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PART- I SECTION-I

No.1/10/8/2009-ER
Government of India
(Bharat Sarkar)
Department of Atomic Energy
(Parmanu Oorja Vibhag)
Mumbai, the June 4 , 2010

RESOLUTION

Subject : Guidelines for implementation of arrangements for cooperation
concerning peaceful uses of atomic energy with other Countries.

Pursuant to the provisions of the Atomic Energy Act, 1962 as amended from time to time, the Department of Atomic Energy, Government of India (hereinafter referred to as the 'Department') has notified a list of Prescribed Substances, Prescribed Equipment and Technology vide notification No. S.O. 61(E) dated 18th January 2006. The Department has also issued 'Guidelines for Nuclear Transfers (Exports) vide notification No.AEA/27(1)/2005-ER dated 1st February 2006 and all exports will continue to be governed by these guidelines.

2. Government is keen to promote civil nuclear cooperation and trade with other countries to produce, develop, use, and dispose of atomic energy, including carrying out research connected therewith. The Government intends to encourage the development of commercial relations with any country in the area of atomic energy, under bilateral or multilateral agreements for cooperation (hereinafter referred to as the 'Agreement') that it has entered or may enter into with any country (hereinafter referred to as a 'cooperating country'). The Government may also allow supplies of nuclear material, non-nuclear material, equipment, components, information and technology listed and defined in Schedule-I hereto (hereinafter referred to as the 'Scheduled items') from countries willing to trade them with India without a formal bilateral agreement of cooperation with such countries (hereinafter referred to as a 'trading country'). Supply of any scheduled item from such country shall be based on assurances from and agreed to by the Government of India (hereinafter referred

to as the 'assurances'). The supply of the Scheduled items shall be in accordance with the relevant agreement and assurances.

3. Copies of the Agreements in force for the cooperation concerning peaceful uses of atomic energy with other countries would be made available on the website of the Department.

4. These Agreements provide for the transfer of nuclear material, non-nuclear material, equipment, components, information and technology directly between the Governments or through authorized / designated persons. Any such transfer is subject to the conditions stipulated in the Agreements which *inter-alia* include peaceful-use assurances, application of IAEA safeguards, provision of adequate physical protection, conditions for retransfer, confidentiality of information and intellectual property rights.

Authorization

5. A person in India who intends to enter into commercial relationship, collaboration, cooperation or contract (hereinafter referred to as an 'arrangement') or has already entered into such an arrangement with persons in a cooperating country or a trading country (hereinafter referred to as a Supplier), as the case may be, shall seek an authorization (hereinafter referred to as the 'authorization') for such an arrangement.

6. A person, who has been granted an authorization, shall be required to ensure that the arrangement proposed to be entered or already entered into by him, meets all conditions stipulated in the Agreement with a cooperating country, or is consistent with the assurances agreed to by the Government of India.

7. A person, who has been granted an authorization, shall also ensure that such an arrangement with a person in a cooperating country or a trading country shall not hinder or otherwise interfere with any other activities in India involving the use of nuclear material, non-nuclear material, equipment, components, information or

technology produced, acquired or developed by persons in India and / or the Government of India independent of the Agreement.

8. Additional Secretary, Department of Atomic Energy, Anushakti Bhavan, Chatrapati Shivaji Maharaj Marg, Mumbai – 400001, is designated as the competent authority (hereinafter referred to as the 'Competent Authority') for grant of authorization including prescribing application fee.

Application

9. Authorization referred to in paragraph 8 may be granted on an application made in the prescribed form as given in Schedule-II.

Every application should be accompanied with a fee as prescribed pursuant to para 8.

The Competent Authority may grant authorization only if he is satisfied as to the technical, financial and legal competence of the applicant.

A person who has been granted an authorization shall furnish to the Competent Authority a copy of the final deed containing the arrangement entered into within a period of 30 days from the date such arrangement is entered.

Additional Information

10. Competent Authority may seek such additional information and facilitation of access to relevant facilities as he may consider necessary for processing an application for authorization, or to ensure continued compliance with the conditions on which the authorization has been issued.

Reporting requirements

11. Every person receiving any nuclear material, non-nuclear material, equipment, components, information or technology under such authorization (hereinafter referred to as the 'Recipient') shall be required to report to the Competent Authority, details of such transfers within 30 days thereof providing

details of such transfer and any activity that was carried out by such person pursuant to the agreement or the assurance.

12. Every Recipient shall be required to submit an annual report by 15th April of every year for the immediately preceding financial year providing the details of transfers of any nuclear material, non-nuclear material, equipment, information, or technology, and any activity that was carried out by such a person pursuant to the agreement or the assurance to the Competent Authority.

13. Every authorization shall be non-transferable, non-assignable and subject to such conditions and reporting requirements as may be stipulated therein or subsequently sought. The Competent Authority may suspend or revoke an authorization for breach of any of the conditions on which it is granted or for non-compliance of any reporting requirement, provided that such suspension or revocation shall be ordered only after giving the person concerned an opportunity of making a representation and considering his representation.

Recognition and verification of transfer

14. Any nuclear material, non-nuclear material, equipment, components, information or technology shall be deemed to have been transferred pursuant to an agreement for cooperation with a co-operating country or an assurance given by the Government of India to a trading country only if an authorization has been obtained by the person in India before entering into any arrangement with a Supplier, and the Competent Authority has been informed of such transfer having taken place. The Government of India reserves the right to verify any such transfer in any manner it may consider necessary.

Legal requirements

15. Arrangements pursuant to authorizations shall continue to be subject to provisions of the Atomic Energy Act, 1962, other applicable Indian laws and rules, regulations and guidelines made thereunder. These arrangements shall also

conform to the policies of the Government of India and the international treaties to which India is or may be a Party.


(A. Gitesh Sarma)
Joint Secretary to the Government of India

Schedule - I

“Nuclear material” means any “source material” or “special fissionable material” as those terms are defined in Article XX of the Statute of the International Atomic Energy Agency (IAEA);

“Non-nuclear material” means material suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission and includes deuterium, heavy water and deuterium compounds in which the ratio of deuterium to hydrogen atoms exceeds 1:5000 in quantities and graphite having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 g/cc;

“Equipment” means equipment specially designed or adapted or which is used or intended to be used for the production or utilisation of any nuclear material, non-nuclear material, or for the production or utilisation of atomic energy and includes nuclear reactors, fuel reprocessing plants, fuel fabrication plants, uranium enrichment plants, uranium & plutonium conversion facilities, heavy water production plants, and associated equipment specially designed, prepared, adapted or used or intended to be used in such plants / facilities;

“Technology” means the specific information necessary for the development, production or use of items listed in this Schedule with the exception of data in the public domain or of Basic scientific research.

“Information” means any information that is not in public domain and is transferred in any form pursuant to such an Agreement and is so designated and documented in hard copy or digital form by agreement of the Parties that it shall be subject to such Agreement, but will cease to be information whenever the Party transferring the information or any third party legitimately releases it in public domain.

Schedule - II

(Application Fee:Rs.....)

Application for authorization by a person in India to enter into an arrangement with a person in a cooperating country / a trading country as required under the GOI Resolution No. _____ dated _____

1. Details of application fee submitted:

2. Particulars of the applicant:

- a). Name:
- b). Address:
- c). Citizenship:
- d). If company, address of registered office:
- e). Degree of control by any foreign person:
- f). Any other information necessary to fulfill requirements of this resolution:

3. Particulars of all interested persons (if there are more than one interested persons such as subsidiaries, contractors and sub-contractors, this information must be given for each such person and may be numbered as 3.1, 3.2, 3.3, etc. If any person acquires such interest at a future date, particulars thereof must be furnished to the Competent Authority within 30 days of acquisition of such interest):

3.1:-

- a). Name:
- b). Address:
- c). Citizenship:
- d). If company, registration number and address of registered office (attach a certified copy of the certificate of registration, memorandum & articles of association and audited balance sheet of immediately preceding financial year):
- e). Degree of control by any foreign person:
- f) Any other information necessary to fulfill requirements for authorization:

3.2:-

(add extra sheet, if required)

4. Particulars of all licences/authorizations issued to the applicant under Atomic Energy Act, 1962 till date (add extra sheet, if required)

5. A complete description of the proposed activity, name and location of any facility involved, name and address of the person with whom the activity is to be performed and a detailed description of the specific project to which the activity relates (draft deed of arrangement proposed to be entered must be furnished) :

6. Designation of any information considered proprietary whose public disclosure would cause substantial harm to the competitive position of the applicant;

7. An undertaking as per the format in the Annex by the Recipient on behalf of itself, its subsidiaries, contractors and sub-contractors.

Undertaking

The Department of Atomic Energy
Government of India
Mumbai

We, (the name of the Recipient), _____ wish to enter into an arrangement (specify type of arrangement) _____ with (Give details of the person with whom arrangement is envisaged), _____, (hereinafter referred to as the Supplier), and avail of the benefits under the agreement of cooperation (Give title of the agreement of cooperation and the Country) _____ and / or pursuant to assurances provided by the Government of India to (Give name of the country) _____.

(Strike out whichever is not applicable)

In connection with the above we hereby declare and undertake as follows –

1. that we have read and understood the Agreement / assurances and shall abide by all its stipulations.
2. that authorization hereby applied for, if granted shall not relieve us of legal requirements as to specific approvals or licences that we may be required to obtain under various applicable statutes and rules and regulations made thereunder.
3. that we are aware that the authorization hereby applied for, if granted to us shall be non-transferable and non-assignable and we shall neither transfer nor assign the same to any person.
4. that we neither have nor shall enter into any arrangement with the Supplier which violates the conditions of the Agreement / assurances.
5. that we neither have entered nor shall enter into any arrangement which hinders or otherwise interferes with any other activities in India involving the use of nuclear material, non-nuclear material, equipment, components, information or technology produced, acquired or developed by persons in India or the Government of India independent of the Agreement.

6. that any nuclear material, non-nuclear material, equipment, information, or technology received by us from the Supplier or items derived therefrom shall be used for peaceful purposes and shall not be used for any nuclear explosive device, for research on or development of any explosive device or for any military purpose.
7. that any nuclear material, non-nuclear material or equipment received by us from the Supplier or items derived therefrom and items derived from information or technology received by us from the Supplier shall be used or supplied for use only in facilities under IAEA safeguards.
8. that we have entered into a Confidentiality Agreement with the Supplier which enjoins on us and the Supplier not to retransfer or disclose any Confidential Information received from the other Party, nor transfer any facilities, equipment or materials derived through the use of such Confidential Information, directly or indirectly, without prior written permission of the disclosing party or its respective Government to any other country, or person, except for disclosure of minimum necessary confidential information to those ministries/departments of the Government of India wherefrom statutory/regulatory approvals are required for the construction of power plants or for the manufacture of equipment or components in India.
9. that we shall ensure adequate physical protection for storage of any supplied nuclear material or any nuclear material derived from facilities under IAEA safeguards and such physical protection, at a minimum, shall provide protection comparable to the recommendations set forth in the International Atomic Energy Agency document INFCIRC/225/Rev.4 (Corrected) or any revisions of this document that has been agreed to by the Government of India. (applicable to Recipients handling nuclear material.)
10. that this undertaking shall be binding on our successors in interest, all our subsidiaries, contractors and sub-contractors and successors in interest of such subsidiaries, contractors and sub-contractors and we shall keep the Competent Authority informed about any additional such future subsidiaries, contractors and sub-contractors.

(Authorized signatory on behalf of the Recipient)