

CHAPTER VIII : POST CONTRACT MANAGEMENT

Introduction: A Contract is a legal document. Hence it needs to be ensured that both parties strictly abide by the terms and conditions of the contract. Post contract management is a very important activity and is directly dependent on the quality of work done during contracting stage. Poorly drafted contractual clauses lead to problems in Post Contract management. It is a very important function with both operational and financial implications and therefore requires close and effective monitoring. Mostly in capital procurement the contracting agency and the contract operating agency are different. In such cases it needs to be ensured that the transition is smooth from pre to post contract.

Distribution of Contract: Placement of a contract does not essentially ensure the completion of supplies. Once the contract is signed by both the parties, it should be ensured that the copies are distributed to the Indenting agency, inspecting agency, payment authority, Consignee, Landing officer, Buyer and the Seller. After the distribution of contract copies, the original contract or a copy should be placed in a folder and all important milestones should be chalked out for monitoring the payments and supplies till all the supplies and obligation are completed. If possible, Post Contract Management Module should be utilised if the procurement process is automated.

Effective Date and Delivery Period: The date of signing of the contract is to be treated as the effective date of the contract. In case of bulk production, the deliveries, supplies and performances or services shall commence from the date of issuing bulk production certificate.

In case of Capital contract the date of delivery should be reckoned from the date of release of Advance payment to the Seller (T_0), provided the Seller submits the documents mandated as per the contract for release of advance within 45 days of signing of contract. If the said documents are not submitted within 45 days of signing of contract, the period between the 45th day and actual submission of documents should be excluded from the actual date of advance payment to arrive at the delivery date. In case, no advance is to be paid, the date for reckoning date of delivery would be the date of signing of contract.

In case of **FOPM**, accord of Bulk Production Clearance date issued by the inspection agency should be taken as date of delivery. If **FOPM** is not successfully validated, approval for next date of submitting **FOPM** should be granted by the Aqn Manager of concerned arm. In case **FOPM** fails during second validation also, then the case should be decided based on criticality of the item for granting extension or cancellation of the contract and progressed for seeking approval of Chairman, Steering Committee. In case of cancellation of the contract, 10% of the EMD/PBG should be deducted as penalty from the seller post approval by the Chairman, Steering Committee.

Changes in the Terms of /Amendment to a Concluded Contract (Revenue)

Changes in the Terms of a Concluded Contract: No variation in the terms of a concluded contract should normally be made, unless the contract specifically provides for it, in which case this can be done with the specific written consent of the parties to the contract and approval of the CFA.

Amendments to a Concluded Contract: Amendment to a contract already concluded may become essential in certain situations when either party to the contract requests for

an amendment and the proposed amendment is acceptable to other party to the contract. Amendments should be undertaken after seeking approval of the CFA.

Enhancement in Rates: No enhancement in rates/prices should be made unless the contract specifically provides for it. Such situations may arise in those cases where the contract provides for price variation clauses or the change is due to variation in GST/Custom Duties/other Government taxes & levies and the contract provides for payment of these duties on the basis of actual rates, provided the supplies are made during the original delivery period. Consultation with Integrated Finance in cases where Delivery Period has expired would be required if the original contract was concluded with the concurrence of Integrated Finance or, after increase in value, the contract falls within the delegated powers of the CFA, exercisable with the concurrence of Integrated Finance.

POV of contract amendment cases (Capital): If there is a requirement of undertaking amendment to contract based on seller's request, a committee comprising specialist officer, Finance Member, rep of Principal Advisor (Cost) and rep of Aqn Manager should consider technical as well as financial implications and recommend the case to Chairman Steering Committee (DG Aqn) for approval. Levy/ waiver of LD should also be recommended by the committee based on the credentials of the case for approval by DG (Aqn).

Amendments of Minor and Non-financial Nature(Revenue): Amendments of minor nature concerning Drawing No, Part Nos, Name change/Merger of the firm, bank details, ultimate consignee etc, which do not have financial implication, may be approved by an authority one rank below the contract approving authority, without consultation of Integrated Finance in case of revenue procurement and by Vice Chiefs of the concerned service.

Performance Security: The Contract Operating Officer should check that the seller provides PBG as per the timeline stipulated in the contract. The PBG received should be retained by the Contract operating Officer for future action.

In case of non receipt of PBG the seller should be informed to deposit the same immediately. Max grace period of 10 days from the last date of submission may be given by the Contract Operating Officer.

LD should be levied for any further delay after seeking approval from the Vice Chief of concerned service in case of capital contract and by the concerned CFA in case of Revenue Contract.

Bank guarantees submitted by the tenderers/Sellers as Performance securities need to be immediately verified by SBI (FED) before acceptance. Such verification will remain valid for a period of Three Years.

PBG may not be taken in case of small value purchases upto RsTen lakhs (Revenue Contract), particularly for off the shelf/common user items or branded commercial products which are to be accepted on the manufacturer's guarantee after approval of the CFA. In case of the Defence PSUs/OFBs, an Indemnity bond may be accepted in lieu of PBG, as per current practice. The Performance Guarantee may be exempted in case of OEM Suppliers or where the value of the tender is less than Ten Lakh dollar by the CFA. (Central Revenue Procurement).

Payment

Payment Terms:

Payment terms are of great importance both for the Buyer and the Seller as the cost of finance plays a very important role in deciding the cost of an item or service being contracted for. If the payment is to be made through LC as per the contract then on receipt of notification from the seller about the readiness of the goods for dispatch, the Contract Operating Officer should first check whether the Performance cum warranty Guarantee/ Corporate Guarantee or Sovereign Guarantee or letter of comfort (as applicable) for full value of the contract has been received. In case the delivery is in multiple consignments as per the contract and there is a long delivery schedule, then opening of revolving LC may be considered.

In case of consultancy/services, payment is based on a schedule agreed to in contract, often based on certain milestones or outputs. The terms and conditions of such payment are set out in the contract wherein the amount of advance payment, if any, is specified, as are the timings of the payment and the amount of advance payment security to be provided by the consultancy firm. The advance payment is set off by the procuring entity in equal instalments against monthly billing statements until it has been fully set off.

Documents to be submitted for Claiming Payment(Revenue): The documents to be submitted for audit and payment depend upon the nature of procurement and the terms and conditions of a particular supply order/contract. However, essential documents that are required for audit and payment are as follows:-

- (a) Documents to be Submitted to the Audit Authority Along With Advance Copy of the Supply Order/Contract:-
 - (i) Ink signed/ digitally approved copy of the Supply Order/Contract Agreement/ Accepted Tender (AT) Note.
 - (ii) An ink-signed/ digitally signed copy of sanction of the CFA indicating UO Number and date of IFA's concurrence, where applicable.
 - (iii) Specimen signatures of sanctioning and countersigning authorities (in case of ink signed documents only).
 - (iv) GST/Service Tax Registration No./PAN No, where applicable.

Note:

1. The budget allotment letter(s) conveying allocation of funds under the concerned code-heads of expenditure are required to be sent as and when the allocations are made.
2. In case documents listed above are not sent in advance to the audit authority, they may be called for by such authority at the time of payment of bills/post audit, where applicable.

(b) Documents to be submitted to Paying Authority for payment along with the Bill

- (i) An ink-signed copy of the Contingent Bill/Seller's Bill.

- (ii) An ink-signed copy of the Commercial Invoice.
- (iii) CRV as proof of BOC.
- (v) Inspection note.
- (vi) Relevant documents/proof of payment in support of the claim for statutory and other levies, such as GST challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF / ESIC contribution with nominal roll of beneficiaries, etc., as Applicable.
- (vii) Exemption certificate for GST/Customs duty, if applicable.
- (viii) Bank Guarantee for advance, if any.
- (ix) Guarantee/Warranty Certificate.
- (x) Performance Bank Guarantee/indemnity bond, where applicable
- (xi) DP extension letter with CFA's sanction, UO No. and date of IFA's concurrence, where required, indicating whether extension is with or without LD.(As Applicable)
- (xii) Details for electronic payment, if these details are not incorporated in the Supply Order/Contract or in case there is a change in these details.
- (xiii) User acceptance.

[Note: Depending upon the peculiarities of the procurement being undertaken, documents may be selected from the list given above and specified in the RFP and supply order/contract.]

Payment of Advance:

Advance Payment to Sellers: Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:-

- (a) Advance payments are demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipments, etc.
- (b) Advance payments demanded by firms against fabrication contracts, turnkey contracts, etc. Where it is decided to provide advance payment, the quantum should be incorporated upfront in the RFP.
- (c) Advance Payment demanded by the OEMs.

Quantum of Advance: Advance payment should not exceed fifteen percent of the contract value or the amount payable for six months in case of maintenance contracts.

Relaxation of the Prescribed Ceilings: The ceilings mentioned above may be relaxed only with the approval of the VCOAS/VCNS/VCAS.

Stage/Part Payments: If stage/part payments are proposed to be made on achievement of milestones, it should be clearly mentioned upfront in the Contract with the approval of CFA and the concurrence of the IFA, wherever required as per the delegation of financial powers.

Securing the Advance: While making any advance payment, adequate safeguards in the form of bank guarantee, etc., should be obtained from the firm.

Correctness of the Quality and Quantity: On receipt at the consignee's premises, the stores should be checked for ascertaining the correctness of quantity, quality and documents. In case the stores are found deficient in any way, the consignee has the right to reject the stores even if these were inspected and cleared by the inspector. In case of any discrepancy the consignee should immediately raise a Discrepancy Report (Fifteen days) and forward to the Contract operating Officer.

Inspection (Capital)

In case of PDI the Contract Operating Officer should inform the concerned QA personnel at least 45 days in advance prior to the Inspection day. If the composition of the PDI committee is specified in the contract, the approval of the names and authority to issue the GSL can be accorded by the VCOAS/VCNS/VCAS/DCAS/CISC/DG(CG).

For JRI, the Contract Op Officer should coordinate the visit of sellers rep to the place of JRI.

If the platform/facilities are to be provided by GOI then the same should also be coordinated well in advance.

In case GOI fails to provide the platform/facilities to the seller to demonstrate the performance of the equipment, delay period should be deducted from the delivery period. Approval can be given by the Vice Chief of concerned service. In case the supplied item fails during JRI due to any reason, it will be the responsibility of the seller to replace the same within the delivery period at his cost and expence.

Inspection(Revenue)

Self inspection: Under exceptional circumstances, the stores ordered may be accepted on the guarantee and warranty of the Seller. Towards this end, for acceptance of the inspected items or the entire batch/lot, the Seller shall also get the stores inspected by its Quality Assurance Department and furnish a certificate that the stores conform to the specifications laid down in the contract.

Inspection by the Buyer: However, where the contract specifies actual inspection by the Buyer, the Seller will arrange for the inspection, in consultation with the Buyer. The following guidelines will apply where inspection is required to be carried out:-

- (a) The stores shall be inspected in accordance with the provisions of the contract.
- (b) Where inspection by the inspector is specified, the seller will give him sufficient advance notice of the date in writing on which the goods will be ready for

inspection. The seller will also provide the inspector all the necessary facilities including appliances, tools, material and labour at no extra cost, to carry out the specified inspection. When independent tests and analyses, in addition to those made by the inspector on the seller's or sub-seller's premises, are considered necessary, the seller shall provide testing at Seller's expense and deliver, free of charge, at such place as the Buyer may direct, such materials as he may require for tests or analysis.

(c) If any of the products, whether finished or in the course of production, are rejected by the inspector, they shall be marked and segregated in such a distinctive manner, to the satisfaction of the inspector, so as to ensure that they are identified as rejected products.

(d) The Buyer shall not be liable for payment for any rejected supplies or any costs of inspection thereof.

(e) The Seller shall at his own expenses and within the period of delivery, as specified in the contract, replace or make good, to the satisfaction of the inspector, any articles rejected on inspection.

(f) The decision of the inspector regarding mode, method, rejection or acceptance of the specified items/ entire batch/ lot will be final.

(g) The Buyer reserves the right to inspect the stores on arrival in India and discrepancy or defects found shall be reported to the Seller within fifteen months. The seller shall rectify the same within ninety days of receiving the intimation.

(h) The stores will be offered for inspection sufficiently in advance considering the time involved for inspection and transportation so as to reach consignee premises before expiry of stipulated delivery period.

(j) The buyer reserves the right to inspect the stores on arrival at consignee premises and discrepancy or defects found shall be reported to the seller within 60 Days. The seller shall ratify the same within ninety days of receiving the intimation.

Packaging and Despatch: The stores are required to be packaged as per the terms and conditions of the contract and should be checked for correctness accordingly. The stores are required to be packaged to withstand normal condition of shipment/ transportation and at consignee premises. In case the stores are not packed as specified in the contract then the PBG should be retained till it is certified by the QA staff that deviation has not resulted in any adverse effect to the consignment.

Terms of Delivery:

Standard Terms of Delivery: Timely delivery is the essence of the contract. Standard terms governing delivery of goods as per the contract need to be checked and will/may be as follows:-

(a) Delivery of Goods are affected within specified days from the date of signing of the contract.

(b) The date of delivery should be the date of clean-on-board Bill of Lading/Air Way Bill.

- (c) Where inspection by the Buyer prior to delivery is provided for, no stores will be considered ready for delivery until the Buyer or his authorized representative certifies in writing that the stores have been inspected and approved by him.
- (d) Each contract will clearly specify the date of delivery/ date on which the items will be ready for inspection. The prescribed delivery schedule should be firm and not open-ended.
- (e) The stores will be shipped by sea/air as specified in the contract
- (f) The contract or any part thereof, if delivered in more than one installment, shall be deemed to be complete, and the contract price for the delivered goods would become payable to the seller, only when all terms and conditions relevant to that delivery as per the provisions of the contracts have been completed.
- (g) The Goods are considered as delivered by the Seller and accepted by the Buyer when they conform to the following:
 - (i) **In respect of Quantity** – According to the number of packages in sound external condition and the weight shown in the shipping documents.
 - (ii) **In respect of Quality** – According to the quality stated in logbooks/passports.

Failure to Deliver within the DP: When the supplies do not materialize by the stipulated contract delivery date, either of the under mentioned action should be initiated:-

- (a) Issuing a performance notice.
- (b) Extending the delivery date with imposition of LD and denial clause, which implies denial of increase in price, taxes, duties, etc. taking place during the extended period.
- (c) Re-fixing the delivery date.
- (d) Cancelling the contract and repurchasing the non-supplied quantity.
- (e) Initiation of punitive action as per the terms and conditions of the contract.

Deciding the Course of Action in the Event of Failure of Supply: For deciding on these options the Procuring Authority has to balance the time factor required for making repurchase and whether the supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative sources and in the latter case whether the indenter can reasonably wait to take advantage of lower trend in prices. Extension shall be granted only where the CFA is convinced that buyer would come forward during extended DP. All DP extensions with applicable LD may be granted by the CFA/Contract operating officer (as applicable) without consultation with IFA. Provisional DP may be accorded on a case to case basis. In case of LD waiver the Finance Member should be consulted.

Maximum Period of Extension: There will be no cap to the period of DP extension any CFA can approve, for cases falling within their powers in case of revenue procurement.

Re-fixation of Delivery Period- The delivery period can be re-fixed only in the circumstances mentioned below:-

- (a) Where manufacture is dependent on approval of advance samples and delay occurs in approving the samples even though submitted in time.
- (b) Extension is granted due to omission on the part of the Buyer to enforce delivery date within the stipulated time.
- (c) Where the entire production is controlled by the Government.

Liability on Account of Taxes etc in the Event of Grant of Extension of Delivery Period: While granting extension of delivery period, any increase in the taxes and levies would not be payable, unless the contract specifically provides for it or it is expressly agreed to with the concurrence of the Integrated Finance.

Warranty Clause

Warranty Clause: A warranty clause, if incorporated in the contract should be invoked in case of any defect/deterioration occurring during the period covered under warranty. The Seller should be approached by the Contract Operating Officer to repair or rectify defective goods or to replace such goods with similar goods free from defect. Any goods repaired or replaced should be delivered at the buyer's premises, without any costs to the buyer.

Imposition of LD While Granting Extensions(Revenue): While granting extensions of delivery period on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery and it must be decided while granting extension whether it would be with or without imposition of Liquidated Damages. LD is to be imposed on value of items excluding taxes. In case full liquidity damage is being levied on the Seller, the sanction for the extension can be approved by the Contract Operating Officer. In case of partial LD the case can be approved by an authority one step lower than the CFA. In case of waiver of LD the case should be progressed through the IFA for CFAs approval.

Liquidated Damages (LD)

Consequential Damages: Consequential damage is to be imposed over and above LD in case of time critical Turn-key Projects, where considered necessary, and should be as per the contract.

Liquidated Damages (LD) (Capital): If the Seller fails to submit the Bonds/Guarantees/Documents or/and supply/perform the items/services as per delivery schedule specified in the contract the case should be moved for deduction of LD under approval of the PSO at service HQ. After approval concerned bank should be intimated to deduct the same.

If seller offers to carry out up gradation/alteration the following action should be undertaken:

- (a) Assessment of time taken and financial affect by specialist officer concerned.

(b) If time taken is less than six months and if accepted, no LD to be levied. However, if it fails LD to be imposed for total delay including the “Less than Six month” period.

(c) If time taken is more than six months, proposal is not to be accepted for the current contract, and if delivery is not as per schedule, LD is to be charged after assessment of reason.

All cases of LD should be approved by the **Vice Chief of concerned SHQ.**

Claims

In case of any discrepancy (Qualitative/Quantitative), the Buyer shall promptly notify the Seller, in writing, of any claims arising during inspection at consignee's end. The time period for notifying the claim should be as per the contract.

For Quality Claims on account of Defects or Deficiencies: The quality claims for defects or deficiencies in quality, noticed during the JRI, shall be presented within time stipulated for completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period at the earliest but not later than the time stipulated in the contract after expiry of the guarantee period.

Excess payment

In case of any excess payment to the seller due to over pricing/wrong generation of the invoice, the amount paid in excess should be immediately recovered from the seller. In case the fault is on part of the seller, penal deduction up to 10% should be levied. Approval for the same should be obtained from the CFA in case of revenue procurement and Def Secy in case of capital procurement.

Arbitration(For Foreign Vendors)

If a dispute, disagreement relating to an existing contract is not resolved within 60 days, then the case should be processed for referring to the Arbitration Tribunal.

Name of the arbitrator on behalf of GOI should be provided within 60 days after seeking approval of CFA. Advice of LA(Defence) may be sought, if required.

Nomination of the third arbitrator should be obtained under Indian Arbitration and Conciliation act, 1996 or from ICA and ICADR.

If the name of third arbitrator is not acceptable to the seller, case should be moved for seeking the name of third arbitrator from International Chamber of Commerce, Paris,

Arbitration(For Indian Vendors)

If a dispute, disagreement relating to an existing contract is not resolved within 60 days, then the case should be processed for referring to the arbitration Tribunal.

Name of the arbitrator on behalf of GOI should be provided within 60 days after seeking approval of CFA. Advice of LA(Defence) may be sought, if required.

Nomination of the third arbitrator should be obtained under Indian Arbitration and Conciliation act, 1996 or from ICA and ICADR.

Force Majeure

Force Majeure: As per this clause, neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earthquake and other acts of God, as well as War, Military Operations, Blockade, Acts or Actions of State Authorities or any other circumstances beyond the control of the parties that might arise after the conclusion of the contract.

Option Clause and Repeat Order Clause (Revenue)

Repeat Order and Option Clauses: Provision for repeat order and option clause should not be made as a matter of course in the RFPs as these clauses have an impact on price. Either or both these clauses may be provided in the RFP only in exceptional circumstances, where the consumption pattern is not predictable, with the stipulation that while exercising one or both these clauses, the overall ceiling of fifty percent of the originally contracted quantity will not be exceeded. Repeat Order and/or Option Clause may be exercised more than once, provided altogether these orders do not exceed 50% of the original order quantity.

Option Clause: Under this clause, the Buyer retains the right to place orders for additional quantity up to a maximum of 50% of the originally contracted quantity at the same rate and terms of the contract. Such an option is available during the original period of contract provided this clause had been incorporated in the original contract with the Seller. This clause may be exercised in case of procurement from single vendor/OEM as well subject to there being no downward trend in prices. However, in multi vendor contracts, great care should be exercised before operating the option clause. The delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order.

Conditions governing Option Clause: Against an outstanding indent for which acceptance of necessity has been approved by CFA, it may be advantageous to the Buyer to exercise the option clause in accordance with the terms and conditions of contract. The option clause may be exercised on approval of the CFA, within whose powers total value of original supplies plus value of the option clause falls, in consultation with IFA, where applicable as per the delegation of financial powers, during currency of the contract. It should be ensured that there is no downward trend in the market prices. No fruitful result will accrue by floating fresh RFP when items are urgently required. If the contract also contains the repeat order clause, it may be kept in mind while placing order under the option clause that the total quantity under the option clause and the repeat order cannot exceed fifty percent of the originally ordered quantity.

Caution should be exercised while invoking option clause in case a Seller has not supplied any items within the original delivery period. If it becomes necessary to do so in exceptional cases, due justification will be advanced by the sponsoring authority for necessity of placing further orders on such contractor. The consent/ confirmation of acceptance of option order quantity will be obtained from the vendor prior to processing of

the order for approval of CFA in consultation with IFA, where required, as per delegated financial powers.

Conditions Governing Repeat Order: A Repeat Order may be placed subject to the following:-

- (a) Items ordered against the previous order have been delivered successfully.
- (b) Original order should not have been placed to cover urgent/emergent demand.
- (c) Repeat Order is not placed to split the requirement to avoid obtaining the sanction of the next higher CFA.
- (d) The original order should have been placed on the basis of lowest price negotiated and accepted by CNC, and not on the basis of delivery or any other preference.
- (e) There is no downward trend in the price of the item. (A clear certificate should be recorded to that effect by the Buyer.)
- (f) The requirement is for stores of identical nature/ specifications, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence should not be precluded from the purview of repeat order but this aspect should be very carefully examined from the point of view of interchangeability of the product offered as an improved substitute.
- (g) The repeat order is to be placed within six months from the date of completion of the supply against the original order.
- (h) The repeat order quantity is to be restricted to a maximum of 50% of last order quantity in case of indigenous and foreign procurement, where the contract does not include the option clause. In case of orders for small quantities (1 to 7), the Repeat Order quantity may be rounded off to the next whole number.
- (i) This provision may be exercised in case of PAC/Single vendor OEM also. However, care should be taken before exercising this provision in multi-vendor situation.
- (j) Where the contract also includes an Option clause, Repeat Order may be placed only for such quantity, which, along with the quantity for which Option clause may have already been exercised, does not result in the total quantity under the Option clause and the Repeat Order put together exceeding 50% of the originally ordered quantity.
- (k) The CFA will be decided taking into consideration the value of the originally ordered quantity and the Option clause/Repeat Order quantity.

Risk and Expense Purchase (Revenue)

Risk & Expense Purchase: Risk and expense purchase clause may be included in the RFP and the contract, if considered necessary. Risk and Expense purchase is undertaken by the Buyer in the event of the Seller failing to honour the contracted obligations within the stipulated period and where extension of delivery period is not approved. While initiating risk purchase at the cost and expense of the Seller, the Buyer must satisfy himself that the Seller has failed to deliver and has been given adequate and proper notice to discharge his obligations. Whenever risk purchase is resorted to, the Seller is liable to pay the additional amount spent by the Government, if any, in procuring the said contracted goods/ services through a fresh contract, i.e. the defaulting Seller has to bear the excess cost incurred as compared with the amount contracted with him. Factors like method of recovering such amount should also be considered while taking a decision to invoke the provision for risk purchase. The seller defaulting in supply should not be allowed to participate in such tender.

Risk and Expense Purchase Clause not Mandatory: Risk purchase at the cost and expense of the Seller may not always be a practical proposition as it may not be feasible to enforce recovery without legal action. This clause is rarely invoked in case of import contracts for this reason. In such cases where the item is of proprietary nature or there is only one qualified firm to supply the items and there is a remote possibility of procuring the same item from an alternative source, it will be essential that instead of having risk and cost clause in the contract, the contract should have performance guarantee clause to cover any such default.

Buy back of spares(Capital)

If the seller has provided MRLS, and buy back clause exist in the contract, the User Dte/Stock Holding Depot should monitor the consumption pattern of MRLS spares, and at the end of the period stipulated in the contract or as per the calculation methodology mentioned in the contract, provide list of non-moving spares to AcqDte (handling Capital Procurement at Service HQ) for taking up with the seller.

Fall Clause(Revenue)

In cases where contracts have to be concluded with the firms, whose rate contract with central procurement agencies has expired and renewal of RC has not taken place, a 'fall clause' should be incorporated in the Supply Order/Contract to the effect that during the currency of the Supply Order/Contract, in case rates are found to be lower on conclusion of rate contract, the lower rates as in the rate contract shall be applicable.

Price Variation Clause/Price Adjustment Clause

Normally a contract should be entered into on a fixed price basis. Nevertheless, in the fluctuating market conditions it may sometimes become necessary in the case of long term contracts to consider variable price quotes given by the Sellers. The following guidelines will be followed in cases where a price variation provision is sought to be included in the contract:

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

- (b) A formula for calculation of the price variations that have taken place between the Base level and the Scheduled Delivery Date should be included in this clause. The variations are calculated by using indices published by Governments or Chambers of Commerce periodically.
- (c) The Price Variation Clause should also specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates.
- (d) The Price Variation Clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both. The buyer should ensure a provision in the contract for benefit of any reduction in the price in terms of the Price Variation Clause being passed on to him.
- (e) The clause should also stipulate a minimum percentage of variation of the contract price above which price variations will be admissible (e.g. where resultant increase is lower than two percent, no price adjustment will be made in favour of the Seller).
- (f) Where advance or stage payments are made, there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment.
- (g) Where deliveries are accepted beyond the scheduled Delivery Date subject to levy of liquidated damages as provided in the Contract, the liquidated damages (if a percentage of the price) will be applicable on the price as varied by the operation of the Price Variation Clause.
- (h) No price variation will be admissible beyond the original Scheduled Delivery Date for defaults on the part of the Seller. Price variation may be allowed beyond the original Scheduled Delivery Date, by specific alteration of that date through an amendment to the contract in cases of Force Majeure or defaults by Government or any other clause mentioned in the contract.
- (j) Where contracts are for supply of equipment, goods, etc., imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item. The mode of calculation of variations in duties and taxes and Foreign exchange rates and the documents to be produced in support of claims for such variations should also be stipulated in the Contract.
- (k) The clause should also contain the mode and terms of payment of the price variation admissible.

Exchange Rate Variation (ERV)(Revenue)

ERV Clause: This clause is only to be included in the contracts concluded with the sellers, in case the delivery period exceeds one year from the date of contract which involves import content (foreign exchange). The offer should indicate the import content. In case DP is re-fixed/extended, ERV will not be admissible, if this is due to default of the Seller. Base Exchange rate of each major currency used for calculating FE content of the contract

is to be indicated. The base date for ERV to be admissible would be the contract date and variation on the base date can be given up to the midpoint of manufacture unless the firm has already indicated the time schedule within which materials will be exported by the firm. Other conditions as above for price adjustment would be applicable.

Documentation for Claiming ERV: The following documents would need to be submitted in support of the claim on account of ERV:

- (a) A bill of ERV claims enclosing worksheet.
- (b) Banker's Certificate / debit advice detailing FE paid & Exchange rate.
- (c) Copies of import orders placed on the Sellers.
- (d) Invoice of Seller for the relevant import orders.

Acceptance of Excess or Short Deliveries (Revenue)

There may be occasions when excess or short supplies are made by the vendors due to various reasons like, exact multiples of the standard units of measure, or where it is difficult to mention exact weight in case of steel plates etc. These variations in supplies may be accepted with the approval of CFA, subject to the value of such excess/short supplies not exceeding 5% (five percent) of the original value of the contract. CFA will be determined with reference to the value of the original order after addition/deduction of excess/short supply.

Indigenous Development

In case of Indigenous development cases, the conditions for extension in delivery period or imposition of LD should be followed as provided in the chapter on design and development.

Change of Name

On receipt of information regarding change of name of the company, vendor should be asked to submit self authenticated relevant documents such as new certificate of incorporation issued by an appropriate Registrar of Companies (ROC) along with Novation Agreement, an undertaking by the new company.

User Directorate for (Air HQ cases)/Aqn Wing (For MoD Cases) shall process the change of name of vendor case for approval of VCOAS/VCNS/VCAS/DG(Aqn)(as applicable). Legal advice may be sought where ever required.

On grant of consent, vendor would be informed and he would have to submit new Pre-Contract Integrity Pact (PCIP), Integrity Pact Bank Guarantee (IPBG) and any other applicable financial instruments/documents bearing the new entity name.

If the firm is involved in multiple contracts, a single case should be progressed for seeking approval of the appropriate competent authority.

Termination of Contract

Termination of a Concluded Contract: A contract may be terminated in the following circumstances by the CFA:

- (a) When the Seller fails to honour any part of the contract including failure to deliver the contracted stores/render services.
- (b) When the contractor is found to have made any false or fraudulent declaration or statement to get the contract or he is found to be indulging in unethical or unfair trade practices.
- (c) When both parties mutually agree to terminate the contract.
- (d) When the item offered by the Seller repeatedly fails in the inspection and/or the Seller is not in a position to either rectify the defects or offer items conforming to the contracted quality standards.
- (e) Any special circumstances, which must be recorded to justify the cancellation or termination of a contract.

Post Contract Management of cases approved by MoD: In all cases where the contract has been approved by MoD as CFA, all issues related to post contract management which include DP extension, imposition of LD, LC related issues and all other terms and conditions, the concurring authority would be Principle IFA and Approving authority Vice Chief/Principle Staff officer of the concerned Service (MoD order No.231(9)/2016/B.II dated 05 Jul 17 and Office Order No. 1(1)/D(Acq)/17 dated 15 Jun 17.)