

CHAPTER VI
PRICE/PURCHASE PREFERENCE

1. DPE/Guidelines/VI/1

Price/Purchase Preference for Production and Servicing of Public Enterprises. Reference is invited to O.M.No.BPE/GL-008/80/23.1.80/BPE/MM dated 15.10.80 on the above subject (copy enclosed).

In the new environment of a liberalized Industrial Policy and the emphasis on performance improvement of public enterprises to function on commercial principles etc., further protection in the term of price/purchase preference is not quite relevant in the new competitive environment. The matter was reviewed by the Government and the decision is as under:-

(a) Instead of granting price preference to public enterprises, Government may grant purchase preference to the public enterprises.

(b) In all such cases, while the quoted prices of public enterprises is not within the 10% of the lowest valid price bid, such a price bid may be rejected without any further consideration.

(c) Where the quoted price is within 10% of the lowest price, other things being equal, purchase preference may be granted to the public enterprise concerned, at the lowest valid price bid.

(d) The above purchase preference may be made operable for a period of 3 years as transition within which public enterprises should adjust themselves to the new environment of competitiveness and efficiency so that the entire policy of price/purchase preference may be withdrawn within the next 3 years, from the date of issue of this O.M.

(DPE O.M. No.DPE/13(19)/91-Fin. dated 13th January, 1992)

Copy of office memorandum No.GI-OC8/80/23-1-80-BPE/MM and No.23/1/80-BPE/MM dated the 15th October, 1980) regarding Purchase/Price Preference for products of public enterprises in competitions with private sector undertakings in the matter of purchase by Government Department etc.

A reference is invited to the O.M. No.BPE/GL-023/78-MM dated 13.7.78 and GL-016/77-BPE/MM dated 15.6.77 both on the subject of purchase & price preference. Govt. have reconsidered the present policy and have decided that the following considerations shall be

kept in view in purchases henceforth by public sector undertakings and Govt. Departments.

(a) Investments in the public sector are made on overall grounds of public policy. Public Enterprises have to be made viable and the capacities created should be utilized to the fullest extent. Ministries, Govt. Departments and public sector undertakings should therefore, invariably purchase their requirements from public enterprises wherever such undertakings are able to meet the demand. Quality requirements and reasonable delivery schedules should of course be enforced.

(b) Subject to negotiations for an agreement on price, price preference not exceeding 10% will be admissible to public sector undertakings;

(c) In exceptional circumstances where a public sector undertaking requires a price preference of more than 10% the purchasing Ministry or Department and the concerned undertaking should endeavour to reach an agreement by negotiation;

(d) Where negotiations in regard to (c) above do not succeed, the cases should be submitted to the Cabinet Committees on Economic Affairs for a decision;

(e) Price preference up to 10% cannot be taken for granted. Every effort should be made to bring down cost and achieve competitiveness.

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2. DPE/Guidelines/VI/2

Grant of price preference to Indian manufacturers of capital goods supplied to fertilizers, power and petroleum projects under deemed export status

Government have decided that the domestic manufacturers of capital goods supplied to fertilizers, power and petroleum projects under international competitive bidding would be accorded a price preference to off-set Central Sales Tax to the extend of 4% or actual, whichever is less, as well as octroi at actual. This dispensation would be subject to 30% local content norm as stipulated for World Bank funded projects.

2. The administrative Ministries may please bring the above to the notices of the public sector enterprises under their administrative control.

(DPE OM No. DPE/5(5)/97-Fin. dated 12th August, 1997)

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3. DPE/Guidelines/VI/3 **Purchase Preference for Products & Services of Public Enterprises.**

Reference is invited to the Department of Public Enterprises OM's of even number dated 13.1.92, 14.2.94 and 15.3.95 regarding the policy of purchase preference for Central PSEs. The basic policy of purchase preference was spelt out in OM dated 13.1.92, which was operable for a period of three years. This policy provided purchase preference in supply of goods and services to the Government Departments and other PSEs if the price quoted by the supplying PSE was within 10% of the lowest valid bid price, other things being equal. The policy incorporated in the said OM was extended up to 31.3.97 vide OM dated 15.3.95 due to restructuring of PSEs in responding to the new competitive environment.

2. There have been requests from various PSEs and Ministries that this facility should be further extended for some more time. The matter has been carefully examined keeping in mind the various relevant factors and Government have decided that the scheme be extended for a limited period of 3 years i.e. up to 31.3.2000, for **manufactured items produced by PSEs or joint ventures with PSEs with a minimum value added content of over 20% by the latter, subject to the purchase being in excess of Rs. 5 crore.**

3. The cases, which were under consideration from 1.4.97 till the date of issue of this OM would stand covered under this policy, except those already decided otherwise.

(DPE OM No. DPE/13(19)/91-Fin. dated 31st October, 1997)

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4.

DPE/Guidelines/VI/4

Purchase Preference for products and services of Central Public Sector Enterprises.

In continuation of this Department's OM of even number dated 31.10.97 extending the Purchase Preference Policy upto the period 31.3.2000, it is clarified that the **extended Purchase Preference Policy covers both products and services of PSUs.**

(DPE OM No. DPE/13(19)/91-Fin. dated 10th February, 1998)

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5.

DPE/Guidelines/VI/5

Purchase Preference for products and services of Central Public Sector Enterprises.

Reference is invited to the Department of Public Enterprises' OM No.DPE/13(19)/91-Fin. dated 31.10.97 and 10.2.98 regarding the policy of purchase preference for products and services of Central PSEs.

2. Keeping in view, the requests from various Ministries, PSEs and the various relevant factors, Government have decided to extend the policy of purchase preference for products and services of central public sector undertakings for two more years i.e. up to 31.3.2002 **with the existing parameters except that the minimum value of purchase as specified in the scheme may be Rs. one crore instead of Rs. 5 crores** as specified in DPE OM dated 31.10.97. **The provisions relating to purchase preference should be specified in the "Notice Inviting Tender" (NIT) in each case.** It has also been decided that the **public enterprises, which avail benefit of the purchase preference should be subjected to adequate penalties for cost over-runs etc.**

(DPE OM No. DPE/13(3)/2000-Fin.-GL-30 dated 14th September, 2000)

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6. DPE/Guidelines/VI/6
Purchase Preference Policy for Products and Services of Central Public Sector Enterprises.

Reference is invited to the Department of Public Enterprises' OM of even number dated 14.9.2000 regarding the Policy of Purchase Preference for Products and Services of Central PSEs.

2. It is clarified that in view of the extension of the policy vide the above OM, the provision of the policy will be applicable to all pending cases also subject to the same parameters as specified in the above OM.

(DPE O.M. No.DPE/13(3)/2000-Fin. dated 30th October, 2000)

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7. PE/Guidelines/VI/7
Purchase Preference Policy for Products and Services of Central Public Sector Enterprises.

Reference is invited to the Department of Public Enterprises' O.M. of even number dated 14.9.2000 and 30.10.2000 regarding the Policy of Purchase Preference for Products and Services of central PSEs.

2. This is to inform that **comparison of bids is done after evaluation of the bids**. Therefore, the valid bid price referred to in para (c) of O.M. dated 13.1.1992, renewed from time to time, is to be construed as the evaluated price and not the quoted price.

(DPE O.M. No. DPE/13(3)/2000-Fin. dated 8.11.2000)

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8. DPE/Guidelines/VI/8
NIT Clause for Purchase Preference for products and services of Central Public Sector Enterprises.

Reference is invited to the purchase preference clause in the Notice Inviting Tender (NIT) in the Department of Public Enterprises' OM No.DPE/13(3)/2000-Fin. dated 14.9.2000 on the policy of purchase preference for products and services of Central PSEs.

It has been brought to the notice of this Department that some NITs do not contain the purchase preference clause mandated by the above mentioned OM. It is clarified that there is no option to any Department/PSE to deviate from the purchase preference policy currently in force till 31.3.2002. **The PSEs being disinvested would also continue to avail the benefit of the policy till privatized. In case any deviation is considered necessary, it is obligatory to obtain exemption from the competent authority.**

(DPE OM No. DPE/13(3)/2000-Fin.-GL-LVII dated 19th November, 2001)

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9.

DPE/Guidelines/VI/9

Purchase Preference for Products and Services of Central Public Sector Enterprises.

Government have decided to extend the existing purchase preference policy for products and services of central public sector enterprises (CPSEs) for two more years from 1.4.2002 to 31.3.2004. Under the policy, if the price quoted by the public sector enterprise is within 10% of the lowest price in a tender, other things being equal, purchase preference may be granted to the CPSE concerned at the lowest valid price bid. The policy has the following provisions:

- i. The 10% purchase preference would be extended to tenders/NIT of rupees five crores and above.
- ii. CPSEs registered under the Companies Act, 1956 and statutory CPSEs will be eligible for purchase preference as before. Joint venture companies where holding of Government and/or CPSEs is 51% or more and joint ventures which are subsidiaries of CPSEs with CPSEs holding 51% equity or more will also be eligible for purchase preference.
- iii. A minimum value addition of 20% by the CPSEs/Joint Venture Units by way of manufacture and/or services would be a prerequisite for availing purchase preference.
- iv. Ministries/Departments/CPSEs and autonomous bodies under Central Government will continue to grant purchase preference to CPSEs.
- v. Purchase preference will also be available to only those privatized CPSEs where specific Government approval has been accorded for the specific periods from the date of disinvestment.
- vi. Respective Ministries/Departments/autonomous bodies/CPSEs will be responsible for implementing the Purchase Preference Policy.
- vii. As per the existing policy the provisions relating to purchase preference should be specified in the Notice Inviting Tender (NIT) for rupees five crores and above. For any deviation including exclusion of the purchase preference clause from the NIT, it will be obligatory for the concerned Ministry/Department/CPSEs/autonomous bodies to obtain prior exemption from the Cabinet in consultation with the Department of Public Enterprises.
- viii. Other provisions of the purchase preference policy remain unaltered.

(DPE OM No. DPE/13(1)/2002-Fin. dated 14th June, 2002.)

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10. DPE/Guidelines/VI/10
Extension of Purchase Preference for products and services of Central Public Sector Enterprises beyond 31.3.2004.

The undersigned is directed to refer to DPE's O.M. No. 13(1)/2002 dated 14th June, 2002 extending thereby the Purchase Preference Policy for a period of two more years upto 31.3.2004. The Government have reviewed the matter further and decided to extend the Purchase Preference Policy for a period of one more year w.e.f. 1.4.2004 to 31.3.2005. Accordingly, other things being equal, purchase preference will be granted to the Central Public Sector Enterprises(CPSEs) at lowest valid price bid(L1) if the price quoted by a CPSE is within 10% of the L 1 price. The salient features of the policy are as under:

- (i) The 10% purchase preference would be extended to tenders/NIT of rupees 5 crore and above;
- (ii) CPSEs registered under the Companies Act, 1956 and Statutory CPSEs will be eligible for purchase preference as before. Joint venture companies where holding of Government and/or CPSEs is 51% or more and joint ventures which are subsidiaries of CPSEs with CPSEs holding 51% equity or more will also be eligible for purchase preference;
- (iii) A minimum value addition of 20% by the CPSEs/Joint Venture Units by way of manufacturing and/or services would be a prerequisite for availing of purchase preference;
- (iv) Ministries/Departments/CPSEs and autonomous bodies under Central Government will continue to grant purchase preference to CPSEs;
- (v) Respective Ministries/Departments/autonomous bodies/CPSEs will be responsible for implementing the Purchase Preference Policy in letter and spirit strictly;
- (vi) As per the extant policy, the provisions relating to purchase preference should be specified in the Notice Inviting Tender (NIT) for rupees 5 crore and above. For any deviation including exclusion of the purchase preference clause from the NIT, it will be obligatory on the concerned Ministry/Department/CPSEs/autonomous bodies to obtain prior exemption from the Cabinet or the agency authorized by it in consultation with the Department of Public Enterprises on case to case basis; and
- (vii) Other provisions of the purchase preference policy remain unaltered.

2. The cases which were under consideration from 1.4.2004 till the date of issue of this O.M. would stand covered under this policy, except those which have already been decided otherwise.

3. All the Ministries/Departments are requested to immediately bring the contents of this O.M. to the notice of all the concerned officers, Central Public Sector Enterprises (CPSEs), Autonomous Bodies and other organisations under their administrative control for strictly following the Purchase Preference Policy in letter and spirit.

(DPE O.M. No.DPE/13(12)/2003-Fin. dated 26th October, 2004)

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11.

DPE/Guidelines/VI/11

Extension of Purchase Preference Policy (PPP) for products and services of Central Public Sector Enterprises(CPSEs) beyond 31.3.2005.

The undersigned is directed to refer to DPE's O.M. of even no. dated 26.10.2004 extending thereby the Purchase Preference Policy (PPP) for products and services of Central Public Sector Enterprises (CPSEs) upto 31.3.2005. The Government has considered the matter further and has decided to extend the Purchase Preference Policy for a further period of three years i.e. upto 31.3.2008 with certain modifications/conditions. Accordingly, other things being equal, purchase preference will be granted to the CPSEs at the lowest valid price bid (L 1) if the price quoted by the CPSE is within 10% of the L1 price. The salient features of the modified Purchase Preference Policy are as under:

(i) (i) PPP will continue for a further period of three years, with clear stipulation that it will be terminated with effect from 31.3.2008.

(ii) (ii) PPP support will be extended to the contracts of the value of Rs. 5 crore and above but not exceeding Rs. 100 crore.

If civil works are included as part of the contract for supply of goods and / or if the contract is a turnkey contract, such contracts would also be covered by the PPP, subject to the condition that the total value of the contract does not exceed Rs. 100 crore.

(iii) (iii) PPP will apply only to CPSEs and their subsidiaries (i.e. where PSE owns 51% or above shareholding), but not to a joint venture owned by a PSE and a private sector partner.

(iv) (iv) A minimum value addition of 20% by the CPSEs/subsidiary companies by way of manufacturing and / or services would be a prerequisite for availing of purchase preference.

(v) (v) The provisions relating to purchase preference should be specified in the Notice Inviting Tenders (NIT) for Rs. 5 crore and above but not exceeding Rs. 100 crore.

(vi) (vi) PSEs should be subject to the same qualification process as any other bidder. If the PSE does not meet the minimum qualifications, it should be subject to disqualification. However, in suitable cases, the purchasers / clients may relax the condition of "net worth" from the list of minimum qualifications.

(vii) (vii) If the PSE, which has had the benefit of the Purchase Preference Policy, fails to perform, it should also be subject to payment of liquidated damages or any other penalty included in the contract.

(viii) (viii) Each Ministry shall make a list of CPSEs that would require PPP support and if there is no possibility of making a positive list, they may attempt a negative list of CPSEs which may not require PPP support.

(ix) (ix) Ministry of Power is granted exemption from the PPP, subject to the condition that they will place certain orders upon BHEL on a negotiated basis price benchmarked through competitively bid projects every year. Ministry of Power and Department of Heavy Industry will work out, at the beginning of the year, the number and value of the orders to be placed upon BHEL during the financial year.

2. All Ministries /Departments/ CPSEs / Autonomous Bodies except Ministry of Power will continue to grant purchase preference to CPSEs/subsidiary companies.

3. Respective Ministries /Departments / CPSEs / Autonomous Bodies will be responsible for implementing the Purchase Preference Policy in letter and in spirit. For any deviation including exclusion of the purchase preference clause from NIT, it will be obligatory on the concerned Ministry/ Department / CPSE / Autonomous Body to obtain prior exemption from the Cabinet in consultation with the Department of Public Enterprises.

4. The cases which were under consideration from 1.4.2005 till the date of issue of this order would stand covered under the policy except those which have already been decided otherwise.

5. All the Ministries/Departments are requested to immediately bring the contents of this O.M. to the notice of all the concerned officers in the Ministry/Department, CPSEs, Autonomous Bodies and other Organisations under their administrative control for strictly following the Purchase Preference Policy. As indicated in para 1(viii) administrative Ministries/Departments are also required to immediately make the list of CPSEs which may or may not require PPP support. A copy of such list prepared may also be sent to DPE for record.

(DPE OM No. DPE.13(12)/2003-Fin. Vol. II dated the 18th July, 2005)

No. DPE/13(15)/2007-Fin
Government of India
Ministry of Heavy Industries and Public Enterprises
Department of Public Enterprises

14, C.G.O. Complex, Lodi Road,
New Delhi-110003

Dated the 21st November, 2007

OFFICE MEMORANDUM

Subject: Review of Purchase Preference Policy for Products and Services of Central Public Sector Enterprises (CPSEs) in view of the judgement of the Supreme Court of India in the matter of M/s Caterpillar India Pvt. Ltd. v/s Western Coalfields Limited and Ors dated 18.5.2007.

The undersigned is directed to refer to this Department's O.M. no. DPE.13(12)/2003-Fin. Vol. II dated 18.7.2005 regarding extension of Purchase Preference Policy for Products and Services of CPSEs for a further period of three years beyond 31.3.2005 with certain modifications.

2. The Supreme Court of India in its judgement in the transferred Civil Petitions of 2004 from the different High Courts in the matter of M/s Caterpillar India Pvt. Limited v/s Western Coalfields Limited and Ors. Observed that imposing a condition like purchase preference no option is left and a monopoly is being created. Any increase in the effectiveness of PSEs cannot be done on a uniform basis without examination as to whether such protection is necessary for a particular PSE. Further, it has to be examined on a case to case basis as to whether any differential treatment is called for. There may not be any competition left if 10% margin is allowed. It was also contended that the preference should be given PSE specific and the margin to be allowed should be examined rationally. Because of the substitution of the word 'may' by 'will' there is essentially a reversal of the policy. While giving its judgement, the Supreme Court also expressed its views which inter-alia includes the following:

- (a) Industry-wise assessment to be done by the concerned Ministries and in case of cost effectiveness is achieved by any PSEs there may not be any need for extending preference to such PSEs. Such examination should be done on the line as to whether any preference is at all called for and the extent of margin of preference to be allowed, which would also ensure level playing field for others. Further, while splitting the tenders, the minimum quantity/amount should be so fixed as to ensure that it is rational and there is no element of uncertainty. In other words, there should not be any rigid / inflexible purchase preference policy without examination as to whether such protection is necessary for a particular PSE;
- (b) Present practice of allowing uniform margin of 10% over the L-1 bidder, as purchase preference to CPSEs, has to be reviewed and margin should be fixed PSE specific by the concerned Ministry on a rational basis;
- (c) The overall impact of such preference to be allowed on foreign direct investment has also to be assessed/considered.

The Supreme Court through its judgement dated 18.5.2007 inter alia directed that the exercise, as noted above shall be undertaken by the concerned Ministry of the Central Government within a period of 4 months from the date of the judgement.

3. In view of the above mentioned judgement of the Supreme Court of India, the Government again reviewed the Purchase Preference Policy for Products and services of Central Public sector Enterprises on 25.10.2007 and decided to reiterate its decision dated 30.6.2005 that the purchase preference policy will be terminated with effect from 31.3.2008. The Government also decided that the preferential purchase policies framed for the specific sectors by the concerned Ministries/Departments within relevant Act of Parliament or otherwise do not come within the purview of this decision. The concerned Ministry/Department may independently evolve/review preferential policies for the sectors of their concern, as per their requirement.

4. All the administrative Ministries/Departments are requested to take note of the above mentioned decision of the Government and also bring it to the notice of the CPSEs under their administrative control for information and necessary compliance.



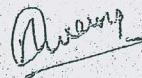
(R.L. Meena)
Joint Adviser

Telefax : 24362061

The Secretaries of all administrative Ministries/Departments and Nodal Ministries/Departments

Copies for information to:

- (i) The Cabinet Secretariat (Shri K.L. Sharma, Director), Rashtrapati Bhawan, New Delhi w.r.t. their Note No.40/CM/2007(i) dated 29th October, 2007 circulating therewith the minutes of the Meeting of the Cabinet dated 25.10.2007 regarding review of purchase preference policy for products and services of CPSEs.
- (ii) Prime Minister's Office (Shri T.K.A. Nair, Principal Secretary to the Prime Minister) South Block, New Delhi.
- (iii) PS to Minister (HI&PE).
- (iv) The Chief Executives of CPSEs.



(R.L. Meena)