

## CHAPTER - 11

### DELIVERY, DELIVERY EXTENSION, FORECLOSURE AND AMENDMENT OF CONTRACT

#### 11.1 Delivery Date - Essence of Contract

11.1.1 The contract must be completed in all respect not later than date(s) stipulated in the contract.

11.1.2 Acceptance of stores beyond the delivery date shall be at the sole discretion of the purchaser and subject to conditions of contract.

#### 11.2 Definition of Delivery Date

As specified in NIT.

#### 11.3 Non-delivery of stores

Option available to the Purchaser in case of non-delivery of stores within the Contract Delivery date

11.3.1 When supply do not materialise by the stipulated contract delivery date the Purchaser has the following options depending upon the condition and circumstances of the case:

- 1) Extend the delivery date with imposition of liquidated damages and other denial clause if delay is not attributable to the purchaser
- 2) To re-fix the delivery date to the extent delays are attributable to the purchaser
- 3) To cancel the contract and forfeit the Security Deposit.
- 4) Impose other available provisions available in NIT.

#### 11.4 Points to be considered for extending the delivery date or to cancel the Contract

11.4.1 Whether the extension of delivery date as asked for by the supplier is to be granted or the Contract can be cancelled would be decided on the merits of each case.

11.4.2 Normally extension should be granted only when the competent authority is convinced that extending the contract is in the interest of the Department and the contract will be completed in all respect during the extended period.

#### 11.5 Re-fixation of Delivery Date

11.5.1 Re-fixed delivery date means the new delivery date which is arrived at by recasting the original delivery date after taking care of the period, for which the purchaser was responsible or on occurrence of Force Majeure as defined in NIT

## **11.6 Extension of Delivery Date**

11.6.1 The Contractor should approach the Purchaser before the delivery date intimating their inability to adhere to the contract delivery date and seeking extension. The Officer concerned may initiate further action for granting extension to the delivery date with the approval of the competent authority of user department.

11.6.3 While considering the request for Extension following points need to be taken care of:

Where Security Deposit is involved	Extension of Security Deposit BG should be obtained, for 2 months beyond the expected extension of delivery date, prior to issue of amendment.
Where interest bearing Advance Payment is involved and advance payment is not adjusted fully in subsequent payment to the supplier	Advance payment BG should be got extended covering period 2 months beyond expected extension of delivery date together with enhancement on bank liability towards unadjusted advance payment covering interest on total period i.e. original delivery date plus extended delivery date at the rate of interest indicated in the contract.
Where stage/progressive/milestone payment is involved and same is not adjusted fully in subsequent payment to the supplier	Stage/progressive/milestone payment BG should be got extended covering period 2 months beyond expected extension of delivery date together with enhancement on bank liability towards unadjusted stage/ progressive/milestone payment covering interest on total period i.e. original delivery date plus extended delivery date at the rate of interest indicated in the contract.

## **11.7 Extension of Delivery date in contract having pro-rata/instalment delivery**

11.7.1 Each pro-rata/instalment constitutes a separate contract and extension should be given accordingly.

## **11.8 Correspondence with the Supplier after breach of Contract**

11.8.1 After breach of contract, correspondence should be made with the contractor with utmost care indicating the right to recourse by the purchaser to the provisions of conditions of contract.

## **11.9 Inspection of stores tendered at the fag end or last date of delivery date**

11.9.1 As far as possible, the inspection should be commenced and finished well within the validity period of the Contract and the shipping release is issued to enable the contractor to complete the contract within the delivery date.

11.9.2 In cases where it is not possible to commence/conclude the inspection before expiry of the contract delivery date the inspecting authority should immediately on receipt of intimation or request for inspection of the stores bring to the notice of the Contractor and Purchaser in writing that the stores have been submitted for inspection at the very last stage and that it is not possible for the contractor to complete the contract within the delivery date and the contractor should make a request for extension of delivery date.

**11.10 Despatch of stores after expiry of the delivery date**

11.10.1 In terms of the contract conditions, on expiry of the contract delivery date, the supplier shall not despatch the stores till such time an extension in delivery date is granted by the Purchaser. The Purchaser shall have a right to cancel the Contract. It shall be no defence from the contractor that the consignee has taken delivery of the stores despatched by the supplier without getting an extension letter and therefore the Contract has been kept alive.

**11.11 Foreclosure of contract or reduction in scope before the delivery date**

11.11.1 If the purchaser at its discretion decide to abandon or reduce the scope of the contract before the Delivery date, for any reason whatsoever and hence not requiring the whole or part of the contract to be executed, the purchaser shall give notice in writing to that effect to the Contractor and the Contractor shall act accordingly in the matter. The contractor shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the contract in full but which he did not derive in consequence of the foreclosure of the whole or part of the contract.

11.11.2 The Contractor shall be paid at contract rates, full amount for part of contract executed and delivered to the Purchaser. In addition, a reasonable amount as certified by the purchaser will be paid to the contractor for the items hereunder mentioned which could not be utilized on the contract to the full extent in view of the foreclosure;

11.11.2.1 Purchaser shall have the option to take over Contractor's materials or any part thereof either bought for execution of the contract or of which the Contractor is legally bound to accept delivery from its suppliers (for incorporation in the contract). For materials taken over or to be taken over by purchaser, cost of such materials as detailed by purchaser shall be paid. The cost shall, however, take into account purchase price, cost of transportation and deterioration or damage which may have been caused to materials whilst in the custody of the Contractor.

11.11.2.2 If any materials supplied by Purchaser are rendered surplus, the same except normal wastage shall be returned by the Contractor to purchaser at rates not exceeding those at which these were originally issued, less allowance for any deterioration or damage which may have been caused whilst the materials were in the custody of the Contractor. In addition, cost of transporting such materials from site to consignee, if so required by purchaser, shall be paid.

11.11.2.3 The Contractor shall, if required by the purchaser, furnish books of accounts and other relevant documents and evidence as may be necessary to enable the purchaser to certify the reasonable amount payable under this condition.

**11.12 Ascertainment of downward trend (applicable only for the cases of standard off the shelf items/chemicals)**

11.12.1 It will be necessary to ascertain price trend where the order is already placed for standard off the shelf items or chemicals and supplier seeks extension of time for execution or the user proposes extension of delivery date due to not able to lift part/full quantity within the period specified in the Purchase Order (applicable for delivery in instalments i.e. as and when

required basis) or when user forward the indent to DPS for placement of Repeat Order, following will be the method to be adopted for ascertaining the price trend.

1. e-tender to be issued with short due date with identical specifications and identical terms and conditions.
2. On opening of the tender, quotations received should be checked by purchase with regard to the prices quoted by vendors and if found to be lower than the accepted case file should be sent to user department to ascertain the technical acceptability of the offers received. If found that price of lowest technically suitable offer is lower than the one accepted, it will not be advisable to extend the delivery date/place repeat order. In case price received against fresh tender is higher than the one accepted, the proposal with outcome against the tender (for ascertaining price trend) can be submitted for extension of the contract/placement of Repeat Order as the case may be.

### **11.13 Amendment to the Contract**

- 11.13.1 Many a time, due to various reasons, changes and modifications are needed even in a duly concluded contract. Requests for such changes and modifications mostly emanate from the supplier. Immediately on receiving such a request, the contracting authorities shall examine the same and take action as necessary with the approval of the competent authority. Before agreeing to the request of the supplier, the contracting authority should scrutinize the issue on its merit to ensure that the requested amendment will not have any adverse effect on the contracting organization as well as deviate from the original bid submitted by the supplier.