

**MINISTRY OF DEFENCE
(ACQUISITION WING SECRETARIAT)**

Subject: Amendments to Defence Procurement Procedure (DPP)-2013.

The following amendments/additions have been approved for inclusion in the DPP-2013:-

(i) **Article 27.1 of Standard Contract Document (Chapter V, page 319) of DPP-2013 is amended as under:**

For 27.1 The SELLER has no right to give, bargain, sell, assign or sublet or otherwise dispose of the contract or any part thereof, as well as to give or let a third party take benefit or advantage of the present contract or any part thereof.

Read 27.1 The SELLER has no right to give, bargain, sell, assign or sublet or otherwise dispose of the contract or any part thereof, as well as to give or let a third party take benefit or advantage of the present contract or any part thereof **except, with the prior consent of the BUYER, in case of merger, amalgamation, consolidation, acquisition, change in control or similar transaction. For granting such consent, BUYER may require SELLER enter into a Novation agreement.**

(ii) The '**Declaration**' at **Para 12 of Appendix E – Information Proforma (Indian Vendors) and Para 10 of Appendix E – Information Proforma (Foreign Vendors) of Chapter I (pages 68 & 70, respectively), will be read as under:-**

For: "Declaration. It is certified that the above information is true and any changes will be intimated within five (05) working days of occurrence."

Read: "Declaration. It is certified that the above information is true and any changes will be intimated at the earliest from the day of occurrence."

(iii) **Addition of Para 24(e) in Chapter I of DPP-2013 [Page 10] as below:**

“(e) **Change of Name of Vendor**. Whenever there is a situation where “change of vendor name” occurs during any stage of procurement process from submission of RFI till execution of complete contract, due to change in business strategy, or due to merger and acquisitions or any other reason, guidelines/procedure as given at Appendix E2 are to be followed. Whenever the company applies to regulatory authorities for change of name, it must inform User Directorate/MoD at the earliest about it. Notwithstanding the ‘on-going process of change of name of affected company’ the procurement process shall continue. On approval of change of name of vendor by legal

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authorities and issuance of new certificate of incorporation by Registrar of Companies (ROC)* all relevant documents, self-authenticated by authorised representative of new entity, as mentioned in Appendix E2 should be submitted to User directorate/MoD by vendor at the earliest. Also an undertaking by the new entity as applicable has to be submitted as per the format given in Annexure to Appendix E2. Grant of consent for change of name by relevant authorities at SHQ/MoD is subject to submission of all documents given in Check list given in Appendix E2.

***Note:-** Registrar of Companies (ROC) appointed under Section 609 of the Companies Act, 1956 covering various States and Union Territories are vested with the primary duty of registering companies floated in respective States and Union Territories and ensuring that such companies comply with statutory requirement under Company Act. For the purpose of this paragraph and related Appendix and Annexure thereof, the term 'ROC' would include relevant regulatory authorities of different countries in case of foreign vendors."

2. Appendix E2 i.e. Guidelines to be followed when change of company name is involved while participating in the procurement process; and Annexure to Appendix E2 i.e. Format for Undertaking or Novation Agreement for New Entity are enclosed herewith.

3. The above amendments are notified for information and compliance by all concerned **with immediate effect.**

Encl. As above

(Praveen Kumar)

Director (Acq)

Telefax: 23792865

To

CISC

VCOAS

VCNS

VCAS

DG(CG)

All Joint Secretaries/Additional FAs /Finance Managers/Technical Managers/ DGWE/ ACAS(Plans)/ACNS(P&P)/Directors/Deputy Secretaries.

Copy for information to: PS to RM, PS to RRM, SO to Defence Secretary, PPS to Secretary(DP), SO to SA to RM, PPS to FA(DS), PPS to DG(Acq), PPS to AS(R), PPS to AS(DP), PPS to FA(Acq) & AS, CGDA, Principal IFAs

MoD ID No.3(48)/D(Acq)/14-Pt dated 06.04.2016

Copy also to: (i) US, D(IT), Room No.217, 'B' Wing, Sena Bhavan for uploading this ID on MoD website immediately for information of all concerned.

(ii) F. No. 1(6)/D(Acq)/13-Vol.II.

GUIDELINES TO BE FOLLOWED WHEN CHANGE OF COMPANY NAME IS INVOLVED WHILE PARTICIPATING IN THE PROCUREMENT PROCESS

1. Whenever the vendor participating in the defence procurement process, initiates the process for change of name with corporate regulatory authorities, due to change in business strategy, merger/acquisition or any other reason resulting in losing its original legal identity, it must inform the MoD/User Directorate at the earliest about its intent to change name on its official letter head signed by the authorised representative. If, at any stage of the defence procurement phase, approval of merger/amalgamation/acquisition is granted by courts/regulatory authorities, resulting in change of name, then the vendor should 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 whose format is given at Annexure to this Appendix, at the earliest after grant of approval by ROC. If any foreign company is involved in the 'merger and acquisition' and if documents are in languages other than English, then a self-certified/official/legal translation of the document along with the original as well as RBI approval should also be submitted. **The onus of submitting all relevant, self-authenticated, authentic documents lies with the vendor affected.**

2. User Directorate/MoD shall process the case of change of name of vendor for consent of the approving authority concerned. 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.

Approving Authorities for the Change of Name of Vendor while Participating in the Procurement Process

3. The approving authorities for change of name of company in all cases will be as follows:-

- (a) **Pre-contract stage.** Case is to be processed by SHQ. Consent is to be given by DG(Acq) for schemes granted AoN by DPB/DAC, and VCOAS/VCNS/DCAS/CISC/DG(CG) for schemes granted AoN by SCAPCHC (i.e for all schemes under delegated powers). However, in all single vendor cases consent will be obtained from DAC.
- (b) **Post-contract stage.** The case has to be processed by SHQ/Acquisition Wing for consent of Raksha Mantri or VCOAS/VCNS/DCAS/CISC/DG(CG) (in case of delegated power cases). On obtaining consent, a corrigendum to the sanction letter reflecting the change in vendor is to be issued.

Checklist for Vendor

4. Whenever, the company applies to the regulatory authorities for 'change of name of company', it must inform User Dte/MoD through a letter about proposed change of name and reason for the same.

5. When change of name is approved by regulatory authorities, the following documents must be submitted to User Dte/MoD **at the earliest**:

(a) Before Submission of Response to RFP

- (i) Information Proforma for Vendors as given at Appendix E to Chapter 1 of DPP-2013.
- (ii) New certificate of incorporation issued by the appropriate Registrar of Companies in case of Indian Vendors or an equivalent organisation in country from where new entity would be operating in case of foreign company
- (iii) Copy of RBI Approval in case of merger/acquisition between Indian and foreign company(s).

(b) If Response to RFP submitted or the contract has been signed.

- (i) Information Proforma for Vendors as given at Appendix E to Chapter 1 of DPP-2013.
- (ii) New certificate of incorporation issued by the appropriate Registrar of Companies in case of Indian vendors or an equivalent organisation in country from where new entity would be operating in case of foreign company.
- (iii) Copy of RBI Approval in case of merger/acquisition between Indian and foreign company(s).
- (iv) Undertaking/Novation agreement by new company (as per the format given at Annexure to Appendix E2).

6. On grant of consent to the case for change of name by the User Dte/MoD, the following documents bearing the new entity name will be submitted by vendor:

- (a) New Pre-Contract Integrity Pact (PCIP)
- (b) Integrity Pact Bank Guarantee (IPBG)
- (c) Advance Bank Guarantee/Bank Guarantee and
- (d) Any other applicable financial instruments/documents bearing the new entity name.

7. In case the documents are in languages other than English then a self certified/official/legal translation of original documents must be submitted.

Steps to be followed by User Directorate/MoD

8. Whenever the Company informs of its intent to change of name, the name will be flagged in the vendor database as it has to submit subsequently, the documentary approvals by regulatory authorities.

9. If the vendor is participating in the procurement process, notwithstanding the vendor's ongoing process of change of name, the procurement process shall continue.

10. Ascertain that vendor has submitted all documents mentioned at para 5, as applicable, are self authenticated by the authorised representative of the vendor.

11. Process the 'change of name case' for obtaining consent of Raksha Mantri or DG (Acq) or VCOAS/VCNS/ DCAS/CISC/DG(CG) as applicable.

12. Once the consent is granted, inform vendor and solicit additional documents as mentioned at para 6. Case be monitored till all documents, as applicable are submitted by vendor.

13. All cases involving change of name of vendor not covered by these guidelines shall be brought to the DAC through DPB for consideration.

Annexure to Appendix E2
(Refers to para 1 of Appendix E2)

Note:- If change of name is due to rectification or due to change of business strategy, the terms Transferor and Transferee will be replaced by old name and new name respectively and **all** applicable paragraphs will only be included.

FORMAT FOR UNDERTAKING OR NOVATION AGREEMENT FOR NEW ENTITY

The _____(Transferor), a company duly organised and existing under the laws of India with its principal office in _____(Address) with ROC Number*_____. The _____(Transferee) a company duly organised and existing under the laws of India with its principal office in _____(Address) with ROC Number* _____and the President of India represented by Joint Secretary and Acquisition Manager (Land Systems/Air/Maritime Systems), Ministry of Defence, Government of India, South Block, New Delhi hereafter referred to as BUYER enter into this Agreement as of _____[insert the date of transfer of assets became effective under applicable law]

***Note:** A unique company identification number issued by Registrar of Companies or an equivalent regulatory authority in case of foreign company.

1. The parties agree to the following facts:
 - (a) The BUYER has entered into a contract ___[insert the contract identifications] with the Transferor/The transferor has submitted response to the RFP _____[insert the RFP identifications].
 - (b) As of _____(date) the Transferor has transferred to the Transferee all the assets to the Transferor by virtue of _____[insert term descriptive of legal transaction involved] between the Transferor and the Transferee.
 - (c) The Transferee has acquired the assets of the Transferor in respect of Contract/Response to the RFP.
 - (d) The Transferee has assumed all obligations and liabilities of the Transferor under the contract/response to the RFP by the virtue of above transfer.
 - (e) The Transferee is in a position to fully perform all the obligations that may exist under the contract/response to the RFP.
 - (f) Evidence of the above transfer has been filed with the BUYER.
2. In consideration of the above mentioned facts, the parties agree to this Agreement:-
 - (a) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the BUYER that it now has or may have in future in connection with contracts/response to the RFP.

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(b) The Transferee agrees to be bound by and to perform each item/Article in the contract/ response to the RFP in accordance with the conditions contained in the contract/response to the RFP. **The transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contract/response to the RFP as if the Transferee were original party to the contract / response to the RFP.**

(c) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract / response to the RFP, with the same force and effect as if the action had been taken by the transferee.

(d) The BUYER recognises the Transferee as the Transferor’s successor in interest and to the contract / response to the RFP. The Transferee by this agreement becomes entitled to all rights, titles and interest of the Transferor in and to the contract/response to the RFP, as if the Transferee were the original party to the contract / response to the RFP. Following the effective date of this Agreement, the term “SELLER” as used in the contract / response to the RFP shall refer to the Transferee.

(e) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the BUYER against the Transferor.

(f) All payments and reimbursements previously made by the BUYER to the Transferor, and all other previous actions taken by the BUYER under the contract / response to the RFP, shall be considered to have discharged those parts of BUYER’s obligations under the contract/response to the RFP.

(g) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee-

- (i) Assumes under this agreement; or
- (ii) May undertake in the future should this contract/response to the RFP be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(h) The contract / response to the RFP shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

BUYER

By

Title.....

[Office Seal]

cont'd...

TRANSFEROR

By.....

Title.....

[Corporate Seal]

TRANSFeree

By

Title.....

[Corporate Seal]
