

RESTD

STANDING OPERATING PROCEDURE
HEAVY INDUSTRIES TAXILA
SOP NO. 390 / 2022
IMPOSITIONS OF LATE DELIVERY (LD) CHARGES

[Reference: Chapter 7 and Chapter 10, Defence Purchase Procedures and Instructions - 35
(Revised 2019) Government of Pakistan - Ministry of Defence Production]

1. **Background**. Procurement contracts are concluded with firms after successful bidding process in HIT. In all the contracts, clause of delivery period is always mentioned (one time supply or supplies in multiple batches). Delivery period is mutually finalized between purchaser (HIT) and supplier, primarily basing on the urgency of requirement of stores by Procuring agency vis-à-vis preparation/ availability of stores by Supplier. Notwithstanding, situations at times, may arise wherein, stores are not delivered within the prescribed delivery period. If the delays in supply of contracted stores occur due to negligence or circumstances attributable to the supplier then, Late Delivery (LD) charges are required to be imposed on the firm.
2. In HIT, although PPRA and DPPI-35 are being followed, there still exists a need to formulate a comprehensive SOP on the issue so as to crystallize imposition / non-imposition of LD charges on the firms.
3. **Aim**. To formulate uniform mechanism for imposition of LD charges on account of late delivery of stores / services.
4. **Scope**
 - a. This SOP has been prepared for implementation in Procurement Directorate HIT in specific and same can be used as guideline by project / setups for execution of procurement activities falling within the financial power of Director / Managing Directors.
 - b. The SOP can also be used as guideline for execution of development contracts. However, keeping in view the peculiarities incident to development contracts, detailed modalities of imposition of LD charges shall be explicitly covered in the development policy of HIT.
5. **Procedure for Imposition of LD Charges**
 - a. **Delivery Period (DP)**. While initiating the procurement indent, project must indicate timeframe by which stores are required. Same must be mentioned in the tender documents by Procurement Directorate. However, in the contract, exact date of delivery (single and multiple consignments / deliveries) shall be mentioned.
 - b. **Grace Period**
 - (1) Delay in supply of stores for first schedule/order, up to 21 x days and for subsequent schedule/orders up to 15 days (from the original DP only) will be regarded as Grace Period. No LD will be imposed if the store is delivered within grace period. No extension/amendment will be granted in the grace period.

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- (2) Once the store is delivered after expiry of grace period then, while calculating total delays in delivery of stores, grace period will be considered as part of the delays.

c. **Extensions in DP**

- (1) DP may be extended by HIT Board (HITB) either before or after the expiry of stipulated date as contained in the relevant clauses of contract on the written request of the firm.

- (2) General guidelines pertaining to extension in DP are:-

- (a) Extensions can be granted with or without LD charges.
- (b) First and second extension may be granted by HITB with financial concurrence of MF with or without LD charges depending on the circumstances.
- (c) After second extension, if cancellation of contract is not considered feasible in the wider interest of HIT, third extension shall preferably be done with imposition of LD charges. Nevertheless, in rare cases, HITB may decide, on the basis of plausible justifications, grant of third extension without imposition of LD charges.

- (3) **Request of Firm for Extension in DP.** As explained earlier, 1st, 2nd & 3rd extension in DP can be granted to the firm. However, request received for extension in DP from the firm will be handled as under:-

- (a) **Till Mid of Contract DP.** Request of the firm for extension in DP till mid of the contract DP will not be accepted if the firm has already agreed with the DP at the stage of contract signing.
- (b) **After Mid of Contract DP.** After mid of the contract DP firm will provide monthly update on the status of manufacturing / provision of stores to procurement directorate. Firm will clearly mention that the production is in time or being delayed. The reasons of envisaged delay must be specifically highlighted with documentary evidences (if any). The duration of likely delays in DP shall also be intimated in the monthly progress reports.
- (c) **After Expiry of Contract DP.** In case, monthly progress reports were not submitted by the firm or likely delays were not mentioned in the monthly progress reports, then request for extension in DP without imposition of LD charges will not be considered.
- (d) **Time Limit between Extensions.** Keeping in view, the steps involved in approval of extensions in DP, firm shall not request for subsequent extension before 3 x months.

- d. **Un-Warranted Delays in Contract DP.** Following situation may arise due to un-warranted delays (preferably 5 x months) in contract DP:-

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- (1) Owing to the prolonged delays in supply of stores the requirement of stores have exhausted and project may be executed through alternative means by factory then the contract shall be short closed. If the onus of responsibility lies on the firm, appropriate punitive action shall be taken against the firm.
 - (2) In case the stores is urgently required to meet the project timelines and delays on account of firm can not be afforded, procurement of the stores on Risk & Expense of the firm shall be resorted to.
- e. **Imposition of LD on the Basis of Timeframe.** If LD is to be imposed on the firm, following timeframe will be kept in mind:-
- (1) **LD Charges @ 1 Percent.** If the delay in supply of store is upto 45x days including grace period, LD charges will be imposed at the rate of 1% of value of which have been delivered late by the firm.
 - (2) **LD Charges @ 2 Percent.** LD charges will be imposed at the rate of 2% of the value of stores delivered late, in case the delays are more than 45 days from the agreed delivery period.
 - (3) Total amount of LD charges imposed on the firm will not exceed 10% of the total value of contract excluding taxes/ duties (freight, KPT, insurance charges etc).
 - (4) No grace period will be considered on already extended deliveries against batches of stores of contract.
- f. **Calculation for LD Charges.** Calculation of LD charges will be done as under:-
- $$\text{LD charges} = \frac{\text{Quantity supplied beyond DP} \times \text{Rate} \times \% \text{ LD imposed} \times \text{No of days delayed}}{i. \times 100}$$
- g. **Special Considerations for Imposition of LD Charges.** Decision for imposition of LD Charges (1% or 2%) must not be merely based on number of total days for which deliveries were delayed. There could be a likelihood that firms suffer more losses on account of certain reasons which were actually beyond the control of firm. Therefore, delays in terms of days shall be taken as basis for initiation of the process of imposition of LD charges only. Final decision must be taken after taking into account certain factors/ considerations. These special considerations shall in fact enable the management of HIT / decision makers to identify delays to be attributable to firm and delays on account of other stakeholder viz. concerned factory, ITD etc. Firm shall only be penalized for delays on account of firm only. Foregoing, following special consideration be taken into account:-
- (1) Time taken from signing of the contract till circulation of endorsed copy of contract amongst all the concerned parties.
 - (2) Time taken in provision of Drawings/Papers/Specifications and Sealed Advance Sample (if any) by Project to the Supplier.
 - (3) Any change(s) in specifications of ordered items etc after signing of the contract.

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- (4) Changes in scope of contract, through addition in type or quantities of ordered items after signing of contract.
- (5) Period during which production/action was stopped by procurement officer, the user /indenter, and /or technical authority due to any compulsion.
- (6) In case delivery of subsequent lots/batches is dependent on previous lots / batches e.g., inspections etc then all abnormal periods taken by the technical authority in inspecting / clearing each delivered lot (delays in clearing the first lot automatically causes the delay in production of subsequent lots).
- (7) Period of 2 – 3 months is required for having a valid LC for the firm's beneficiary Bank in FOB contracts. The same time period shall primarily be embedded in the contract DP at the time of signing of contract.
- (8) Time taken in provision of End User Certificate to the firm including time taken in subsequent amendments in EUC.
- (9) Responsibility of delays in conduct of PSI / ATPs / Trials be weighed on account of purchaser or supplier.
- (10) Any other reason attributable or not attributable to the firm.

6. **Responsibilities / Actions While Processing LD Case**

a. **Actions by Indentor**

- (1) Approach the firm directly or indirectly through Procurement Directorate, at least one month before the delivery date of stores to ensure timely delivery.
- (2) Firm request for extension of DP / non imposition of LD charges be obtained before expiry of actual DP.
- (3) In case stores are required as per agreed timelines to avoid delays in production targets, same shall be intimated in clear terms to firm through meetings followed by letters.
- (4) Factory / Directorate shall also evaluate the case apart from the above mentioned considerations keeping in view following additional considerations:-
 - (a) Firm intimation for extension in DP before its expiry with valid justification.
 - (b) Past performance of the firm approximately last 3x years (contract deliveries, record of rejections, value additions etc).
 - (c) Firm status whether OEM, manufacturer or supplier of the store, sole proprietorship as well as prospects for future engagements in provision of same items / spares / after sale services.
 - (d) Effect of late delivery on project timelines.
 - (e) Firm's wherewithal / strength in rare technologies.
 - (f) Validation of the Force Majeure circumstances.
- (5) A Board of officers (BOO) be detailed at factory / establishment level to evaluate each case, keeping in view all special considerations mentioned above and give

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its recommendation regarding imposition or non-imposition of LD charges on merit based on documentary evidences/ other circumstantial record available. Board proceeding shall be counter-signed by respective Managing Director (MD) of factory / Director of respective Directorate and shall become part of the case file.

b. **Actions by Procurement Directorate**

- (1) Procurement directorate will publish the relevant instructions on imposition of LD charges in the tender as well as incorporate it in the contract. Same SOP will also be uploaded on HIT website.
- (2) While releasing CRC amount of each batch or complete store, amount of LD charges will be retained from the amount to be released against CRC.
- (3) In case no written request or justifications of late delivery(s) have been forwarded by the firm, Procurement directorate will render an opportunity to firm and ask for detailed justifications for delay in supplies.
- (4) Procurement Directorate will process case file for extension in DP and obtain the consent of the factory / Directorate. Firm will be given another opportunity at this stage to provide fresh response duly highlighting detailed reasons of delay and justifications for non imposition of LD charges.
- (5) Procurement Directorate will evaluate and validate the board proceeding provided by project as well as justifications given by the firm for non-imposition/ imposition of LD charges. Final recommendations shall be endorsed and case shall be processed further for endorsement of HITB.
- (6) Upon finalization of the case for imposition / non imposition of LD charges amendment in the contract will be made and the amount of LD already retained from CRC will be paid / adjusted / deposited in government treasury.
- (7) Imposition of LD charges will be notified to CMA (HIT) / CMA (DP) for necessary recovery. A copy of amendment will be shared with CMA (HIT) / CMA (DP).

c. **Actions by HITB.** LD charges would be imposed when HITB is satisfied that the failure to supply the stores within the scheduled delivery period has been for reasons within the control of the Supplier, and/or if HIT suffered losses due to late delivery of important stores.

7. **Appeal by Firm against Imposition of LD Charges**

a. Following procedure will be adopted to deal with the appeal of firm:-

- (1) Firm can appeal against imposed LD charges within 3 x Months in the name of appointment who signed the contract i.e., Director Procurement or any MD / Director.
- (2) Date of issuance of formal amendment letter regarding imposition of LD charges shall be considered as the reference date for the purpose of determining / calculating the allowable time frame (3 x months) for appeal. Appeal made after

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stipulated period shall not be entertained being time barred.

- (3) Appeal must be lodged by the firm on company's letter head pad duly signed by MD /CEO / authorized signatory.
- (4) Once LD charges have been imposed by HITB, it can only be waived off by next higher authority i.e. Secy MoDP.
- (5) Once the appeal is received from firm by receiving agency, it will be forwarded to the president HIT grievance committee to hold the hearing at the earliest.
- (6) President Grievance committee will seek comments from defendant party (Factory / Procurement Directorate) who will be bound to submit reply within 96 hours to Grievance committee.
- (7) President Grievance committee will then hold formal hearing with appealing party (Firm) and defendant party (Project / Procurement Directorate).
- (8) Only firms MD/CEO will be allowed to appear before the appellate authority for hearing of appeal, except under special circumstances, it becomes necessary.
- (9) **Decision of Grievance Committee Along with Follow up Actions**
 - (a) In case, the LD imposed by HITB warrants review as desired by firm then case will be referred to Secy MoDP as under:-
 - i. Grievance committee will forward minutes of committee meeting / board proceeding to Procurement Directorate/ concerned factory / Directorate.
 - ii. Factory / Proc Dte will prepare the case for HITB approval.
 - iii. After HITB Approval the case will be referred to MoDP for waiving off LD Charges.
 - (b) In case firm does not feel satisfied with the decision of appellate authority for maintaining original decision of LD charges imposition, she may lodge another appeal Tier 2 (Joint Appeal committee) which is next appellate authority (MoDP) in chain within 15 days of receipt of formal decision in writing from the appellate authority against whom appeal is to be lodged. Receipt of appeal beyond 15 days will not be entertained being time barred.
- (10) Appeal once heard and disposed off in a particular appellant authority shall not be referred / entertained again by same authority.

8. **Composition of Appellate Authorities for Hearing of Appeals.** Compositions of Tier-I and Tier – II Appellate authorities shall be as under:-

a. **Tier – I (Grievance committee)**

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|-----|-----------|------------------------|
| (1) | President | - Director Technical |
| (2) | Member 1 | - Director Procurement |
| (3) | Member 2 | - Member Finance |

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(4) Member 3 -MD / Dir(Concerned Factory / Directorate)

b. **Tier –II (Joint Appeal Committee)**

- (1) Chairman -Secy MoDP
- (2) Member -1 - AS(DP)
- (3) Member -2 - HIT Rep
- (4) Member -3 - HIT (Proc concerned)
- (5) Member -4 - FA (DP)
- (6) Member -5 - JS (DP)
- (7) Member -6 - AD Legal (HIT Concerned)
- (8) Member -7 - DS-II (DP – 6)
- (9) Member -8 - SO (DP-6)

9. **Conclusion.** Due diligence be done by purchaser / indentor and supplier in finalizing the delivery milestones. Timely provision / supply of stores by contractors / suppliers is extremely critical for accomplishment of timelines for project / assignments. Delays in contract(s), may cast adverse effects in operational landscape of Pak Army/ end user.

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