<td>CEFADROXIL</td>
<td>21. CALCIUM+VITAMIN D3</td>
</tr>
<tr>
<td>11.</td>
<td>TETRACYCLINE</td>
<td>22. CEFIXIME TABS/CAPS</td>
</tr>
<tr>
<td>12.</td>
<td>CEFPODOXIME PROXETIL</td>
<td>23. CEFUROXIME AXETIL</td>
</tr>
<tr>
<td>13.</td>
<td>CETIRIZINE HCL BP</td>
<td>24. CETIRIZINE+PARACETAMOL+PHENYL EPHERIN</td>
</tr>
<tr>
<td>14.</td>
<td>CIPROFLOXACIN+TINIDAZOLE</td>
<td>25. CHLOROQUINE PHOSPHATE IP</td>
</tr>
<tr>
<td>15.</td>
<td>CIPROFLOXACIN IP</td>
<td>26. DICLOFENAC SODIUM</td>
</tr>
<tr>
<td>16.</td>
<td>DOMPERIDONE</td>
<td>27. DICLOXMINE+PARACETAMOL</td>
</tr>
<tr>
<td>17.</td>
<td>ERYTHROMYCIN STERATE IP</td>
<td>28. DOMPERIDONE</td>
</tr>
<tr>
<td>18.</td>
<td>IBUPROFEN IP</td>
<td>29. ERYTHROMYCIN STERATE IP</td>
</tr>
<tr>
<td>19.</td>
<td>LEVOCETIRIZINE</td>
<td>30. IBUPROFEN IP</td>
</tr>
<tr>
<td>20.</td>
<td>LEVOFLOXACIN</td>
<td>31. LEVOFLOXACIN</td>
</tr>
<tr>
<td>21.</td>
<td>LOSARTAN</td>
<td>32. METRONIDAZOLE IP</td>
</tr>
<tr>
<td>22.</td>
<td>NIMESULIDE</td>
<td>33. NIMESULIDE</td>
</tr>
<tr>
<td>23.</td>
<td>NORFLOXACIN+TINIDAZOLE</td>
<td>34. NORFLOXACIN+TINIDAZOLE</td>
</tr>
<tr>
<td>24.</td>
<td>NORFLOXACIN</td>
<td>35. OFLOXACIN</td>
</tr>
</tbody>
</table>
### TABLETS

44. OFLOXACIN+ORNIDAZOLE  
45. ORAL CONTRACEPTIVE PILLS  
46. PANTOPRAZOLE  
47. PARACETAMOL  
48. PARACETAMOL IP+DICLOFENAC SODIUM  
49. PARACETAMOL+IBUPROFEN  
50. PENICILLIN V  
51. POLY VITAMIN PROPHYLACTIC (NFI)  
52. RANITIDINE HCL IP  
53. ROXITHROMYCIN  
54. METFORMIN  
55. SPARFLOXACIN  
56. TINIDAZOLE  
57. VITAMINE B-COMPLEX  

### SUSPENSIONS/SYRUPS

58. ALBENDAZOLE SUSP.  
59. AMOXYCILLIN DRY SYP.  
60. CETRIZINE SYRUP  
61. COTRIMOXAZOLE SUSP.  
62. COUGH SYP. EACH 5 ML CONTAINS-CPM IP : 3MG+AMMONIUM CHLORIDE IP: 110MG+SODIUM CITRATE IP : 4SMG+MENTHOL IP: 9MG  
63. COUGH SYP. EACH 5ML CONTAINS- DYPHENHYDRAMINE HCL:14MG+AMMONIUM CHLORIDE IP: 135MG+SODIUM CITRATE IP: 57MG+MENTHOL IP: 9MG  
64. DOMPERIDONE SUSP.  
65. PRACETAMOL SYP.  
66. VITAMIN A SOLUTION IP  

### ORAL POWDERS

67. ORAL REHYDRATION SALT (WHO FORMULA)  

### EXTERNAL LOTIONS/SOLUTIONS

68. GLUTARALDEHYDE  
69. CHLORHEXIDINE GLUCONATE SOLUTION  

### OINTMENTS

70. CLOTRIMAZOLE OINTMENT  
71. DICLOFENACO GEL  
72. POVIDONE IODINE SOLUTION/OINTMENT  
73. SILVER SULPHADIAZINE  

### I.V. FLUIDS (INFUSION)

74. CIPROFLOXACIN  
75. LEVOFLOXACIN IV  
76. Mannitol  
77. METRONIDAZOLE  
78. PLAZMA VOLUME EXPENDER  
79. RINGER LACTATE I.V.  

### DRY POWDERS/LIQUID INJECTIONS

80. AMIKACIN  
81. AMOXICILLIN SODIUM+CLAVULANATE POTASSIUM  
82. AMPICILLIN IP  
83. AVS LIQUID (LYFOLYSED)  
84. BENZATHENE PENICILLIN IP  
85. BENZYLE PENICILLIN IP
<table>
<thead>
<tr>
<th></th>
<th>DRY POWDERS/LIQUID INJECTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>86.</td>
<td>CEFEPIME</td>
</tr>
<tr>
<td>87.</td>
<td>CEFOPERAZONE</td>
</tr>
<tr>
<td>88.</td>
<td>CEFOPERAZONE+SULBACTAM</td>
</tr>
<tr>
<td>89.</td>
<td>CEFOTAXIME SODIUM USP</td>
</tr>
<tr>
<td>90.</td>
<td>CEFOTAXIME SODIUM+SULBACTAM</td>
</tr>
<tr>
<td>91.</td>
<td>CEFTAZADIME</td>
</tr>
<tr>
<td>92.</td>
<td>CEFTRIAXONE</td>
</tr>
<tr>
<td>93.</td>
<td>CEFTRAXONE+SULBACTAM</td>
</tr>
<tr>
<td>94.</td>
<td>DICLOFENAC SODIUM</td>
</tr>
<tr>
<td>95.</td>
<td>ETO-THEOPHYLLINE</td>
</tr>
<tr>
<td>96.</td>
<td>ATROPIN INJ.</td>
</tr>
<tr>
<td>97.</td>
<td>FRUSEMIDE</td>
</tr>
<tr>
<td>98.</td>
<td>GENTAMYCIN IP</td>
</tr>
<tr>
<td>99.</td>
<td>MEROPENEM INJ.</td>
</tr>
<tr>
<td>100.</td>
<td>PENTAZOCIN</td>
</tr>
<tr>
<td>101.</td>
<td>PIPERACILLIN+TAZOBACTAM</td>
</tr>
<tr>
<td>102.</td>
<td>RANITIDINE IP</td>
</tr>
<tr>
<td></td>
<td>TABLETS</td>
</tr>
<tr>
<td>103.</td>
<td>GLIMEPIRIDE (1MG/2MG)</td>
</tr>
</tbody>
</table>
Annexures

Annexure 28 Deleted
Appendix 1: Advanced Concepts of Value for Money

1.0 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

2.0 Total Cost of Ownership

While the value of a product covers all components of value over the “Whole-Of-Life” (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or “Life-Time-Cost” (LCC) or “Total Cost of Ownership” (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:
Appendix 2: Legal Aspects of Procurement

i) **Procurement price.** The amount paid to the vendor/contractor for the product, service, or capital equipment;

ii) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer’s location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;

iii) **Usage costs.** In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on; and

iv) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

### 3.0 Value for Money

Besides value of a product or service, the customer also has his own notion of “value” of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the Government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is ‘fit for purpose’ and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before
procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional ‘value added’ benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any ‘added value’ that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or ‘shadow’ bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

i) Fitness for purpose;

ii) Potential vendor/contractor’s experience and performance history;

iii) Flexibility (including innovation and adaptability over the lifecycle of the procurement);

iv) Environmental sustainability (such as energy efficiency and environmental impact); and

v) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.
Appendix– 2: Legal Aspects of Public Procurement

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practise any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state Governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the
authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase “For and on Behalf of the President of India/the Governor of State” is written to signify this fact. In a state Government, the persons who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various Departments by issuing SoPP. Rule 224 (1) & (2), Chapter 8: Contract Management of the GFR, 2017 covers this aspect also

1.3 Other Mercantile Laws
A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage.

Salient features of these mercantile laws relating to Procurement are summarised below.

2.0 Salient Features of the Indian Contract Act
2.1 Legal Aspects Governing Public Procurement of Goods - Introduction
A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

i) The Constitution of India;
ii) Indian Contracts Act, 1872;
iii) Sale of Goods Act, 1930;
v) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
vi) Micro, Small and Medium Enterprises Development (MSME Development) Act, 2006;
vii) Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
viii) Right to Information (RTI) Act 2005;
ix) Central Vigilance Commission Act, 2003;
x) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
xii) Prevention of Corruption Act, 1988;

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

2.2 Elementary Legal Practices

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

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

2.2.3 **Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

2.2.4 **What agreements are contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable

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

2.3 **Competency of Parties**

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

2.3.1 Categories of persons and bodies who are parties to the contract maybe broadly sub-divided under the following heads:

i) Individuals
ii) Partnerships
iii) Limited Companies
iv) Corporations other than limited companies

a) **Contracts with Individuals:** Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.
(b) **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

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

(d) **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, CooperativeSocietiesActandSocietiesRegistrationActarealsoartificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such
associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.4 Consent of both Parties

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

i) When the misunderstanding relates to the identity of the other party to the agreement;

ii) When it relates to the nature or terms of the transactions;

iii) When it related to the subject matter of the agreement.

2.5 Free consent of both Parties

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

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

2.5.3 Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.
2.6 Consideration
Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an actor a promise which is illegal or impossible has no value.

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

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

2.9 Communication of Acceptance
A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

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

2.10 Acceptance to be identical with Proposal

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

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

2.11 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the date and time of opening of tender.

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

2.12 Withdrawal of Acceptance
Appendix 2: Legal Aspects of Procurement

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

2.13 Changes in terms of a concluded Contract

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

2.14 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged:

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

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

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

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

2.15 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

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

2.16 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should therefore follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

2.17 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably
indicated in each contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the effective date to be a date after the following:

i) Date of signing of the contract.
ii) Furnishing of performance bond in terms of performance security.
iii) Receipt of Bank Guarantee for advance payment.
iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer.
v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

3.0 **Salient Features of the Sales of Goods Act, 1930**

3.1 **Scope**
Agreements for the sale of goods are governed by the general principles of the contract law. A contract for sale of goods has, however, certain peculiar features such as transfer of ownership of the goods and quality aspects implied under a contract for sale of goods, and so on, are not covered in the Contract Act. These peculiarities are the subject matter of the provisions of the Sale of Goods Act, 1930. In this act, the two parties to the contract are called “seller” and “buyer”. This act defines goods, for the purpose of applicability of this act, as every kind of movable property, including stocks and shares, growing crops, goodwill, patents, trademarks, electricity, water, gas, and so on—all that can be exchanged for money but not any kind of immovable property (for example, real estate).

3.2 **Concept of Transfer of Property (Passing of Title)**
Proprietary (ownership) rights and obligations in “goods” are called legally “title to goods” or “property in goods”. The meaning of property here is different from the common connotation of the word. At what point of time or stage in a contract does this passing of title of (property in) goods happen is laid down by this Act. This ownership of goods is different from ‘possession of goods’ which means the physical custody or control of the goods. Delivery of goods is only a transfer of ‘possession of goods’; and may or may not coincide with the passing of title in goods. This distinction is very important in procurement.
The transfer of property in the goods, from the seller to the buyer, is the essence of a procurement of goods. Therefore, the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

3.3 Ownership
The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, and so on.

3.4 Concept of “Res Prit Domine” -- Risk Follows Ownership
This concept simply means that, as a general rule, risk follows the ownership, irrespective of whether the delivery (or transfer of possession of goods) has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at that time – irrespective of whosoever is in the “possession of the goods”.

3.5 Action against Third parties
When the goods are, in any way, damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action (claim, litigation) against them.

3.6 Time at which Property in Goods is Transferred
The property in goods is transferred to the buyer at such time as the parties to the contract intend this to happen, as recorded in the terms of the contract. This needs neither to coincide with the point when payment is made nor with the delivery of Goods and not even with the point of time when the seller dispatches the goods.

3.7 Document of Title to Goods
These are the voucher, bill, document, receipt, cash memo, bill of lading, lorry receipt, railway receipt, or any such acknowledgement which proves the ownership of the goods that, in the ordinary course of business, the buyer may receive. These are called documents of title to goods.

3.8 Doctrine of Caveat Emptor
The Sales of Goods Act lays down this important concept that the buyer must act with due diligence when buying goods; it is not a seller's duty to point out the defects in goods. This is a doctrine which is not in consonance with modern times but,
unfortunately, is a legal position. This, however, does not apply if the buyer’s consent to buy is obtained by the seller by knowingly concealing the defects which could not have been discovered by the buyer reasonably at the time of procurement. The caveat emptor is also diluted under some implied conditions in a contract for sale.

3.9 Provision of the Act regarding Statutory Variations in Taxes and Duties
Statutory variations in the taxes and duties (customs duties, excise duty, tax on the sale or procurement of goods), after the making of any contract, has to be borne by the buyer even if there is no such express stipulation in the contract.

4.0 Salient Features of the Indian Arbitration & Conciliation Act 1996
Indian Arbitration & Conciliation Act 1996 provides for dispute settlement either by a process of conciliation and/or by arbitration. This act is based on a ‘United Nation’s Commission on International Trade Law Model Arbitration Law’ with an object to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

4.1 Arbitration
Arbitration is one of the oldest methods of settling civil disputes arising out of and in the course of performance of the contract between two or more persons by reference of the dispute to an independent and impartial third person called the arbitrator, instead of litigating the matter in the usual way through the courts. It saves time and expense, avoids unnecessary technicalities and, at the same time, ensures “substantial justice within limits of the law”.

4.2 Arbitrator, Arbitration and Arbitral Award
The person or persons appointed to determine differences and disputes are called the arbitrator or arbitral tribunal. The proceeding before him is called arbitration proceedings. The decision is called an Award. For the purpose of Law of Limitations, The Arbitration for a particular dispute is deemed to have commenced on the date, on which a request for arbitration is received by the respondent.

4.3 Arbitration Agreement
It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

4.4 Appointment and Composition of Arbitral Tribunal
Both parties can mutually agree on the number of arbitrators (which cannot be an even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators, or else in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint an arbitrator within 30 (thirty) days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the court may appoint any person or institution as arbitrator. In case of an international commercial dispute, the application for appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

4.5 Challenge to Appointment of Arbitrator
An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. The appointment of an arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to the arbitrator’s independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside the arbitral award can be made to the court, after the award is made by the arbitrator. Thus the other party cannot stall further arbitration proceedings by rushing to court.
4.6 Conduct of Arbitral Proceedings

The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the arbitral tribunal may decide themselves on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872. Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

i) Determine admissibility, relevance, materiality and weight of any evidence;

ii) Decide on their own jurisdiction;

iii) Decide on interim measures;

iv) Termination of proceedings; and

v) Seek court assistance in taking evidence.

4.7 Arbitral Award

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

4.8 Recourse against Arbitral Award

Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award), only on the grounds specified in the act, that is, the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award deal with disputes not falling within the terms of reference of arbitrator; composition of the arbitral tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the arbitral award is in conflict with the public policy.

4.9 Conciliation
This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into a common use.

4.10 Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015

i) Independence, Disqualification and Obligations of arbitrators at the time of appointment

a) Independence, Impartiality and Accountability of Arbitrators: A fixed fee structure ensures the independence of the arbitral tribunal and also provides a reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 to Rs 30 Lakh (Rupees forty-five to rupees thirty lakh) for various slabs of disputed value from Rupees five Lakh to above Rs 20 (Rupees twenty) Crore (with a sole arbitrator entitles to 25% (twenty-five percent) extra above the model fee). However it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.

b) Disqualification from appointment: A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if
they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of procuring entity as arbitrator is no more legal.

c) **Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:

1. conflict of Interest the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.

2. Time constraints: An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.

ii) **Fast-tracking Arbitration in India**

a) **Award within 12 (Twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:
1. Reduce the fees of arbitrators by up to 5% (five percent) for each month of delay.
2. Substitute one or all the arbitrators.
3. Impose actual or exemplary costs on any of the parties.
   b) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.
   c) **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The salient features of the fast track arbitration are:
      1. Dispute is to be decided based on written pleadings only.
      2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
      3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
      4. The parties are free to decide the fees of the arbitrator(s).
   d) **Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.
   iii) **Procedural and Jurisprudence simplified**
   a) **Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the
arbitration must commence, if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

b) **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.

c) **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the ‘usages of the trade applicable to the transaction’. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.

d) **Act made applicable on International Commercial Arbitration with even seat outside India:** Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect:

1) Seeking interim relief from courts [section 9]
2) Seeking the assistance of the court in taking evidence [section 27]
3) Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]
4) Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

5.0  **Salient Features of Competition Act, 2002 relating to Anti-competitive Practices**

i) The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country
to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.

ii) The Act was amended by Competition (Amendment) Act, 2007 and again by Competition (Amendment Act), 2009.

iii) In India, Competition Commission of India ("CCI"), formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy, power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).

iv) Section 8 dealing with composition of Commission provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.

v) The Competition Appellate Tribunal (COMPAT) is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.

vi) Any person aggrieved by the order or decision of the CCI may prefer an appeal to the Competition Appellate Tribunal ('COMPAT') within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 (sixty) days from the date of communication of the order by the COMPAT.

vii) CCI may initiate an inquiry:

a) On its own motion on the basis of information and knowledge in its possession, or
b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or

c) On receipt of a reference from the Central Government or a State Government or a statutory authority

viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.

ix) The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.

x) Under Section 21 of the Act, any statutory authority can suo moto or on request of a party in the course of a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.

xi) The key provisions of the Competition Act include:

1) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;

2) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
3) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.

xii) The term ‘agreement’, has been defined broadly in the Competition Act. It extends to a mere ‘arrangement’, ‘understanding’ or ‘action in concert’, none of which need be in writing or enforceable by law.

xiii) Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.

xiv) Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:

1) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise
2) Practice carried on by any association of enterprises or association of persons
3) Decision taken by any association of enterprises or association of persons

xv) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.

1) Agreements regarding Prices
2) Agreements regarding Quantity / Quality
3) Market Allocation
4) Bid Rigging

These four horizontal agreements are not presumed to have appreciable adverse effect on competition and excluded from the provisions of Section 3(3) of the Competition Act, 2002 provided they are entered into by way of joint ventures and
increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Cartels, by their very nature are secretive and thus it is difficult to find the direct evidence of their presence. The orders of the CCI clearly point that CCI relies on circumstantial evidence, both economic and conduct-based, to reach its decision on the existence of a cartel agreement.

The Act provides a definition for bid rigging and it covers agreements having effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:

1) Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence
2) Bid Rotation
3) Bid Suppression
4) Complementary Bidding
5) Subcontracting arrangements
6) Market Allocation

The Act gives wide discretion to CCI to frame the remedies to overcome the anticompetitive situation:

1. Declare Anticompetitive Agreements Void
2. ImoseHeavy Penalties

1) Penalty can be up to 10% (ten percent) of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging
2) Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten percent) of its turnover for each year of the continuance of such agreement, whichever is higher

3. Order the parties to Cease & Desist
4. Modification of agreements
5. Remedy Damage to reputation
6. Fix Individual Liability
7. Grant Interim orders
8. Any other order as CCI deems fit

xvi) **Who can file the information**: Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:

a) Any person, consumer or their association or trade association can file information before the Commission.

b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.

c) “Person” includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

xvii) **What are the issues on which information can be filed?**

a) The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.

b) Class of consumers.

xviii) **The fee** -

a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non-Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,

b) Rupees 20,000/- (twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crore, and

c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

6.0 **Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015**

i) The Act seeks to protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.

ii) Any public servant or any other person including a non-Governmental organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.
iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.

iv) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:

1) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence
2) Records of deliberations of the Council of Ministers
3) That which is forbidden to be published by a court or if it may result in contempt of court;
4) A breach of privilege of legislatures;
5) Commercial confidence, trade secrets, intellectual property (if it harms a third party);
6) That relayed in a fiduciary capacity;
7) That received from a foreign Government;
8) That which could endanger a person’s safety etc.;
9) That which would impede an investigation etc.;
10) Personal matters or invasion of privacy.

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.

v) Any public interest disclosure received by a Competent Authority will be referred to a Government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.

vi) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.
vii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Designated Agency.

viii) Any person who negligently or with malafide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding Rs. 50,000 (Rupees fifty thousand).

ix) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding Rs. 30,000 (Rupees thirty thousand).

x) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.

xi) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code.

xii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.

xiii) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before.
xiv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.

xv) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.

xvi) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

xvii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

xviii) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.
Appendix 3: Electronic Procurement (e-Procurement) and e-Auction

(The details given in this appendix are generic in nature are not prescriptive part of this Manual of Policies and Procedures. Procuring Entities may settle and decide the details with the service provider)

1.0 **Electronic procurement (e-procurement)** is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014 prescribed mandatory publishing of tenders through the e-procurement mode for tenders valued above Rupees two lakh.

2.0 **Service Provider:**

A service provider is engaged to provide an e-procurement system covering the following:

i) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;

ii) The system archives the information and generates reports required for the management information system/decision support system;

iii) A helpdesk is available for online and offline support to different stakeholders;

iv) The system arranges and updates the Digital Signature Certificate (DSC) for Departmental users; and

v) Different documents, formats, and so on, for the e-procurement systems are available.

3.0 **Process:**

93[http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_1/eProcurement0901208.4.pdf](http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_1/eProcurement0901208.4.pdf)
In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

i) **Communications**: Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;

ii) **Publishing of tenders**: Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the tender, a unique "tender id" is automatically generated by the system. While creating/publishing the tender, the "bid openers" are identified – four officers (two from the procuring entity and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;

iii) **Registration of bidders on portal**: In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and
conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;

iv) **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/declaration/scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker’s cheque/pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/banker’s cheque/pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;

v) **Corrigendum, clarifications, modifications and withdrawal of bids:** All these steps are also carried out online mutatis mutandis the normal tendering process;

vi) **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids and
the reports/statements and sign them for further processing. In case of
opening of the price bid, the date and time of opening is uploaded on the
portal and shortlisted firms are also informed through system generated
emails and SMS alerts – after shortlisting of the techno-commercially
acceptable bidders;

vii) **Shortfall document:** Any document not enclosed by the bidder can be
asked for, as in case of the traditional tender, by the purchaser and
submitted by the bidder online, provided it does not vitiate the tendering
process;

viii) **Evaluation of techno-commercial and price bids:** This is done offline in
the same manner as in the normal tendering process, based on system
generated reports and comparative statements;

ix) **Award of contract:** Award of the contract is done offline and a scanned
copy is uploaded on the portal. More needs to be done in this regard. The
information and the manner of disclosure in this regard must conform to
Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and
also to reduce the need for filing individual RTI applications. Therefore, the
award must be published in a searchable format and be linked to its NIT;
and

x) **Return of EMD:** EMD furnished by all unsuccessful bidders should be
returned through an e-payment system without interest, at the earliest,
after the expiry of the final tender validity period but not later than 30
(thirty) days after conclusion of the contract. EMD of the successful bidder
should be returned after receipt of performance security as called for in the
contract.

4.0 **Disposal through e-Auction**

4.1 **Contractual Legal Aspects of Auction Sale of Scrap**

Ministry/Departments should decide the calendar for holding auctions/tenders for
groups of lots. A brief summary of this Auction Schedule is given publicity in
Newspapers and on websites, indicating how to obtain/download Auction
Catalogues. For each Auction a Catalogue is prepared containing details of
Schedule of Lots in the Auction, as well as General and Special Terms and

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Conditions of Sale (GTC and STC). In contractual terms, Publishing of an Auction catalogue in sale of scrap is equivalent to NIT/ SBD in Tenders for procurement and forms the basis of bids by the purchasers. In e-Auction, the General Conditions of Sale are available on the website and Special Conditions of Sale of each lot is hyperlinked to the Lot Description. In case of Tender/ Physical Auctions Catalogue contains these in printed format.

In Auction, the bidders keep bidding higher and the highest accepted bid is accepted. In such a case a Bid-Sheet is immediately signed by the Seller and Bidder’s representative, which along with the delivery order serves as a legal contract document. In e-Auction, Bid Sheet is generated with DSCs of Buyer and Seller.

4.2 Legal Status of e-Auction

e-Auction through E- Auction Service Provider (eASP) is a triangular contract. eASP is a sub-agent of the seller through a standing contract entered between them, which is subject to general terms and conditions (GTC) of eASP. eASP is also a sub-agent of the successful buyer through a standing contract between them which is subject to Buyer Specific Terms and Conditions (BSTC). eASP gets a commission of fixed percentage of sale value from the purchaser directly – which is deducted from the amount payable to the seller. The e-auction sale is governed by GTC, BSTC and Special Terms and Conditions (STC) of the e-auction. In case of conflict or differences among any provisions of GTC, BSTC and STC, the provisions of STC would prevail. Normally, successful purchasers pay all monies to eASP who, in turn, transfers it to the seller. But the seller may, if desired, negotiate with eASP to accept such payments directly from purchaser.

4.3 Creating an Auction Event: Auction Catalogue

The seller lists items to be auctioned on a specified date. This list is generally called an auction catalogue. Besides the list of items, it also contains any special conditions of contract applicable generally or to specific lots. The following auction details are provided in this list: Auction Catalogue.

i) Auction number;

ii) Auction Opening date and time,

iii) Auction Closing date and time;
iv) Type of Auction Ending: Close Ended/ Open Ended
v) Max Auto Extensions Allowed (five to ten)/ Duration of Auto Extensions (90 Secs– ninety seconds)
vi) Auction Catalogue Number and Date
vii) Inspection from date;
viii) Inspection closing date;
ix) Seller/Unit name;
x) Address; Contact details;
xi) Details of the contact person;
xii) Details of ED and Sales Tax (CST/ VAT) in each Lot and TCS (including Surcharge and Edu Cess) for all lots;
xiii) Whether Subject to Acceptance (STA) is applicable for bids within (10% (ten percent) or any other percentage) of the Reserve Price and
xiv) List of lots to be included: (Lot Description is hyper-linked to relevant details containing special terms of lifting, etc)

<table>
<thead>
<tr>
<th>Auction Sq No:</th>
<th>Lot No</th>
<th>Lot Desc</th>
<th>Quantity</th>
<th>ED/(S T/Vat) %</th>
<th>Custodian/ Location</th>
<th>Start Time</th>
<th>Close Time</th>
<th>Minimum Increment</th>
<th>STA applicable Y/N</th>
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</table>

Total Number of Lots =

The fixed reserve price also has to be uploaded on the portal for each lot, which is kept confidential. It should also be mentioned if bids below the reserve price up to a percentage can be accepted on an STA basis. The auction details can be posted by eASP but to maintain the sanctity of the reserve price, it is better for the seller to do so through his login and password. The bidder's queries before the auction will reach seller by e-mail and can be answered online. The seller will not be allowed to edit any item once the auction starts. To attract bidders to the auction to get a higher price, the seller should describe items in detail to include information such as condition and size of the item. The more information is provided, the more bidders will bid with confidence. A photo can also be uploaded. Generally, auctions with
images have higher sell-through. Many buyers like to browse through the eASP categories and, therefore, listing the item in the appropriate category increases the likelihood of interested bidders viewing it.

4.4 Buyer Eligibility
All prospective e-auction sellers and bidders will have to register themselves by filling in the relevant details online. Bidders have also to pay the specified non-refundable registration fee (usually Rs.10,000 – Rupees ten thousand) off line. Only registered bidders will be able to access the auction floor. The auction notification will, however, be seen by all internet users. If it is found that the bidder is not adhering to the terms and conditions of the e-auction and also indulging in any malpractices either himself or through his agents, deputies or observer, such a bidder is liable to be blacklisted and appropriate action will be taken as deemed fit by the seller. There are various reports available by which seller can rate a bidder. The seller can restrict or blacklist a buyer from bidding by making a formal request to eASP.

4.5 Conduct of Auction
The seller cannot close/cancel an auction once it starts. It can be cancelled/amended prior to the starting of the auction by making a request for cancellation. The following information will be present on the auction floor web-page:

i) Opening date and time,
ii) Closing date and time,
iii) Item number,
iv) Item name, hyper-linked to relevant details containing duties, etc., /special terms of lifting, etc.;
v) Quantity and unit of measurement;
vi) Location of material/item;
vii) Last bid or basic price, if any;
viii) Bidders’ bid in Rs./unit; and
ix) Bid history.
The closing time of an auction shall automatically be extended by period indicated in Auction Catalogue for all auctions if bid continues (e.g., in case the closing time is 5.30 pm of any particular date and if a bidder bids at 5.29 pm then the closing time will be automatically extended). Maximum number of auto extensions are also specified.

Bidders are able to indicate the bid price through their login. A bid, once given, cannot be retracted. Conditional offers will not be accepted/entertained. Each bidder will have the option to declare his maximum value of bid (which cannot be viewed by other bidders) up to which his automatic bidding will continue.

The seller can monitor auction activity and view the bidding history of the live auctions, reserve prices (reserve price can only be viewed by seller and no one else), and other features. However, the seller will get an automated email once the auction ends with detailed information on the auction (highest bidder, subject to approval items, rejected items).

The respective items will be marked "sold" after closing of the auction when the highest bid is greater than the reserve price and an automatic intimation to the concerned buyer will be sent online to make the payment.

If the bid price matches the limits specified for inclusion in STA, then it shall be shown under the STA category and the seller will be accordingly informed. In case of STA, the seller has to convey the acceptability of the bid amount or otherwise of the bid value to eASP as well as the bidder within three days (excluding holidays) of the close of the auction.

In case of "Sold" or STA a Bid-Sheet is displayed (Annexure 20), indicating the details of the accepted bid, which is printed and shows digital signatures of Auction Supervising Officer and the Bidder. As mentioned before this serves the role of legal Contract document.

If the reserve price has not been met by close of auction, the auction closes without a winning bidder. On the seller’s request, eASP will arrange for inclusion of the unsold item in the next auction.

4.6 Earnest Money Deposit
EMD is payable within seven calendar days from the date of closing of the e-auction (excluding the date of closing) by the successful bidder. EMD is equivalent to 25 per cent of material value of the accepted lots and 10 (ten) per cent of the material value for STA lots in the forms of a demand draft drawn in favour of the authority mentioned in the auction catalogue. On receipt of the EMD by eASP, an acceptance letter/sale order will be issued for sold lots. In case of failure to pay the EMD in time, the login of the party will be deactivated in addition to other actions as deemed fit and the offer will stand withdrawn.

4.7 Payment of Balance Sale Value (BSV)

In case of sold/accepted lots and lots taken on STA basis, the balance payment has to be made within 15 (fifteen) calendar days from the date of the acceptance letter/sale order (excluding the date of issue of the acceptance letter/sale order), by way of a demand draft as per the following manner:

i) Commission percentage as per STC/ GTC/ BSTC to be paid in favour of eASP, by way of demand draft/pay order;

ii) The balance amount (after deducting the EMD and amount payable to eASP) plus applicable VAT/duties, income tax and other charges if any must be paid in favour of authority mentioned in auction catalogue;

iii) In case of delay, a late payment charge @ one per cent per week or part thereof will be charged up to two weeks only and thereafter the EMD will stand forfeited without any notice; and

iv) Tax Collected at Source (TCS) at the applicable percentage (presently@ one per cent) of the gross value (material value + excise duty + VAT + any other applicable taxes/duties/cess, etc.) may be deducted by the purchaser and a TDS certificate may be given. A surcharge of 10% (ten percent) on TCS and a further Education cess of 3% (three percent) is leviable on the TCS+ Surcharge.

4.8 Delivery Order

eASP will hand over, to the successful buyer, a delivery order authorising the Stores Department to make such a delivery, after getting the requisite material value. The purchaser will approach the seller with the delivery order to allow him to lift the
material. The validity of the delivery order is 60 (sixty) days from the date of the e-auction. The delivery order should show the following particulars:

i) Lot number;
ii) Description of material;
iii) Purchaser's name and address;
iv) Approximate quantity in the lot;
v) Rate at which sold;
vi) Value realised;
vii) Reference to the cash remittance note, under which the value was remitted to the nominated cashier;
viii) Chief cashier or treasurer's receipt note and date; and
ix) Amount of loading charges recovered by the store keeper.

**Note:** Information sought in S.No i) to viii) shall be filled in by eASP in tabular form (Columns 1 to). Information pertaining to S.No. ix) (Columns 9) shall be filled by the store keeper.
Appendix 4: Management of Public Procurement Function

1.0 Organisation of Procurement Function

The procurement function should be so organised that procurement executives get an opportunity to develop expertise in a particular market segment, and internal customers may have to deal with only a single point of interface. Thus, work distribution in the procurement entity may be segmented based on markets, but there may be nodal officers to provide a single window interface to internal clients.

In a procurement entity, beside procurement activities, there are also ancillary activities. In a small procurement entity, these ancillary activities may be distributed among various executives. Ancillary procurement activities are:

i) Administration and management services;
ii) Human resources development and training;
iii) Policy and guidelines;
iv) Procurement performance measurement and management reporting
v) IT systems and master data management;
vi) Advertising, bidding document sale/issue/receipt, tender boxes, tender opening, custody of samples;
vii) Direct contracting/local purchase;
viii) Liaison and progressing;
ix) Supplier relations management and registration; and
x) Legal and arbitration matters.

2.0 Management Reporting

2.1 Procurement Key Performance Indices and Management Reporting

As in all management and financial functions, it is possible to measure the pulse of the procurement function by using certain Procurement Key Performance Indices (KPIs). As part of management reporting, these KPIs can be devised to reflect the status of workload, throughput and efficiency of the procurement function. Some KPIs are given in Appendix 5: Templates for Management Reports and KPIs.
2.2 Management Reports for Monitoring of Procurement Function

For proper monitoring and control of the procurement function, regular monthly reports to procurement managers should highlight throughput and stagnation at important milestones of the procurement process. The milestones where workload, throughput and stagnation need to be studied in procurement management are:

i) Receipt of indent;

ii) Issue of tenders;

iii) Finalisation of tender decision;

iv) Signing of contracts;

v) Successful performance of the contract; and

vi) Payments for supplies/works/services.

This will highlight stages where urgent intervention is required for efficient procurement to the management. These reports would be compiled by the procuring entity. Templates for management reports are given in Appendix 5: Templates for Management Reports and KPIs.

3.0 Record Keeping

3.1 All procurements done by the organisation are subject to post audit by internal audit, statutory audit and various internal and external vigilance agencies. Hence, all documents related to the procurement should be filed and kept systematically and safely. Files shall be properly numbered on the notes and correspondence side. The period of retention of various types of documents should be laid down. The procuring entity should also maintain following basic records (either in manual or electronic form):

i) Item/Asset Master Database: The heart of the procurement system is the item/asset master database. It contains complete data about an item or asset handled in the past. It contains: code-number; category; description long/short; specification; drawings; trade group of vendors; book-rate; estimated annual consumption; replenishment data; inventory parameters (buffer stock, safety stock levels) – to the extent relevant to goods, works or services;
ii) **Vendor/Contractors Database:** Contains vendor/contractor information such as name; address; small scale and minority enterprise categorisation; registration data (registration code, trade groups, monetary limits of registration, NSIC registrations); past performance ratings;

iii) **Procurement Register:** Key information at various stages of procurement operations, from receipt of indents till the issue of the contract, is recorded (manually or electronically) in the procurement register. The Procurement register thus enables ascertaining of status of a particular procurement and also overall monitoring of efficiency and throughput of procurement operations;

iv) **Procurement Order Guard Register:** An indexed register with only machine numbered stubs of pages (instead of full pages) is used for this purpose. One ink signed copy of all orders issued by the procuring entity is compulsorily pasted in these stubs in chronological order. This is the most authentic record which is used as a guard and ultimate reference against any tampering/falsification/misreporting of procurement orders; and

v) **Procurement Order Progress Register:** It contains record of all procurement orders issued and progress of supplies against these contracts. It contains procurement order numbers, vendor/contractor name, brief description of procurement, total value of the order, delivery dates, actual dates of supply, and so on.
Appendix 5: Templates for Management Reports and KPIs

(Refer Appendix 4, Para 1.3)

1. Delays by more than one month in floating of tenders against indents received

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Item/Work Code and Description</th>
<th>Quantity, Value Required/Indented</th>
<th>Date Received in Procuring Entity</th>
<th>Date of Floating Tenders</th>
<th>Remarks</th>
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</table>

2. Delays by more than one month in finalising tenders over ideal time

(Chapter 7, Para 1.2)

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Tender Number &amp; Opening date</th>
<th>Item/Work Code and Description</th>
<th>Quantity &amp; Value</th>
<th>Date Indent Received in Procuring Entity</th>
<th>Delay as per Ideal Time</th>
<th>Likely Date of Contract/Remarks</th>
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</table>

3. Cases of tenders discharged or proposed for re-tendering

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Tender No. &amp; Opening Date</th>
<th>Item/Work Code and Description</th>
<th>Quantity &amp; Value</th>
<th>Reasons of Discharge/Retendering</th>
<th>Level of Approval</th>
<th>Is it a Case of Repeat Retendering?</th>
<th>Actions Taken to Avoid Repetition</th>
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4. Delays by over one month in signing contracts after finalisation of tender

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Tender Number &amp; Opening date</th>
<th>Item/Work Code and Description</th>
<th>Quantity &amp; Value</th>
<th>Date of Finalisation of Decision</th>
<th>(Likely) Date of Contract Signing</th>
<th>Remarks</th>
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</table>
5. **Delays by over three months in Performance of Contract**

<table>
<thead>
<tr>
<th>Po No &amp; Dt.</th>
<th>Item/Work Code and Description</th>
<th>Contractor Name /Code</th>
<th>Original Delivery /Performance Period/ Date</th>
<th>Delay in Weeks</th>
<th>Indicative Delivery/ Performance Date</th>
<th>Proposed Action/ Remarks</th>
</tr>
</thead>
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6. **Delays in payment by over three months from due date**

<table>
<thead>
<tr>
<th>Po No &amp; Dt.</th>
<th>Item/Work Code and Description</th>
<th>Vendor Name /Code</th>
<th>Date of Performance / Delivery</th>
<th>Due Date of Payment as Per Contract</th>
<th>Date of Signing Payment Order Voucher</th>
<th>Likely Date of Payment</th>
<th>Proposed Action/ Remarks</th>
</tr>
</thead>
<tbody>
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</table>

7. **Top 10 Contractors during the current year**

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Vendor Name /Code</th>
<th>Item/ Work Code/ Description</th>
<th>Number and Value of Orders</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Outstanding as on April 1, ----</td>
<td>Further Ordered Since Then</td>
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</tbody>
</table>

8. **KPIs during last month/quarter/financial year**

**Work Load & Throughput**

<table>
<thead>
<tr>
<th>Number and Value of Indent pending contract placement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number and value of indents received during the month</td>
</tr>
<tr>
<td>Number and value of tenders floated during the month</td>
</tr>
<tr>
<td>Number and value of tenders finalised during the month</td>
</tr>
<tr>
<td>Number and value of contracts signed during the month</td>
</tr>
<tr>
<td>Number and value of payments made for deliveries/performance during the month</td>
</tr>
</tbody>
</table>

**Efficiency of procurement process**

<table>
<thead>
<tr>
<th>Productivity – number and value wise tenders finalised/on hand per head of staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average time taken for award decision for OTE, GTE, LTE, PAC/ OEM/ STE categories of procurement</td>
</tr>
<tr>
<td>Proportions of tenders on PAC, STE basis with reference to the total number/value of tenders</td>
</tr>
<tr>
<td>Proportions of tenders on limited/selective bidding with reference to the total number/value of tenders</td>
</tr>
<tr>
<td>Proportion of tenders through e-procurement with reference to the total number/value of tenders</td>
</tr>
</tbody>
</table>
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