

## Chapter-1

### Introduction

#### 1.1 Short Title and Commencement

- 1.1.1 This Manual may be called the Defence Procurement Manual, 2018 (DPM 2018, for short)
- 1.1.2 This Manual contains principles and procedure relating to procurement of goods and services for the Defence Services, Organizations and Establishment, laid down in terms of Rule 142 of the General Financial Rules, 2017 and shall come into force with effect from \_\_\_\_\_.
- 1.1.3 All on-going cases of procurement in which Request for Proposal (RFP) has already been issued may continue to be regulated by the provisions of the Defence Procurement Manual, 2009 **as amended**.

#### 1.2 Applicability

- 1.2.1 The principles and procedures contained in this Manual are to be followed by all wings of the Ministry of Defence and the Defence Services, as well as all organizations and units/establishments there under, for procurement of goods and services, expenditure on account of which is met from the revenue heads of the Defence Services Estimates (DSE) and any other type of purchases to which the provisions are made specifically applicable. The procedure laid down in this Manual shall be followed for central procurement as well as local purchase under delegated financial powers of authorities in the Ministry of Defence, Service Headquarters and all subordinate authorities in the Command Headquarters, lower formations, establishments and units there under at all levels.
- 1.2.2 The procedure laid down in this Manual shall also be applicable to the following:
  - (a) the Coast Guard Organization and Jammu & Kashmir Light Infantry (JAKLI) for procurement under the revenue heads;
  - (b) procurement of certain capital items **under revenue procedure (CBRP)**, as notified by the Ministry of Defence from time to time;
  - (c) procurement of medical equipment, both under revenue and capital heads;
  - (d) **Implementation of ICT Projects under the Revenue budget or under CBRP mechanism;** and
  - (e) procurements made by the Defence Services from grants placed at their disposal by other Ministries/Departments like the Ministry of Home Affairs, Ministry of Environment and Forests, etc.
- 1.2.3 **Applicability of the Manual to OFB and DRDO** DPM will not be applicable to procurements done by OFB and DRDO and they will be guided by their own Procurement manuals.
- 1.2.4 **Conformity of the Manual with other Government Orders** The provisions contained in this Manual are in conformity with General Financial Rules, as also other instructions issued by the Government and the Central Vigilance Commission from time to time, though some changes have been made to meet the specific requirement of Defence Services and other Defence organizations under Ministry of Defence, without violating the spirit of Basic Rules/ Regulations/ instructions, which form the basis of this Manual. DPM Provisions supersede any procurement related instructions contained in Defence Financial Regulations. If any instance of variance between the provisions of this Manual and other Government Rules, Regulations, instructions, etc., comes to notice, the matter should be immediately referred to the Ministry of Defence (MoD) for clarification. In such cases, however, the on-going procurement need not be stopped pending resolution of the issue, if the requirement is operationally urgent or delay is likely to have any adverse implications.
- 1.2.5 **Removal of Doubts and modifications:** Where any instance of variance between the provisions of this Manual and other Government Rules, Regulations, Instructions etc. comes to notice or a doubt arises as to the interpretation of any provision of this manual, the matter should be referred through proper channel to the designated officer/section in the Finance Division of the Ministry of Defence. Pending further instructions, JS & Additional Financial Advisor will be the designated officer for this purpose. If required, such references would be placed before the empowered committee set up under Secretary (Defence Finance)/ Financial Advisor (Defence Services). The composition of the Committee may be decided by MoD. The Chairman of the Committee may set up sub-committee(s).
- 1.2.6 **Proposals entailing policy implications or new practice involving recurring procurement:-** If, while processing a procurement proposal, it is found that the case may have a bearing on an existing

policy or needs formulation of a new policy in Services, the matter should be taken up with the Empowered Committee through the proper channel for necessary action. Similar action should be taken, if it is felt that it may result in introduction of a new practice in the Services or change in existing scales. If the demand is likely to be of recurring nature, the option of entering into a rate contract or referring the matter to the Service HQs for central provisioning should be considered. The on-going proposal should not be stalled, but, the CFA should ensure that a reference is made to the Empowered Committee before a similar proposal is initiated on a second/subsequent occasions. IFAs may also report such cases to the CGDA.

1.2.7 **Deviation from procedure:** There should normally be no occasion to deviate from the procedure as sufficient flexibility has been built into the provisions of this Manual. However, if such a need arises, the matter should be referred through the Principal Staff Officer concerned to the JS & Additional Financial Advisor concerned for approval of Secretary (Defence Finance)/FA (DS) and Defence Secretary. Depending on the merit of a case, the matter may also be submitted for approval of the Raksha Mantri (RM). If considered necessary, the designated officer referred to in paragraph 1.2.5 may be consulted before the matter is submitted to the Secretary (Defence Finance)/FA (DS) to maintain uniformity.

1.2.8 **Validity of internal orders and instructions** Internal orders and instructions, including Standard Operating Procedures (SOPs), issued by various Wings of the Ministry of Defence and the Services may be deemed to have been modified by the provisions of this Manual, to the extent the former are not in conformity with this Manual. This is necessary for ensuring uniformity among the procurement practices followed by various wings of the Ministry and the Services. The concerned Wings of the Ministry and Services may take necessary action to suitably modify their internal instructions and orders accordingly.

1.2.9 **Non-application of the provisions of this Manual:** Provisions of this Manual will not be applicable in the case of procurements made under delegated financial powers of certain specified authorities in the Defence Services which are exercisable by them without IFA's concurrence during period preparatory to war, hostilities, special operations, natural calamities and disasters. Provisions of this paragraph should be invoked only as and when the aforesaid eventualities are notified by the Government. Separate orders laying down the fast track procedure to be followed uniformly by the three Services would be laid down by the Ministry of Defence.

### 1.3 **Scope**

1.3.1 The term "Procurement" means acquiring all types of goods (both scaled and non-scaled/NIV) and services, such as equipment, stores, spares, tools and calibration equipment, technical literature, software etc., as well as all types of services, including packing, unpacking, preservation, transportation, insurance, delivery, special services, leasing, technical assessment, consultancy, systems study, software development, maintenance, updates, conservancy, etc. The term 'goods' also includes works and services which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance. <sup>[GFR 143]</sup>

### 1.4 **Definitions**

1.4.1 Unless the context requires otherwise, the terms used in this Manual will have the meaning as described herein below.

1.4.2 **Authority Holding Sealed Particulars (AHSP)-** Authority Holding Sealed Particulars is the authority responsible for collecting, collating, developing, amending, updating, holding and supplying sealed particulars of the defence items in accordance with the laid down procedure. AHSP may be the Director General of Quality Assurance (DGQA) or an authority in the Service Headquarters for service specific items. Similar responsibility for the Naval and Air Force equipment rests with respective service headquarters. Ordnance Factories are the AHSP for certain types of 'B' vehicles and items issued to indenters, other than the Defence Services. DGAQA is one of the AHSP for Indigenously manufactured aviation stores of all the Services and the Coast Guard. Procurement officers, the Sellers and the Inspection Agencies are required to comply with the specifications drawn up by the AHSP.

1.4.3 **CAPEX model:** In the CAPEX Model, Capital expenditures is used by the buyer to straightway purchase goods followed by procurement of consumables, arranging comprehensive maintenance contact after warranty period and finally disposing the product after useful life <sup>[GFR 2 (xxxi)]</sup>.

**OPEX model:** In the OPEX model, the Seller provides the goods, maintains it and also provides the consumables as required and finally takes back the goods after useful / contracted life. The expenditure is made by the Buyer in a staggered manner as per the terms and conditions of the contract. <sup>[GFR 2 (xxxii)]</sup>

- 1.4.4 **Competent Financial Authority (CFA)-** Competent Financial Authority is an authority duly empowered by the Government of India to sanction and approve expenditure upto a specified limit in terms of amount of such expenditure and subject to availability of funds. All financial powers are to be exercised by the appropriate CFA. Where financial powers have been delegated to several officers under one hierarchical chain under the same Serial/Head, authority with higher delegated financial powers will constitute the 'next higher CFA'.
- 1.4.5 **Contract-** A proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement, if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object, is a contract.
- 1.4.6 **Direct Demanding Officer-** The authorities in the Services/ Departments/ establishments/ units/ hospitals etc. who have been duly authorized to place purchase orders directly on the rate contract holding firms/suppliers with whom Rate Contracts have been concluded for the particular items/goods.
- 1.4.7 **Electronic Reverse Auction-** Electronic Reverse Auction means an online real-time purchasing technique utilized by the Procuring Entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids. <sup>[GFR 167(i)]</sup>
- 1.4.8 **e-Procurement-** It means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures. <sup>[Goods Manual Glossary (x)]</sup>
- 1.4.9 **Financial Powers-** Financial Power is the powers to approve expenditure to be incurred for bonafide purposes in accordance with the laid down procedure and subject to availability of funds. The powers delegated by Ministry of Defence to various authorities in the Services Headquarters and other organizations/establishments under them, as also to authorities in other organizations under the Ministry of Defence, are personal and cannot be further sub-delegated to any subordinate authority by the delegatee. However, on the strict understanding that the sole responsibility rests on them, the authorities to whom financial powers have been delegated may authorize staff officer(s) to sign communications and financial documents on their behalf provided that the name of the officer who is authorized to sign is communicated to the Audit Officer concerned.
- 1.4.10 **Goods-**The term 'goods' includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, medicines, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machineries comprising of an integrated production process of such other category of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a Procuring Entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance. <sup>[GFR 143]</sup>
- 1.4.11 **GSQRs/JSQRs/NSQR/AFSQR-** The General Staff Qualitative Requirements which lay down the technical parameters of the equipment/ items required by the Service (Army), reflecting the user's requirements in terms of functional characteristics of the stores being procured. These also generally need to indicate the requirement of military grade, ruggedized or commercially off the shelf items. NSQRs and AFSQRs refer to the Naval and Air Force Staff Qualitative Requirements respectively for equipment specific to these Services. JSQRs refer to specifications reflecting the Joint Services Qualitative Requirements in cases where commonality of equipment exists and standardization of QRs between the three Services is merited.
- 1.4.12 **Indent-** It is a requisition placed by the provisioning authority on the procurement agency to procure an item. Indent is the authority for initiating procurement action and may contain one or more items, each with a distinct item code/part number. All necessary details of the item, including quantity, denomination, estimated price, specification, scope of supply, budget code head, date by which

required and inspection authority are to be indicated in the indent to enable prompt procurement of the item.

- 1.4.13 **Indenting Agency-** Indenting agency is a logistic entity that places the requirement of stores in the form of an indent on a procurement agency to meet the requirement of stores based on periodic reviews or urgent unforeseen requirements. Normally, the indenting agency is a store holding agency and the indenter is a person authorised to raise indents on behalf of the indenting agency.
- 1.4.14 **Inspecting Authority-** Inspecting Authority promulgates inspection methodology and nominates suitable inspection agency for specific contracts. Normally, AHSP is designated as the Inspecting Authority. This can be DGQA/DGAQA/DGNAI for defence related items and designated AHSP in Service Headquarters for specified category of items procured by them.
- 1.4.15 **Inspecting Agency-** The Inspecting Authority nominates the Inspecting Agency and the Inspecting Officer based on the type of items and geographical location of the purchaser and supplier. The Inspecting officer need not necessarily be from the organization of the Inspecting Authority.
- 1.4.16 **Integrated Finance-** Finance Division of the Ministry of Defence functions as Integrated Finance for CFAs in the Ministry and officers designated as Integrated Financial Advisors (**PIFAs/IFAs**) constitute integrated finance for the CFAs in the Services Headquarters, Inter Service Organisations, Command Headquarters, lower formations and units thereunder. The term 'IFA' used in this Manual includes the Finance Division and vice versa.
- 1.4.17 **Not in Vocabulary (NIV)-** Items which are not in the vocabulary of stores, i.e., the items that have not been formally introduced **or items that are introduced but not yet** <sup>[MoD Draft 1.4.29]</sup> allotted a unique cat part number in the central approved list of inventory items of the concerned Service/Organization, as applicable.
- 1.4.18 **Original Equipment Manufacturer (OEM)-** The original equipment manufacturer is the only firm manufacturing the specified item/equipment of a specific make, as distinguished from the stockists/distributors or suppliers of such items/equipment. **OEM may also be any other firm subsequently manufacturing the item after acquiring the know-how through transfer of technology (TOT) from the original manufacturing firm** <sup>[MoD Draft 1.4.23]</sup> .
- 1.4.19 **Paying Authority** means any of the following authorities –
- (a) Office of the Principal Controller of Defence Accounts/Controller of Defence Accounts under the Controller General of Defence Accounts
  - (b) A sub-office of the Principal Controller of Defence Accounts/Controller of Defence Accounts
  - (c) An authority holding cash assignment/imprest and duly authorized to make payment for procurement.
- 1.4.20 **Procurement:** Procurement refers to the entire gamut of activities involved in and the procedures to be adopted for acquiring goods and services as defined in paragraph 1.3.1 of this Manual.
- 1.4.21 **Procurement Agency-** The Procurement or Procuring Agency is responsible for the actual procurement as per the prescribed procedure to meet the requirement of the indenter.
- 1.4.22 **Purchaser-** The President of India acting through the authority issuing the purchase/supply orders or signing the Contracts/Memo of Understanding/Agreement, is the Purchaser in all cases of procurement on behalf of the Government of India. Where the context so warrants, other terms, such as the 'buyer', have also been used in this manual.
- 1.4.23 **Rate Contract-** Rate Contract (RC) is an agreement between the Buyer and seller/supplier to supply stores at specified prices during the period covered by the contract. An RC is in the nature of a standing offer from the supplier and no minimum drawal need be guaranteed. A contract comes into being only when a formal order is placed by the CFA or the Direct Demanding Officers on the Supplier.
- 1.4.24 **Request for Proposal (RFP) - RFP (including the term 'tender enquiry' or 'Notice Inviting Tender')** means a document issued by the Procuring Entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) RFP Document is the standardized template to be used for preparing Bidding Documents after making suitable changes for specific procurement. <sup>[Goods Manual Glossary (iii)]</sup>

- 1.4.25 **Service-** Service means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. [Goods Manual Glossary (xxxii)]
- 1.4.26 **Supplier-** Supplier (also referred sometimes as Seller, Contractor, Service Provider, Vendor) is the entity, which enters into a contract to supply goods and services. The term includes employees, agents, assigns, successors, authorized dealers, stockists and distributors of such an entity.
- 1.4.27 **Tender** - (including the term ‘bid’, ‘offer’, ‘quotation’ or ‘proposal’ in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers. [Goods Manual Glossary (i)]
- 1.4.28 **Tenderer-** (including the term ‘bidder’ or ‘service provider’ in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a Procuring Entity. [Goods Manual Glossary (ii)]
- 1.4.29 **Terms and expressions not defined in the Manual:** The terms and expressions not defined herein shall have the meaning assigned to them, if any, in the Indian Sale of Goods Act 1930, the Indian Contract act 1872, the General Clauses Act 1897, or other Indian Statuettes and Government Instructions, as amended from time to time.

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## Chapter-2

### Procurement – Objective and Policy

#### 2.1 Procurement

**2.1.1 Fundamental Principles of Public Buying:** Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

**2.1.2 Procedural Propriety:** The procedure to be followed in making public procurement must conform to the following yardsticks: -

- i) The description of subject matter of procurement, to the extent practicable should be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics. It should not indicate a requirement for a particular trade mark, trade name or brand.
- ii) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.
- iii) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist.  
Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification.
- iv) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs.
- v) offers should be invited following a fair, transparent and reasonable procedure.
- vi) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects.
- vii) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.
- viii) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
- ix) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.
- x) All Organisations/Formations shall prepare Annual Procurement Plan before the commencement of the year.<sup>[GFR 144]</sup>

**2.1.3 Channels of Procurement:** Procurement of stores will in general be done by one of the following methods:

- (a) Placing demands on the Director General of Ordnance Factories for manufacture of stores in Ordnance Factories;
- (b) Placing demands on:
  - (i) Other Ministries of the Government of India.
  - (ii) State Governments, for supply from factories/ workshops/other procurement agencies under them
- (c) Placing demands on the Industries/Factories/Statutory Corporations – whether wholly or partly financed by the State set-up for the manufacture of specific range of items in the country;

- (d) Purchase through **Government e-Marketplace (GeM)** or indigenous trade.
- (e) Local Purchase in respect of items which are not supplied by the central procurement authority/ organizations of the Services / Departments and stores emergently required; and
- (f) Placing demands on Defence Public Sector Undertakings and other Government Public Sector Undertakings for purchase/repair/ manufacture/fabrication of items/equipment/systems/aircrafts etc. to meet Defence Services requirements.
- (g) **Ex-import from foreign manufacturers/ State Designated agencies abroad.** [MoD Draft 2.3]

## 2.2 Policy Guidelines

2.2.1 **Economy:** Purchases of stores must be made in the most economical manner and in accordance with the definite requirements of the defence Services. Stores should not be purchased in small quantities. Periodical indents should be prepared covering the requirement for one year or more, except where for reasons of short life or for other recorded reasons it is necessary to procure lesser quantities. Care should also be taken not to purchase stores much in advance of actual requirements, if such purchase is likely to prove unprofitable to the Government, and thus locking up of capital in stock should be minimized.

2.2.2 **Transparency**– All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such authorities must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities’ to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared. As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP), organisations’ website or other authorised websites except where exemption has been granted on grounds of confidentiality/ National Security or classified nature of items, etc. [MoF Goods Manual 1.7(i)]

2.2.3 **Broader Obligations principle** – The procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the Government - to the extent these are specifically included in the ‘Procurement Guidelines’ issued by the Nodal Ministry. These could be in areas like Preferential procurement from MSEs, locally manufactured goods or services, Reservation of procurement of specified class of goods from nominated agencies, support to broader objectives of Government like ‘Make in India’, facilitating administrative goals of other Departments of Government like ensuring tax/environment compliances, energy conservation and complying with accessibility criteria as mandated by Government from time to time etc. [MoF Goods Manual 1.7(iii)]

2.2.4 **Public Accountability Principle-** Procuring authorities have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes. The procuring authority, at each stage of procurement, must therefore place on record, in precise terms, the considerations, which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The Procuring Entity shall therefore maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include documents pertaining to determination of need for procurement

- (i) documents pertaining to determination of need for procurement;
- (ii) description of the subject matter of the procurement;
- (iii) statement of the justification for choice of a procurement method other than open competitive bidding;

- (iv) documents relating to pre-qualification and registration of bidders, if applicable;
- (v) particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- (vi) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- (vii) bids evaluated, and documents relating to their evaluation;
- (viii) contracts and Contract Amendments; and
- (ix) complaint handling, correspondences with clients, consultants, banks. [\[MoF Goods Manual 1.7\(v\)\]](#)

2.2.5 **Standards (Canons) of Financial Propriety**\_ Public Procurement like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. Rule 21 of General Financial Rules 2017 has prescribed it as under [\[GFR 21\]](#)

- (i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- (ii) The expenditure should not be prima facie more than the occasion demands.
- (iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- (iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless a claim for the amount could be enforced in a Court of Law, or the expenditure is in pursuance of a recognized policy or custom.

2.2.6 **Code of Integrity for Public Procurement** -No official of a procuring entity or a bidder shall act in contravention of the codes which includes [\[GFR 175\(1\)\]](#)

- (i) prohibition of
  - (a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.
  - (b) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
  - (c) any collusion, bid rigging or anticompetitive behaviour that may impair the transparency, fairness and the progress of the procurement process.
  - (d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.
  - (e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.
  - (f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.
  - (g) obstruction of any investigation or auditing of a procurement process.
  - (h) making false declaration or providing false information for participation in a tender process or to secure a contract;
- (ii) disclosure of conflict of interest.
- (iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

2.2.7 **Scales:** Where scales of consumption or limits of stores have been laid down by the competent authority, the officer ordering a supply should certify on the purchase order/demands that the prescribed scales or limits are not exceeded.



- 2.2.8 **Splitting:** Purchase order should not be split to avoid the necessity for obtaining the sanction of the higher authority required with reference to the total amount of the orders.
- 2.2.9 **Open competitive tendering:** When stores are purchased from contractors, the system of open competitive tender should normally be the preferred mode, except where otherwise permissible under the rules and the purchase should be made from the lowest **acceptable** tenderer.

### 2.3 **Decentralization and delegation of powers**

- 2.3.1 **Decentralization:** With implementation of the New Management Strategy (NMS) in the three Services, the Government has decentralized decision making process so as to enhance efficiency and expedite decision making. The procurement function has also been decentralized and most of the defence organizations undertake bulk of the central procurement and local purchase themselves. It must be ensured that all procurement officers meticulously follow the laid down procedures
- 2.3.2 **Delegation of Powers:** With the objective of decentralizing powers to enable effective use of resources by the actual operators, financial powers have been delegated to various authorities in the defence establishments down to the units/establishments. These powers are to be used within the framework of laid down procedures, cannons of financial propriety and subsidiary/amplificatory instructions. The financial powers so delegated also imply accountability and the CFAs must ensure that financial propriety and probity are observed in all cases **and integrated finance consulted wherever prescribed in the delegations.**

### 2.4 **Types of Procurement**

- 2.4.1 **Capital Procurement:** As per Rule 98 of the General Financial Rules, 2017, significant expenditure incurred with the object of acquiring tangible assets of a permanent nature (for use in the organization and not for sale in the ordinary course of business) or enhancing the utility of the existing assets, shall broadly be defined as Capital expenditure. Further, as per Rule 99 (a) of the General Financial Rules, 2017, Capital shall bear all charges for the first construction and equipment of a project as well as charges for intermediate maintenance of the work while not yet opened for service. It shall also bear charges for such further additions and improvements, which enhance the useful life of the asset. Capital procurement would, therefore, refer to procurement of all goods and services that fit the description of capital expenditure. The procedure for capital procurement is separately laid down in the Defence Procurement Procedure (DPP) as amended from time to time.
- 2.4.2 **Revenue Procurement:** As per Rule 99 (b) of the General Financial Rules, 2017, revenue should bear all subsequent charges for maintenance and all working expenses, including all expenditure on working and upkeep of the project and also on renewals and replacements and additions, improvements or extensions, etc., as under rules made by the Government. The revenue procurement, therefore, implies procurement of items and equipment, including replacement equipment (functionally similar) assemblies/sub assemblies and components, to maintain and operate already sanctioned assets in the service, the necessity of which has been established and accepted by the Government.
- 2.4.3 **Capital Booking Revenue Procedure (CBRP) – MoD (Fin) from time to time exempt procurement of certain items of capital nature following the provisions of DPP and instead allow their procurement following the provisions of DPM. Such Capital procurements through Revenue procedures are booked to Capital Heads. Procurement Entities may refer to the latest instructions issued by MoD on the subject before processing such cases under DPM.**
- 2.4.4 **Indigenous Procurement:** Procurement from indigenous sources is called indigenous procurement. It is the policy of the Government to encourage indigenization, particularly in the field of defence to achieve self-reliance. Hence, indigenous firms should be given all support to produce and supply quality goods conforming to specifications. Proper loading criteria for all taxes, duties and other expenses involved in procurement of an item need to be applied to provide a level playing field to the indigenous manufacturers. Payments against indigenous procurement are made in rupee terms. Procurement of goods of foreign origin from indigenous firms/ suppliers will not be treated as import in the following cases:-
- a) Sale of imported goods which are supplied from the already existing stock of supplier.
  - b) Import of raw materials and components which have been utilized by the suppliers in assembling or manufacturing the goods ordered for sale where price of such raw materials, components and accessories have not been shown separately.

- c) Sale of imported goods which have been further processed in India before supply to the consignee.
- d) Sale of goods which are to be imported against firm's own 'Stock and Sale' license for supply to various customers.
- e) Sale of goods that may have moved from foreign country to India as a result of the Indian Supplier purchasing the goods from the foreign supplier, i.e.
  - (i) the movement of goods has been occasioned by the contract from purchase which the Indian supplier entered with the foreign seller.
  - (ii) there is no privity of contract between the Government Department and the foreign seller.
  - (iii) the foreign seller has not entered into the contract by himself or through the agencies of the Indian supplier.

2.4.5 **Foreign Procurement (Import):** For such Defence equipment and assets, which are of foreign origin, items required to maintain and operate these equipment may also need to be procured from suppliers abroad. The procedure for such procurement is laid down in Chapters 9 and 10 of this Manual. Procurement of goods of foreign origin from indigenous firms/ suppliers will be treated as import purchases in the following cases: -

- (a) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale.
- (b) Where there is a privity of contract between the foreign supplier and the Defence Department/ purchaser.
- (c) Where the Indian Supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

2.4.6 **Central Procurement:** Central Procurement (CP) is undertaken against indents resulting from planned provisioning process like the Annual Provision Review, refit planning, obsolescence planning and planned routines. CP indents normally cover the entire requirement of the item for the duration of the provisioning period. **Central Procurement is also resorted to for procuring commonly required items in centralized manner so as to benefit from economy of scale.**

2.4.7 **Local Procurement:** Local Purchase (LP) is undertaken within the LP powers of various authorities as per the delegated powers in the following circumstances:

- (a) To meet the short-term, ad-hoc or urgent requirements of units/ establishments when supplies are not available through the central provisioning agency. Intimation regarding such purchases should immediately be sent to the central provisioning agency so that the latter could take the quantities procured through local purchase into account.
- (b) To meet the normal requirements of units/establishments for stores which are not within the purview of central purchase organizations.

2.4.8 **Purchase of goods and services through Government e-Marketplace (GeM)-** The procurement of Goods and Services by Departments or Organisations will be mandatory for Goods or Services available on GeM (Rule 149 of GFR 2017).

2.4.9 **Purchase of goods and services without quotation:** Purchase of goods and services up to the value of Rs. 25,000/- (Rupees Twenty Five Thousand) <sup>[GFR 154]</sup> only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the Competent Financial Authority in the following format.

"I, \_\_\_\_\_, am personally satisfied that these goods/services purchased are of the requisite quality and specification and have been purchased from a reliable supplier/service provider at a reasonable price."

2.4.10 **Purchase of goods by Purchase Committee:** **In case a certain item is not available on the GeM portal,** purchase of goods costing above Rs. 25,000/- (Rupees Twenty Five Thousand only) and up to Rs. 2,50,000/- (Rupees Two lakh Fifty Thousand only) <sup>[GFR 155]</sup> on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Competent Financial Authority. The committee will be required to survey the market to ascertain the reasonableness of rate, quality and specifications and

identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under:

"Certified that we, \_\_\_\_\_, members of the local purchase committee are jointly and individually satisfied that the goods/services recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question and it is not debarred by Department of Commerce or Ministry/Department concerned."

- 2.4.11 **Obtaining of Quotations by the Local Purchase Committee:** The Competent Financial Authority may direct the local purchase committee responsible for carrying out the market survey to obtain quotations as a part of the market survey. Where no such direction has been given, it would be up to the purchase committee to decide whether or not to obtain quotations as a part of documentation of market survey. In either case, however, details of the market survey (suppliers contacted and the rates quoted by them) would be recorded by the local purchase committee.
- 2.4.12 **Purchase of goods directly under Rate Contract:** Goods for which Central Procurement Agency or MoD/Service HQrs/Command HQ/Depots etc. has rate contracts can be procured directly by the Direct Demanding Officers/units/formations using such Rate Contract.
- 2.4.13 **Cash purchase from Imprest:** Cash purchase is a type of LP (local purchase) resorted to in case of extreme urgency or when the supplier is not willing to supply the required item on credit. Cash and carry powers are very limited as such procurement is made only in exceptional cases when cash payment is made from the imprest of the unit and the same is claimed from the paying authority who reimburses the amount after due audit of the transaction.
- 2.4.14 **Procurement from Ordnance Factories and Defence Public Sector Undertakings:** The following guidelines should be followed for procurement of goods/services from the Ordnance Factories and Defence Public Sector Undertakings:
- (a) After acceptance of necessity, all stores falling within the product range of the Ordnance Factories should be procured through the Ordnance Factories Board (OFB) by placing indents without issuing RFPs. In the case of emergent purchase, items falling within OFB's product range may be procured from trade following the tendering procedure but only after obtaining a "No Objection Certificate" from the OFB. All requests for obtaining No Objection Certificate should be addressed to the Secretary, Ordnance Factories Board, 10-A, S. K. Bose Road, Kolkata 700 001 (Fax No. 033-22482927).
  - (b) Goods and Services may be procured from Defence Public Sector Undertakings by following the tendering procedure. Any item developed/ manufactured by a Defence PSU specifically for the Defence Services, with transfer of technology or through design and development, should be procured from the concerned Defence PSU only. Similarly, Defence PSUs shall be approached for providing any service, such as repairs and overhauling, if facility for providing such services has been set up by a Defence PSU exclusively for the Defence Services.
  - (c) Cases falling under (a) & (b) above, including procurement against provision review for scaled items, will not be treated as STE/PAC procurements.
  - (d) For induction of new equipment or procurement of new goods and services on the basis of global/open/limited tendering, RFPs should also be issued to the OFB/concerned Defence PSUs. In such cases, tender fee, EMD and PBG need not be taken from the OFB/Defence PSU.

## 2.5 Product Reservation, Purchase/Price Preference and other facilities-

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. Before considering any Purchase Preference/product reservation mentioned below, the Procuring Entity should check the latest directives in this regard for necessary action. Product Reservation/Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT) and RFP<sup>[GFR 153(3) & Goods Manual 1.10 Note]</sup>.

- 2.5.1 **Product Reservation for Khadi Goods / Handloom Textiles** The Central Government has reserved all items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). Government has also reserved all items of handloom textiles including Barrack Blankets for exclusive purchase from KVIC and/or notified handloom units of the

Association of Corporations and Apex Societies of Handlooms (ACASH). For latest update, website : [http://handlooms.nic.in/ User\\_Panel/UserView.aspx?TypeID=1199](http://handlooms.nic.in/ User_Panel/UserView.aspx?TypeID=1199) may be referred to. The handloom textile items are to be purchased from KVIC to the extent they can supply and the balance from the handloom units of ACASH; to the extent these units can make supplies. Left over quantity, if any, may be purchased from other sources. [GFR 153(1) & Goods Manual 1.10.1]

**2.5.2 Procurement Preference Policy (PPP) for products of Pharma Central Public Sector Enterprises (CPSEs) and their subsidiaries:** The policy of the Government of India to grant procurement preference exclusively to Pharma CPSEs and their subsidiaries, as laid down in Ministry of Chemicals and Fertilizers, Department of Chemicals and Fertilizers Office memorandum No. 50(9)/2010-PI-IV dated 10/12/2013, as amended from time to time, would be followed while purchasing medical stores. [Goods Manual 1.10.2]

**2.5.3 Product Reservation and other facilities for Micro and Small Enterprises (MSEs)** To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall continue to procure items reserved for procurement exclusively from MSE, presently 358 (three hundred and fifty- eight) items including eight items of Handicrafts, from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. The latest list may be seen from the website of the MSME Ministry <http://dcmsme.gov.in/pppm.htm>. Government of India has been extending various facilities as given below to these MSMEs.

- (i) Issue of Tender Sets free of Cost;
- (ii) Exempted from payment of Earnest Money;
- (iii) Price Preference up to 15% (L1 + 15%) where L1 price is from someone other than MSEs. Such MSEs shall be allowed to supply upto 25% of total tendered value.

**Exemptions from the policy:** Given their unique nature, defence armament imports shall not be included in computing 20 (twenty) percent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such policy of reservation. [GFR 153(2) & MoF Goods Manual 1.10.3 & MSME Gazette Notification S.O. 5670(E) dated 09 Nov 2018]

**2.5.4 Procurement Preference for domestically manufactured electronic Products -** Ministry of Electronics and Information Technology (MeitY) has notified a policy vide Notification No. 33(3)/2013-IPHW dated 23.12.2013 for Preferential Market Access (PMA) in Government procurement for Domestically Manufactured Electronic Products (DMEP), having a specified minimum domestic Value Addition (VA) for notified items of Electronics and Networking. Subsequently eligible products have been notified vide 33(3)/2013-IPHW dated 22.05.2014 and 01.10.2014 and guidelines have been issued vide No: 33(7)/2015-IPHW 16.11.2015 for implementation of the policy. The Department of Telecommunications (DoT) has also notified 23 (twenty-three) Telecom Products. Latest details of policy and notifications may be referred to on MeitY website <http://deity.gov.in/esdm/pma>. [MoF Goods Manual 1.10.5]

**2.5.5 Public Procurement (Preference to Make in India):** Purchase preference shall be given to local suppliers (as defined in policy) in all procurements undertaken by procuring entities as per Ministry of Commerce & Industry, Department of Industrial Policy & Promotion vide order No. P-45021/2/2017-PP (BE-II) dated 28.05.2018 as amended time to time.

**2.6 Time Limit for Procurement & Accountability:** The effect of delay in processing and clearance of various procurement activities needs no emphasis. The decentralization of decision-making mechanism and delegation of financial powers are aimed at facilitating faster decision making and obtaining the best value for money. However, delegation of powers also implies 'authority with accountability'. Every individual in the chain of the procurement process is accountable for taking action in a specified time period so that the requirements of the Defence Departments are met on time.

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**CHAPTER 3**  
**SOURCING AND QUALITY**

**3.1 General**

**3.1.1 Identification of suitable suppliers:** Proper source knowledge and identification of suitable suppliers capable of meeting the product quality required by the defence departments, particularly by the Defence Services, are vital for ensuring procurement of quality goods and services. The objective behind identification of proper sources of supply, registration of firms and their periodic evaluation is to have a broad based panel of technically capable, financially sound and reliable sources of supply to whom enquiries can be addressed for Government purchases. An exhaustive directory of reliable firms/ suppliers providing different types of stores/ services facilitates prompt initiation of purchase action by obviating the need for a fresh identification of sources for each demand raised. <sup>[MoD Draft 3.1.1]</sup> Providing equal opportunity and ensuring fair play are also important requirements in any procurement process so as to achieve transparency and competition. Hence, the selection and registration of firms, their performance appraisal and classification must be clearly spelt out and properly disseminated.

**3.2 Registration of Suppliers and Service Providers:** The Joint Services Guide on Assessment and registration of Suppliers/manufacturers for Defence (JSG: 015: 2018) is applicable mainly to registration of manufacturing firms as suppliers. The guidelines and procedures laid down therein may, however, also be applied, mutatis mutandis, by the Registering Agencies to other suppliers and service providers till such time as a separate procedure is laid down. The DGQA/DGAQA/Other QA agencies may assist central procurement agencies at Service HQs in registration of vendors, as per their request.

**3.3 Registration of Firms/Suppliers**

**3.3.1 Basic Guidelines:**

- (i) For goods and services not available on GeM, Head of Ministry/Department may also register suppliers of goods and services which are specifically required by that Department of Office, periodically. Registration of the supplier should be done following a fair, transparent and reasonable procedure and after giving due publicity. Such registered suppliers should be boarded on GeM as and when the item or service get listed on GeM.
- (ii) Credentials, manufacturing capability, quality control systems, past performance, after-sales service, financial background etc. of the firms/supplier(s) should be carefully verified before registration.
- (iii) The firms/supplier(s) will be registered for a fixed period depending on the nature of the goods. At the end of this period, the registered supplier(s) willing to continue with registration are to apply afresh for renewal of registration. New supplier(s) may also be considered for registration at any time, provided they fulfil all the required conditions.
- (iv) Performance and conduct of every registered supplier is to be watched by the concerned Department/Organisation. The registered supplier(s) are liable to be removed from the list of approved suppliers if they fail to abide by the terms and conditions of the registration or fail to supply the goods on time or supply substandard goods or make any false declaration to any Government agency or for any ground which, in the opinion of the Government, is not in public interest.
- (v) The list of registered suppliers for the subject matter of procurement be exhibited on the websites of the Procuring Entity/ e-Procurement portals. <sup>[GFR 150]</sup>

**3.3.2 Eligibility for Registration of Firms/Suppliers:** In addition to the guidelines given in JSG 015:2018 following eligibility criteria may also be considered: -

- (a) Where registration is granted based on partly outsourced arrangements/agreements, it shall be the responsibility of the registered unit, to keep such arrangements/agreements renewed/alive at all times, to keep their registration valid for the period for which it has been granted. Any failure in this regard may make the registration null and void ineffective retrospectively from any such dates which the registering authority considers appropriate;
- (b) Suppliers should possess valid Digital Signature Certificate (DSCs) Class III with the company name at the time of registration/renewal, so as to enable them to participate in e-Procurements;

- (c) Firm, against whom punitive action has been taken, shall not be eligible for re-registration during the currency of punitive action. Registration requests may not be entertained from such firms, stakeholders of whom have any interest in deregistered/banned firms; [MoF Goods Manual 3.4.8 (vi) (b), (c), (d)]

### 3.3.3

**Procedure for Registration:** Registration of suppliers should be done ensuring fundamental principles of public procurement (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of Competent Financial Authority after carefully assessing and verifying credentials, capability, quality control systems, past performance, after-sales service facilities, financial background, and so on, of the supplier/ contractor/service provider(s); [MoF Goods Manual 3.4.8]

- (i) Registration of the suppliers should be done after giving due publicity. Details of the procedure for registration of new firms may be uploaded on the website and also published in the form of a booklet for information of the suppliers. Timeframes and criteria for registration of new suppliers may be clearly indicated; [MoF Goods Manual 3.4.8(i)]
- (ii) Possible sources for any category/group of requirements can be identified based on internal and external references. Data of new suppliers can be obtained from the response received from suppliers, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of NSIC, Development Commissioner of the Small Industries Service Institute, BIS, trade journals, and so on. The e-Procurement portal does pre-registration of suppliers online. Such data can be a source of information on prospective suppliers; [MoF Goods Manual 3.4.8(ii)]
- (iii) New supplier(s) may be considered for registration, provided they fulfil all the required conditions. For any larger scale or critical registration or development of new suppliers, Procuring Entity should call for EoI by publicising its need for development of sources. [MoF Goods Manual 3.4.8(iii)]
- (iv) While registering the firms, an undertaking may be obtained from them that they will abide by the Code of Integrity (Para 2.2.6 of DPM) enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of registered suppliers, besides any other penalty or more severe action as deemed fit; [MoF Goods Manual 3.4.8(iv)]
- (v) In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re-verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the Department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly; [MoF Goods Manual 3.4.8(vi)(f)]
- (vi) Registration should be for specific trade groups of goods/works/services as well as for the monetary categories for which firm/supplier would be eligible to quote. For this purpose, all goods/works/services should be divided into trade groups and the information published on the relevant portals/websites. Purchase Organisation may also decide the monetary categories for the purpose of registration. [MoF Goods Manual 3.4.8(vi)(g)]
- (vii) All registered suppliers should be allocated a unique registration number. Once the firms are registered, a circular shall be issued by the registration authority indicating the names and addresses of the registered suppliers with details of the requirements and monetary value they will supply as well as the validity period, and so on, for which they are registered. The list of registered suppliers for the subject matter of procurement be exhibited on the Central Public Procurement Portal and websites of the Procuring Entity/e-Procurement/portals; [MoF Goods Manual 3.4.8(vi)(i)]
- (viii) Within the monetary limits so prescribed, as also for the category of registration, the registered firm may be exempted from depositing the Earnest Money Deposit(EMD). In other categories and higher monetary limits, the supplier would be treated as any unregistered supplier and not be entitled to the privileges of a registered supplier. The monetary limit or category, so laid down, does not, however, debar a firm from getting orders in excess of the monetary limit or

for other categories, provided the Procuring Entity is satisfied about the capacity and capability of the firm but a requisite security deposit should be obtained, as is being done in the case of unregistered firms; [MoF Goods Manual 3.4.8(vi)(j)]

- 3.3.4 Assessment of Capabilities:** The technical and financial capabilities of the firms, including their past performance, must be carefully evaluated and verified by a Board of Officers constituted by AHSP/ Registering. Agencies for the purpose of considering registration/renewal of registration. The Registering Agency may also co-opt a representative of the User. IFA may be associated with assessment of the financial capabilities of the firm, if considered necessary by the CFA.
- 3.3.5 Registration at Service HQ/ISOs-** Registering Agencies shall carry out Capacity Assessment/ Registration as per the detailed procedure for registration of firms given in the Joint Services Guide (JSG) on Assessment and registration of Suppliers/Manufacturers for Defence (JSG: 015:2018) published by the Directorate of Standardization, Department of Defence Production, Ministry of Defence mutatis mutandis. JSG is an enabling document which serves as a guide for procurement agencies to formulate guidelines for registration of vendors. The publication is available on DGQA website www.dgqadefence.gov.in. It can also be obtained from the Directorate of Standardization, Ministry of Defence, New Delhi 110 011.
- 3.3.6 Registration by Agencies at the Command HQ/Corps HQ/Area HQ and Other Levels:** Apart from the central procurement agencies at the Services Headquarters, firms should also be registered by the Command/Corps/Area Headquarters, Depots, Workshops and Naval Dockyards, etc., as per the provisions contained in this Chapter. Detailed procedure for registration of firms given in the Joint Services Guide (JSG) on Assessment and registration of Suppliers/manufacturers for Defence (JSG: 015:2018) which may be followed, mutatis mutandis, for the purpose of registration of vendors at Command HQs and other central procurement agencies.
- 3.3.7 Registration at the Unit Level:** It would not be necessary to register the firms at the unit level for the purpose of carrying out local purchase. However, the reputation, capacity and credibility must be ascertained before obtaining quotations from or placing supply orders on a particular firm.
- 3.3.8 Inter-Services/Inter-Departmental Acceptability of Registration:** A firm/supplier registered with any department of the Ministry of Defence, the Services, DRDO or OFB or the Inter-services organizations, establishments in the field formations or any higher formation may be considered as a registered firm for procurement by other departments of the Ministry of Defence or the other Services/ establishments, for the same range/ category of products/ goods/ services/ specifications for which the firm is registered with any of the aforesaid organizations. **Provided that a firm / supplier registered with a central procurement organisation can be taken as a registered firm by other central procurement organisations and also for local purchase by units/ establishments but a firm registered with a field formation/unit for local purchase would not be accepted as registered for central procurement by higher headquarter. Vendors who are registered/ empanelled through a pre-qualification process by Other Sector Specialist Ministries/ Departments of the Govt of India e.g. NIC/ NICS/ DEITY for ICT Procurements/ Projects or Ministry of Health for Medical Equipment/ Stores may be used by the Defence Central Procurement authorities for procurement of same range of goods/ services as registered/ empanelled vendors. Directorate of Standardization will, in due course, set up a common data-sharing platform to enable and ensure inter-service/ intra-service/ Inter-unit/ inter-departmental acceptability of registration of firms in the Ministry of Defence and establishments there under.** [MoD Draft 3.2]

### 3.4 Assessment of Performance of the Registered Firms

- 3.4.1 Criteria for Assessment of Performance:** Performance of the registered firms must be reviewed by the procurement agencies periodically and reported to the Registering Agency. While the detailed guidelines in this regard are contained in DGQA Publication JSG:015:2018, the general criteria for assessing the performance of the registered firms are as follows:
- (a) **Quality:** Quality has to be assessed from the inspector's report as well as the feedback from the actual users.
  - (b) **Delivery:** Delivery compliance has to be assessed from the delivery data against purchase orders placed on the firm. The purchaser could generate the data from the computer records to determine the percentage of orders in which delivery was completed within the original delivery date as per the contract/supply order.

- (c) **Price:** Price competitiveness of a firm has to be assessed against its ability to secure orders on competitive basis. Orders secured as percentage of quotes should indicate the price competitiveness of the supplier. This data can be generated from the computer records.
- (d) **Response:** The response analysis of the firms could be carried out in terms of number of quotes submitted against the number of RFPs sent to them. Computer generated data for quotes received as a percentage of RFPs sent could be one of the valid criteria for response analysis.
- (e) **Product Support:** Product support record of a firm may be determined on the basis of response to enquiries for spare parts and maintenance services for the equipment originally supplied by that firm.
- (f) A rating system may be adopted to assess the performance of the registered firms based on the above or any other criteria, as deemed necessary by the registration authority boards. Service HQrs may issue detailed SOP for this purpose. [MoD Draft 3.3.1.1]

3.5 **Renewal and Additional Registration:** All applications for renewal or additional registration as the case may be shall be dealt with as in the case of initial registration. The assessment fee is also to be taken for additional items involving new technology and design at any stage after initial registration/ renewal and when there is a change of location/ premises of factory/ works of the firm involving a fresh visit. The procedures and the authority for these shall be the same as that of the initial registration. [MoD Draft 3.3.6]

3.6 **Inviting Capable Unregistered Firms for Registration:** When on capacity verification of an unregistered manufacturer (identified in response to OTE/EOI tendering), it is observed that the firm possesses necessary capability and is suitable for registration, they shall be invited to apply for registration with the concerned Registering Authority. The application in the prescribed form with necessary documentation and processing fee shall be processed as per prescribed procedure and registration granted as in the case of initial registration. [MoD Draft 3.3.8]

3.7 **Registration of SSI units with NSIC:** Under the Single Point Registration Scheme of NSIC, under Ministry of MSME, the Small Scale Units can also apply for registration to the National Small Industries Corporation Limited. The units registered under Single Point Registration Scheme of NSIC are eligible to get the benefits under Public Procurement Policy for Micro & Small Enterprises (MSEs) Order 2012 as notified by the Government of India, Ministry of Micro Small & Medium Enterprises, New Delhi vide Gazette Notification dated 23.03.2012 [MoD Draft 3.3.10]. MSEs having Udyog Adhar Memorandum should also be provided all the benefits available for MSEs under Public Procurement Policy for Micro & Small enterprises (MSEs) Order 2012 as notified [MoF Goods Manual 1.10.4(iii)].

3.8 **Debarment of Suppliers** Registration of suppliers and their eligibility to participate in Procurement Entity's procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Following grades of debarment from registration and participation in Procuring Entity's procurement can be considered against delinquent bidders/suppliers (including unregistered bidders): [MoF Goods Manual 3.5.1]

**3.8.1 Temporary debarment or suspension:** Whenever a supplier is found lacking in performance, in case of less frequent and less serious misdemeanours, the suppliers may be put on a temporary debarment for a period upto 12 (twelve) months. When a supplier is on the temporary debarment, he is neither invited to bid nor are his bids considered for evaluation during the period of the temporary debarment. The supplier is, however, not removed from the list of registered suppliers. The supplier automatically stands removed from the temporary debarment on expiry of the debarment period. Performance issues which may justify temporary debarment of the vendor are:

- (i) Vendors who have not responded to requests for quotation/tenders consecutively three times without furnishing valid reasons or as decided by the functional manager with the approval of competent authority;
- (ii) Repeated non-performance or performance below specified standards (including after sales services and maintenance services);
- (iii) Suppliers undergoing process for Removal from Registration or banning/debarment may also be put on a temporary debarment during such proceedings, if so recommended by the competent authority. [MoF Goods Manual 3.5.2]

**3.8.2 Removal from the List:** Whenever a firm is found lacking in performance in terms of response, delivery compliance, capacity, quality standards, ethics or any other valid reason, the firm may be



removed from the list for a period of 12 to 24 months by the registering authority after giving notice of proposed removal to the firm. Besides, there may be registered firms which may have ceased to exist or may have been acquired by or merged with another firm, may have switched over to other sectors of business operation or indulged in unethical business practices and influence peddling. Such firms should be removed from the list of approved vendors after giving them notice of the proposed removal. Suppliers removed from the list of registered vendors or their related entities may be allowed to apply afresh for registration after the expiry of the period of removal. A registered firm is liable to be removed from the list of approved contractors, if –

- (i) The supplier fails to abide by the terms and conditions or to maintain the required technical/operational staff/equipment or there is change in its production/service line affecting its performance adversely, or fails to cooperate or qualify in the review for registration;
- (ii) Bankruptcy or insolvency on the part of the supplier as declared by a court of law; or
- (iii) Other than in situations of force majeure, after opening of financial bids, the supplier withdraws from the procurement process or after being declared as successful bidder: (a) withdraws from the process; (b) fails to enter into a procurement contract; or (c) fails to provide performance security or any other document or security required in terms of the bidding documents;
- (iv) If the Central Bureau of Investigation/CVC/C&AG or Vigilance Department of Procuring Entity or any other investigating agency recommends such a course in respect of a case under investigation;
- (v) any other ground, based on which the registering authority considers, that continuation of registration is not in public interest. [MoF Goods Manual 3.5.3]

**3.8.3 Effect of Removal from the List:** Whenever a firm is removed from the list of approved vendors, its registration with the Registering Authority concerned stands cancelled and the firm will not be able to participate in the procurement of the concerned procurement entity for the period of removal imposed. Such removal must be communicated to all other registering and procuring agencies so that no further business relations are maintained with such firms.

**3.8.4 Ban on dealings:** When the misconduct of a firm or its continued poor performance justifies imposition of ban on business relations with the firm, this action should be taken by the appropriate authority after due consideration of all factors and circumstances of the case and after giving due notice. The latest guidelines of MoD in this regard contained in MoD ID No. 31013/1/2016-D(Vig) Vol.II dated 21.11.2016 & dated 06.03.2018 as amended from time to time may be followed.

**3.8.5 Ban on Dealing by Other Ministries/Departments:** The banning of business dealing will be of two types, namely (i) banning confined to one Ministry; and (ii) banning to be implemented by all Ministries. In the second category of cases before any banning orders relating to other Ministries are passed, the matter is required to be placed before the Committee of Economic Secretaries and their approval obtained. As such, any reference received from any other Ministry/Department needs to be forwarded to MoD/D (Vigilance) section for dissemination case approval of the Committee of Economic Secretaries has been taken. The departments/organizations under Ministry of Defence will not take cognizance of any other order/letter received from another Ministry imposing ban on dealing which is confined to one Ministry.

#### **3.8.6 Debarment Procedures**

- (i) Punitive actions of various grades of debarment against the suppliers should be examined by a Committee and approved by competent authority.
- (ii) The supplier should be given adequate opportunity (including an oral hearing by the competent authority) to make representations. If the response to the show cause notice is not satisfactory or not acceptable, such firms should be put on suitable grade of debarment, depending on the severity of the misdemeanour.
- (iii) Appeals would lie at a level higher than the competent authority. In case of Debarment from concerned Procuring Entity, the concerned Department will maintain such list which will also be displayed on their website. [MoF Goods Manual 3.5.5]

**3.9 Specification:** Items bought by the defence department, particularly the defence services, must be manufactured as per or conforming to the specifications. The specifications are the detailed qualitative

requirements of the item being procured and should indicate the material composition, physical, dimensional and performance parameters, tolerances, if any, manufacturing process where applicable, test schedule, preservation and packing etc. AHSP/ Specification promulgating authority should forward copies of specification/amendments to all the concerned procurement agencies periodically. Various types of specifications relevant to the defence items are as follows:

- (a) **PAC Specifications:** These are available only with the proprietary firms. Hence, PAC specifications are normally not available with the purchaser and firm's certificate of quality is accepted. However, essential characteristics required for inspection should be available with the procuring and inspecting agencies.
- (b) **Branded Product:** The specification for branded commercial product is not available with the purchaser or the inspecting agency and these are to be accepted on the firm's guarantee.
- (c) **Industrial Specification:** There are standard industrial specifications like the IS, BS, DIN and GOST available for sale in the market. In the case of medical stores standard specifications are issued by WHO, FDA, CE etc. Every procuring and inspecting agency should acquire such specifications for reference to ensure quality standards of the product being procured.
- (d) **Defence Specifications:** There are defence specifications for specialist items for use by the defence departments, particularly the Defence Services. These are Joint Services Specification, Milspecs, etc. Copies of such specifications should be available with the procuring agency, QA authority Directorate of Standardization and the AHSP.
- (e) **Indigenized Item:** The manufacturing agency, QA agency, DRDO and Service Headquarters, involved in the indigenization efforts often successfully indigenize some items as import substitute. In such cases, the specification including the drawing and other details are formulated by these agencies in consultation with the manufacturing firms/QA agency/Design agency/Service HQrs, as the case may be, to guide future production. Such specifications should be available with the purchase agency as well as the inspecting authority so as to ensure conformity with the required quality standards of the items being supplied.
- (f) **Ad-hoc Specifications:** There are items for which neither industrial nor defence specifications are available. In such cases, the indenter must indicate the general parameters, normally the dimensional and performance parameters to enable procurement and inspection. Such ad-hoc specifications must be broad enough to permit wider participation by the suppliers and should not be restrictive so that adequate competition is not obviated.
- (g) **As per Sample:** There are occasions when items, normally PAC products, cannot be procured from the original manufacturer and have to be procured from another manufacturer as per sample in the absence of detailed specifications or drawing. For such items the supplier prepares detailed specification as well as the drawing. The purchaser and the inspecting authority should acquire such specifications and drawings and retain with them to guide future production and inspection.
- (h) **Common Use Items:** There are a large number of items in use by the defence departments and defence services, which are common-use items, freely available in the open market. As in the case of ad-hoc specifications, specifications of common use items should also be broad enough to permit wider participation by the suppliers and should not be restrictive so that it does not pre-empt adequate competition.

### 3.10 Inspection Note

- 3.10.1 Waiver of inspection note:** There would be no requirement of Inspection Note in respect of items procured against specifications mentioned at 3.9 (f), (g) & (h) above or for items available commercially off-the-shelf(COTS) or in respect of items for which testing facilities do not exist with AHSP/DGQA. Such items may be accepted based on self-certification by the firm and inspection by a Board of Officers at the user's end. Relevant certificate from the firm should be enclosed with the bill by the procurement agency.

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**CHAPTER 4**  
**APPROVAL PROCESS**

**4.1 Assessment of Need** [MoD Draft 4.2]

**4.1.1 Procurement of Goods:** The need for procurement of goods may arise due to the following reasons:  
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- (a) to make up the deficiency of equipment, spares/consumables which are authorized as per scales laid down in various Government letters, revealed as a result of provisioning reviews;
- (b) to build up authorized stocks; or
- (c) on account of non-scaled and not-in-vocabulary (NIV) items, which may include any kind of equipment, spares and other medical/ miscellaneous.

**4.1.2 Procurement of Services:** The need for procurement of services may arise for any of the following reasons: -

- (a) Maintenance of any equipment/asset already held on charge;
- (b) Performance of any task being performed in-house but considered appropriate for outsourcing;
- (c) Requirement for engaging consultants;
- (d) Any new function which can be performed economically by an outside agency.

**4.1.3 Provisioning Review:** Provisioning Review (PR) is the primary method to establish necessity and determine quantity in respect of goods at AoN stage. Procurement of equipment, stores, spares, supplies is an ongoing process to meet the needs of the Services for their normal day to day sustenance and the defence specific requirements relating to equipment, weapon systems, platforms etc. that need to be maintained and kept in a state of op-readiness. In order to assess the need, a periodical review of the inventory has to be undertaken by the Services for each category/ type of item authorized to various units/ establishments, based on prescribed scales and for other items where scaling has not been done (non-scaled items) and new items (NIV) proposed to be procured to meet specific requirements arising occasionally. Special reviews of inventory are also undertaken periodically pertaining to various classes of ships, aircrafts, weapon systems, platforms, as and when necessitated, to meet additional requirements for spares, unplanned refits/ overhaul and operational commitments. PRs are dictated by factors like system of working out gross requirements, procurement systems available for individual fleets, maintenance philosophy of sub-systems, source of supply, lead time required and other such issues. The exercise of carrying out PRs should be done with reference to the relevant instructions issued by concerned services like DGOS instructions, AOM canons, Naval Material Planning manuals, etc. and on ERP platform developed by Defence Services for that purpose. [PCDA AF 3.2.7]

**4.1.4 Indents** [Para 9.2 of DPM 2009]

- (i) **Information to be given in the Indents:** The process of procurement of stores commences only on receipt of indents, duly approved and authenticated by the competent authority. Every indent should contain the following information:-
  - (a) Complete details like part numbers and specifications of the equipment indented.
  - (b) A realistic estimate of the cost with basis of assessment so that back references to the indenters is avoided.
  - (c) Where a demand is being indented for the first time, an indication to this effect.
  - (d) When an item has been purchased before, the indent should indicate the price at which it was purchased and also give the contract /SO number and date and the source of supply.
  - (e) Names of likely sources of supply, if available.
  - (f) Reference to the page No. of publication where the item is described.
  - (g) Code Head to which the expenditure is debitible.
  - (h) Consignee depot.

- (i) Desired Delivery Schedule.
  - (j) Normally, items of similar or allied nature should be indented in one indent.
  - (k) Mode of tendering, Single/Two Bid.
  - (l) Exemption from e-publishing/ e-procurement taken from Competent Authority if applicable.
- (ii) **Documents etc. to be furnished along with the Indents:** Every Indent should be accompanied by the following in the form of documents/records/inputs or endorsement in the case of automated inventory management system:
- (a) Schedule of Requirement of the indent
  - (b) Complete Technical specifications of the items
  - (c) A certificate of provision of funds to meet proposed expenditure
  - (d) A copy of the financial concurrence to the indent
  - (e) A copy of CFA's approval of the indent
  - (f) A certificate of necessary import clearance, wherever applicable
  - (g) Proprietary Article Certificate (PAC) given in the prescribed format, where applicable
  - (h) Priority of the indent, i.e. whether normal or urgent.

**4.2 Stages of Procurement Proposals:** The broad stages involved in processing of a procurement proposal are indicated below: -

**4.2.1 Broad Stages in Processing a Procurement Proposal**

- (a) Acceptance of Necessity
- (b) Framing of Draft RFP & finalising vendor base
- (c) Vetting, approval and issue of RFP
- (d) Pre-bid conference (where required)
- (e) Submission of Bids
- (f) Opening of Bid/Technical bid and technical evaluation by TEC
- (g) Trials (where required, incorporated in RFP and justified in terms of CVC's Circular 2EE-1-CTE-3 dated 15 October 2003)
- (h) Approval of TEC by CFA.
- (i) Determination of reasonable price/ Benchmarking.
- (j) Opening of Commercial Bid / Preparation & vetting of CST.
- (k) Convening PC/CNC meeting and submission of recommendations.
- (l) CFAs approval for the CNC/purchase decision with or without IFA consultation as per delegation of powers.
- (m) Issue of CFA Sanction
- (n) Vetting of Draft Supply Order /Contract
- (o) Dispatch of Supply Order/ Signing of contract<sup>[MoD Draft 4.6.2]</sup>

**4.3 Processing of Procurement Proposals**

**4.3.1 Processing of Proposals for CFA's Approval:** All Procurement proposals should be initiated in the form of a Statement of Case (SOC), which should clearly bring out all aspects of the proposal, including the justification/reason for procurement, quantity, cost, likely sources of supply, mode of tendering, etc. It needs to be kept in view that Expeditious processing of the proposal depends on the comprehensibility and quality of the SoC. Draft NIT/RFP should also be submitted along with the SOC for approval of the CFA in consultation with integrated finance, where required as per the delegation of financial powers. A simplified SOC may be prepared in case of small value local

procurements of stores/ services valuing upto Rupees 10 lakhs, particularly for COTS items, items with standard/ ad-hoc specifications etc. However, it should contain all essential details which are relevant for taking the purchase decision.

#### **4.4 Acceptance of Necessity (AON) : Steps**

##### **4.4.1 Quantity Vetting:**

- (a) **Scaled Items:** Care should be taken to avoid purchasing quantities in excess of the requirement to avoid inventory carrying costs. The IFA is supposed to vet the quantity indented/ projected for procurement of scaled items so as to ensure timely provisioning. In order to ensure that there is no infructuous provisioning, the IFA must have access to all inputs required to assess the basis of the projection of indented quantity. The calculation sheet showing the authorized scales, dues-in, dues-out, reserves, etc. must be made available to the IFA. In case an IT based management system is operational in the department, the IFA is to undertake such vetting of quantity on the system itself.
- (b) **Quantity Vetting in Respect of Non-scaled and NIV Items:** While no fixed guidelines can be laid down for vetting of quantities of non-scaled and NIV items, it has to be ensured that purchase proposals of such items are based on the bare minimum inescapable requirement but with due regard to economy of scales. Where financial powers are to be exercised with the concurrence of integrated finance, IFA should vet the quantity of such items if the procurement is proposed to be made under the delegated financial powers exercisable with the concurrence of integrated finance. If requirement of such items is found to be arising repeatedly, central procurement agencies should be intimated about the requirement.

##### **4.4.2 Costing of Procurement Proposals:**

- (a) **Cost Estimation:** Correct estimation of rates/cost is vital for determining the CFA. It is important that the rates/cost are worked out in a realistic, objective and professional manner on the basis of the prevailing market rates, last purchase price, procurement done by other department/organization, economic indices for raw material/ labour, Budgetary Quote (BQ) to be obtained from one or more prospective firm/supplier, other input costs and assessment based on complexity of the product etc. **Computation of break-up of costs of various components/ parts/ processes involved by technical/ costing experts may also be considered, if available, in a particular case.** It is necessary to work out the complete and comprehensive cost of a procurement proposal to determine availability of funds to meet the expected cash outflow and the level at which it would need to be approved. **The basis of cost estimation and the element-wise break up should be mentioned in the SoC. It will not be enough to indicate summarily that the cost is an indicative cost. The manner in which that indicative cost has been arrived at should be explained in the SoC. For example, if it is based on budgetary quote, the source of budgetary quote and the reason for obtaining the quote from that particular prospective bidder (in multi-bidder situation) should be indicated. Similarly, if the cost estimation is based on LPP, the year of procurement, the escalation factor applied, the basis of applying the escalation factor etc. should be clearly indicated in the SoC. Detailed provisions on cost estimation are provided in Chapter 5.** [PCDA AF Draft 3.5.3]
- (b) **Mode of Tendering-** Mode of tendering should be decided at AoN stage, in order to achieve maximum competition amongst eligible suppliers.
- (c) **Determination of CFA:** The level of approval by the CFA would depend on the entire cost of a proposal, inclusive of all taxes, levies and other charges with reference to ceiling of powers given in relevant serial number of Schedules of Financial Powers.

##### **4.4.3 According Acceptance of Necessity by CFA:**

- (a) **Acceptance of Necessity in Respect of Scaled Items:** Acceptance of Necessity in case of scaled items would actually only entail vetting of quantities, assessment of physical requirement of various resources with respect to targets fixed and budget availability.
- (b) **Acceptance of Necessity in Respect of Scaled Items Whose Inventory is Computerized:** In case of scaled items where inventories are maintained through automated systems and IFAs have been provided terminal on the same, IFA will vet the quantity on the automated systems based on data available on such automated systems, which would be deemed to be financial concurrence for acceptance of necessity also.

- (c) **Acceptance of Necessity in Respect of Non-Scaled and NIV Items:** Acceptance of necessity in respect of non-scaled and NIV items would depend entirely on the justification provided for their procurement. It must be ensured that procurement of such items does not introduce a new practice and does not have the effect of changing the existing scales or policy. However, the quantity of stores/equipment required by the DGQA for proof activity will be included for procurement.
- (d) **Acceptance of Necessity in Respect of Items Included in Procurement Plans:** **The system of Annual Revenue Procurement Plan (ARPP) will be followed by each Service HQr/Command HQr, who should prepare ARPP for each financial year. It is desirable that all users and procuring entities prepare ARPP for their respective organisations. This plan should incorporate physical and financial milestone to be achieved during the year, clearly indicating the number of AoNs. ARPP should also have linkage with budget allocation** <sup>[PCDA AF Draft 3.2.2]</sup> and committed liabilities for the previous years. Provisioning Review & Special Review in respect of scaled items may also be considered as ARPP for the purpose of this paragraph. In such cases, necessity would be deemed to have been accepted in respect of each item included in the plan. The AON would be for the item and not for the quantities required and therefore, Integrated Finance should be consulted for vetting of quantity, mode of tendering, identification of vendors in case of LTE/STE/PAC and vetting of draft RFP, where financial powers are to be exercised with the concurrence of Integrated Finance.

Provided that if in any such case Integrated Finance wishes to make any observation regarding necessity, it may be done with the specific approval of the IFA concerned. Further processing of the proposal would, however, not be deferred pending resolution of the issue raised by Integrated Finance, unless the procuring agency considers it desirable to resolve the issue before proceeding further. Where it is decided not to defer further processing of the proposal, the observations made by Integrated Finance would be brought to the notice of the CFA while seeking approval for the proposal. Provided further that AON of the CFA would need to be taken in consultation with the IFA, where financial powers are to be exercised with the concurrence of integrated finance, before the proposal is processed any further in case of non-scaled items which do not also figure in any approved procurement plan.

- 4.4.4 **Combining Various Stages of Processing:** It is not necessary that a proposal should be processed sequentially for AON, Quantity Vetting, financial concurrence, etc. A proposal, when initiated, should be complete in all respects so that all the aspects relating to AON, quantity vetting, costing, vetting of NIT/RFP, etc., could be examined simultaneously by the IFA, where required as per the delegation of financial powers. Various stages of processing may generally be combined in case of local purchase.
- 4.4.5 **Processing of Proposals Subject to Availability of Funds:** A procurement proposal should normally be processed only if it figures in the Annual Procurement Plan (wherever such Plans are being prepared, irrespective of the nomenclature of the Plan) and subject to availability of funds. Availability of funds should be determined only after accounting for cash outgo during the relevant financial year on account of committed liabilities.
- 4.4.6 **Processing of Proposals Without Linking Them With Availability of Funds:** Subject to the general rule that purchase proposals should be processed with due regard to availability of funds, a procurement proposal may be processed without linking it with actual availability of funds, if it is certified by the budget holder that there is reasonable certainty of funds becoming available by the time the proposal reaches the final stage of contracting/placing of supply order. In such cases, however, availability of funds would be determined after taking into account cash outgo on account of the committed liabilities.
- 4.4.7 In the case of stores having a long lead time, a purchase proposal may be processed without linking it with actual availability of funds and the supply order/contract placed in the last quarter of the Financial Year (FY) (January to March) when the delivery will take place in the ensuing FY/s and there is a reasonable assurance of availability of funds in the budget of that/those year/s, taking into account the anticipated cash outgo against the contractual/committed liabilities for the FY/s. However, payments against the Supply Order will only be made after confirmation of availability of funds in FY in which it becomes due.
- 4.4.8 **Prior Concurrence of Integrated Finance:** Competent Financial Authority's approval is subject to prior concurrence of integrated finance, if required as per the delegation of financial powers.

- 4.4.9 **Ex-post Facto Financial Concurrence:** There is no provision under the delegated financial powers to obtain ex-post facto concurrence of integrated finance. Such cases where prior concurrence is not obtained, though required as per the delegation of financial powers, would be treated as cases of breach of rules and regulations and referred to the next higher CFA for regularization. Such regularization will be subject to concurrence of IFA to the next higher CFA.
- 4.4.10 **Ex-post Facto Approval of the CFA:** Where a proposal is approved, with or without the concurrence of integrated finance, by an authority not competent to sanction that proposal as per the delegation of financial powers, ex-post facto sanction may be accorded by the appropriate CFA with or without the concurrence of the IFA, as the case may be, as per delegation of financial powers.
- 4.4.11 **Disagreement with the IFA:** At any stage of procurement, the CFA can overrule the advice of the IFA by a written order giving reasons for overruling the IFA's advice on file. A copy of the order overruling IFA's advice will be provided to IFA for information. The cases of disagreement would be dealt with as per the procedure prescribed in relevant Delegation of Financial Powers.
- 4.5 Processing of Proposals after CFA's Approval (AoN):** After CFA's approval, the procuring agency is required to go through the tendering action as per the provisions of Chapter 5 of this Manual and obtain CFA's approval for the proposed procurement in consultation with integrated finance, where required as per the delegation of financial powers.
- 4.6 Responsibility of the CFA**
- 4.6.1 **Responsibility of CFA in Purchase Decision:** The CFA must consider all aspects of the case, including the quoted terms and conditions of the contract, delivery period, taxes and duties applicable, freight, insurance and other charges and the compliance to the specification before a purchase decision is taken. One of the important responsibilities of the CFA to ensure proper ranking of all offers so that the decision making process is totally transparent. Conditional offers and those with specifications not in conformity with the tendered specifications (Essential QRs) should not be considered. Before according sanction, concurrence of integrated finance should be taken wherever the powers are exercisable subject to such concurrence.
- 4.6.2 **Compliance with Procedures:** While taking the purchase decision, the CFA needs to satisfy himself that proper procedures have been followed at various stages of procurement, purchase policies of the Government have been complied with and capacity and financial status of the firm have been checked. Purchase decisions should be taken through a formal order in a written form.
- 4.6.3 **Accountability:** The decentralization of decision making mechanism and delegation of financial powers are aimed at facilitating faster decision making and obtaining best value for money. However, the delegation of powers also implies 'authority with accountability'. The CFA approving the expenditure must ensure financial propriety and probity, transparency and fair play as well as optimum utilization of resources. The designated CFA and all members of committee CFA are accountable for all decisions taken by them while approving any measure involving Government funds. This accountability is unconditional and absolute.
- 4.7 Time frame**
- 4.7.1 **Need for Expeditious Processing:** It is imperative that the procurement process is fully responsive to the need of the Defence Services and other departments and facilitates expeditious procurement so that requirements are met on time. It is, therefore, essential that all prescribed activities are undertaken expeditiously and advice rendered within a specified time frame
- 4.8 Documentation-** The procuring authority shall maintain documents relating to AoN stage as mentioned in above paras. The SoC/indent, PR Sheets, notings on file, concurrence of IFA, approval of CFA, etc will be kept in one file, for easy future reference and audit. [PCDA AF Draft 3.6]

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**CHAPTER 5**  
**TENDERING & EVALUATION**

**5.1 General**

**5.1.1** Tendering is the process through which procurement with Bidders is initiated. Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition on one hand and complexity of the procedure, on the other. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. [PCDA AF Draft 4.1]

**5.2 Government e-Market place (GeM) (Rule 149 of GFR 2017)**

**5.2.1** Procurement of Goods and Services through GeM is mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM administering agency. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under :-

- (i) Up to **Rs.25,000/-** through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period.
- (ii) Above **Rs.25,000/- and up to Rs.5,00,000/-** through the GeM Seller having lowest price amongst the available sellers **(excluding Automobiles where limit of Rs30,00,000/- will continue)**, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer **even for procurements less than Rs 5,00,000/-**.
- (iii) Above **Rs.5,00,000/-** through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM **(excluding Automobiles where current limit of 30 lakh will continue)**.
- (iv) The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant rules shall apply.
- (v) The organisations/formations shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/ suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 days of Budget approval.
- (vi) The Organisations/Formations may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, organisation’s own Last Purchase Price etc.
- (vii) A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.

**5.3 Types of Tendering**

**5.3.1 Procurement of goods by obtaining bids:** Except in cases covered by purchase of goods without obtaining quotations, purchase of goods through Purchase Committee, purchase of goods against Rate Contracts and purchase of goods through GeM, goods should be procured under the delegation of financial powers by adopting one of the following standard methods of obtaining bids:

- (i) Advertised Tender Enquiry (OTE & GTE);
- (ii) Limited tender Enquiry;
- (iii) Two-Stage Bidding (in exceptional cases outlined at Para 5.6)
- (iv) Single Tender Enquiry;
- (v) Electronic Reverse Auctions. [GFR 158]

**5.3.2 E-Publishing (Rule 159 of GFR 2017)**



- (i) It is mandatory for all Organisations/Formations, to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP), Defence eProcurement Portal (<https://defproc.gov.in>) and organisation's own website.
- (ii) Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the Secretary of the Department with the concurrence of the concerned Financial Advisor or any other authority delegated such powers by the Secretary. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure.
- (iii) The above instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party.
- (iv) In the case of procurements made through Rate Contracts concluded by Central Procurement Organizations (CPOs), only award details need to be published.
- (v) These instructions would not apply to procurements made in terms of provisions Purchase of goods without quotations or Purchase of goods by purchase committee.

### 5.3.3 E-Procurement (Rule 160 of GFR 2017)

- (i) It is mandatory for Organisations/Formations to receive all bids through e-procurement portals in respect of all procurements.
- (ii) Organisations/formations which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far, may use e-procurement solution developed by NIC /Defence e-Procurement Portal (<https://defproc.gov.in>).
- (iii) These instructions will not apply to procurements made by Organisations/Formations through Rate Contracts.
- (iv) In individual case where national security and strategic considerations demands confidentiality, Organisations may exempt such cases from e-procurement after seeking approval of concerned Secretary with concurrence of Financial Advisers or any other authority delegated such powers by the Secretary.
- (v) In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender, may exempt such case from e - procurement.

## 5.4 Advertised Tender Enquiry/Open Tender Enquiry (ATE/OTE)

**5.4.1 Advertised/Open Tender Enquiry:** The Advertised/Open Tendering system must be adopted in all such cases in which the estimated value of the tender is more than Rs twenty five lakhs, except purchase of goods without quotation (Rule 154 of GFR 2017), purchase of goods by purchase committee (Rule 155 of GFR 2017), purchase through Limited Tender Enquiry (Rule 162 of GFR 2017) and purchase through Single Tender Enquiry/PAC (Rule 166 of GFR 2017). The organization should also post complete bidding document in its website and on CPPP/Defence e-Procurement Portal to enable prospective bidders to make use of the document by downloading from the website. [GFR 161(i)& (ii)] Further, when requirements are not available from known sources or sources are presently limited and need to be broad based, in such situations, even for procurement below Rs twenty five lakh, ATE/OTE mode may be used, if warranted. [MoFGoods Manual 4.2.1(iv)]

**5.4.2 Global Tender Enquiry:** Where it is felt that the goods/services of the required quality, specifications, etc., may not be available in the country and it is necessary to also look for suitable competitive offers from abroad, this mode of tendering is resorted to. Copies of the tender enquiry may also be sent to the Indian embassies abroad as well as the foreign embassies in India. The selection of embassies would depend on the possibility of availability of the required goods/services in such countries. The tender enquiries may also be sent through the Defence Attachés wherever they are posted in the Embassies and High Commissions. **GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international**

trade standard. In such cases e-Procurement may not be mandatorily insisted upon. [MoF Goods Manual 4.3.2 (v) & (vi)]

**5.4.3 Publicity:** Open tender system involves wide publicity through advertising media. E-publishing of advertisement on Central Public Procurement Portal (CPPP)/Defence e-Procurement Portal (defproc) and GeM is mandatory. In case organization/formation, still insists that the advertisement should be published in newspapers, a request to DAVP should be sent in a signed letter stating that Competent Authority has approved publication of newspaper advertisement/s despite new GFR provisions [Rules 161(i) & (ii), 183(ii) and 201 (ii)]. In such cases too, only window advertisement should be published in newspapers. The advertisement for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. [DAVP Advisory F.N. 11/0280/1617-MR&C dated 17.05.2017]

**5.4.4 Preparation of the Notice Inviting Tender:** The Notice Inviting Tender (NIT) should be carefully drafted. It should contain salient features of the requirement in brief to give a clear idea to the prospective tenderers about the requirements. Superfluous or irrelevant details should not be incorporated in the tender notice, as it will needlessly increase the cost of advertisement. The tender notice should normally contain the following information:

- (a) Description and specification of the goods and quantity
- (b) Period and terms of delivery
- (c) Cost of the tender/bidding document
- (d) Place(s) and timing of sale of tender documents
- (e) Address of the website from where the tender document could be downloaded
- (f) Place and deadline for receipt of tenders
- (g) Place, time and date for opening of tenders
- (h) Amount and form of Bid security/Earnest Money Deposit.
- (i) Any other important information

**5.4.5 Time to be given for submission of bids:** Ordinarily the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the Department also contemplates obtaining bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidder. [GFR 161(v)]

**5.4.6 Pre-Qualification:** In OTE/GTE cases, where considered necessary, a pre-qualification process may be followed with a view to identifying, prior to inviting quotations, the bidders that are qualified to participate in the bidding process for the specified goods/ service. [MoD Draft 5.2.9.3]

**5.4.7 Unregistered firms claiming compliance:** In OTE cases, where an unregistered firm claiming compliance of technical specifications meets the laid down technical parameters detailed in the RFP, before opening the commercial bid of such firm, assessment of capability of the firm by procuring/registering agency would be mandatory. This capability verification will, however, not amount to automatic registration of the firm by the Registering Authority. However, in the case of specialized and critical medical equipment/stores, where DGQA and Central Procurement Agency are presently not registering the firms on the grounds that SPQR are not formulated by them but by the users, manufacturers of national repute or their authorized agents may be considered, based on financial status and market reputation/past performance of the firm, as at present.

## 5.5 Limited Tender Enquiry (LTE)

**5.5.1 Limited Tender Enquiry:** This method may be adopted when estimated value of the goods to be procured is up to Rupees Twenty-five lakhs. Normally, the number of supplier firms in Limited Tender Enquiry should be more than three. However, Limited Tender Enquiry may be resorted to also when there are only two or three known sources of supply. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. [GFR 162 (i)]

**5.5.2 Limited Tender Enquiry in Special Circumstances:** Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twenty five

lakhs, in the following circumstances, subject to approval by the CFA and in consultation with the IFA, where required as per delegation of financial powers:

- (a) The Indenter certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The nature of the urgency and reasons why the procurement could not be anticipated should also be placed on record.
- (b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.
- (c) The sources of supply are definitely known and possibility of fresh source(s) beyond these being tapped is remote.
- (d) The nature of item to be procured is such that pre-verification of the competence of the firms and their registration is essential.

**5.5.3 Publicity and dispatch of tender documents:** E-publishing of advertisement on Central Public Procurement Portal (CPPP)/Defence e-Procurement Portal (defproc) and GeM is mandatory. Copies of the bidding document should be sent directly by speed post/registered post/ courier/e-mail to firms which are borne on the list of registered suppliers for the goods in question. Copies of the bidding documents should also be sent by registered post to the firms to whom these are initially sent by e-mail. Except in cases which are exempted, web based publicity should be given for Limited Tender Enquiry.

**5.5.4 Time to be given for submission of bids:** Sufficient time, normally ranging from two to three weeks, should be allowed for submission of bids in Limited Tender Enquiries. A reduce time frame of less than two weeks may also be given for submission of bids in case of emergent repairs of equipment, plant and machinery, ships, air craft etc. to make them operational/functional.

**5.5.5 Unsolicited Bids:** The unsolicited bids should not be accepted. However, Organisation/Formation should evolve a system by which interested firms can register and bid in next round of tendering. <sup>[GFR 162 (ii)]</sup>

**5.6 Two-Stage Bidding (Obtain bids in two stages with receipt of financial bids after receipt and evaluation of technical bids)**

- (i) Organisation may procure the subject matter of procurement by the method of two-stage bidding, if
  - (a) it is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or
  - (b) the character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; or
  - (c) Organisation seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or
  - (d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- (ii) The procedure for two stage bidding shall include the following, namely: —
  - (a) in the first stage of the bidding process, the Organisation shall invite bids through advertised tender containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price;
  - (b) all first stage bids, which are otherwise eligible, shall be evaluated through an appropriate committee constituted by the Organisation;
  - (c) the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;

- (d) in revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or omit any specification of the subject matter of procurement or criterion for evaluation;
- (e) in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement;
- (f) any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification. <sup>[GFR 164]</sup>

## 5.7 Single Tender Enquiry (STE)

**5.7.1 Single Tender Enquiry (STE):** Single Tender Enquiry. Procurement from a single source may be resorted to in the following circumstances:

- (i) In a case of emergency/operational/technical requirements, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent financial authority obtained.
- (ii) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.
- (iii) For standardisation of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm. <sup>[GFR 166]</sup>

**5.7.2 Reasons for recommending procurement on STE:** Wherever applicable, the indenter should communicate to the Procuring Agency the reasons for recommending STE.

**5.7.3 STE to be sent only to OEMs and registered firms:** STE should generally be sent to the OEM or to a registered firm.

## 5.8 Procurement on the basis of the Proprietary Article Certificate (PAC)

**5.8.1 PAC Tendering:** PAC tendering may be resorted to for cases covered under Para 5.7.1 (ii) & (iii) above. While PAC is issued only in respect of the concerned OEM, the item may be bought from any dealer, stockist or distributor specified in that particular PAC on the basis of the information provided by the OEM, provided the purchase is accompanied by a proper manufacturer certification. PAC once issued will be valid for two years from the date of issue unless cancelled earlier by the CFA. **The list of PAC items and the OEMs/suppliers granted PAC status for the subject matter of procurement be exhibited on the Central Public Procurement Portal and websites of the Procuring Entity/ e-Procurement/portals.**

**5.8.2 Repairs/servicing on the basis of PAC:** The provisions of paragraph 5.7.1 would also apply to repairs and servicing of equipment through the sole dealer/servicing agency, authorized by the OEM, if the main equipment was purchased on the basis of PAC.

**5.8.3 Caution to be exercised while granting PAC:** PAC bestows monopoly and obviates competition. Hence, PAC status must be granted after careful consideration of all factors like fitness, availability, standardization and value for money. Many OEMs do not manufacture assemblies, subassemblies and components but outsource these items. Hence, such items may be available at cheaper prices with the actual manufacturers. The procurement officers must, therefore, keep abreast of the proper source knowledge and procure items from the right source to protect the interest of the State. However, the spares have to be sourced from OEM or OEM approved/recommended manufacturers only in order to make the OEM responsible for the malfunctioning of the main equipment in which the spares have been fitted.

**5.8.4 Fall Clause:** The firm should be asked to accept a “fall clause” undertaking that, in case if supplies or quotes a lower rate to other Governments, public sector or private organization, it would reimburse the excess. Negotiations may be called for to get prices reduced. <sup>[MoF Goods Manual 4.6.3- Mitigation]</sup>

**5.8.5** Concurrence of IFA is, necessary at the time of grant of PAC in case the delegated financial powers of CFA are exercisable in consultation with Integrated Finance. For PAC purchases under delegated

financial powers of CFAs exercisable without consultation of integrated finance, concurrence of IFA is not necessary in individual procurement cases, provided the Proprietary certification of the firm for that item has been established by the Service/organization previously at the appropriate level. The PAC certificate should be given at the level of PSO/Controller/APSO/DG/ADG (equivalent) at Service HQ and by the C-in-C/Corps Commander/Area Commander and Heads of Establishment/Formation or Units not below the rank of Brigadier/Commodore/Air Commodore in the Command HQs and below. The PAC Certificate should be as per the following format-

#### Proprietary Article Certificate

(Description of Goods/services): \_\_\_\_\_ It is certified that:

- (i) The goods are manufactured/services are provided by ..... (name of the OEM)
- (ii) No other make or model/service provider is acceptable for the following reasons:
  - (a) .....
  - (b) .....
  - (c) .....
- (iii) M/s ..... (name of the firm) are the authorized dealer/stockist/distributor of the OEM/original service provider.
- (iv) Concurrence of integrated finance to grant this PAC has been obtained vide \_\_\_\_\_.
- (v) Grant of this PAC has been approved by \_\_\_\_\_ as the competent authority, vide.....

(Signature with date and designation  
of the Officer signing the PAC).

**5.8.6 Withdrawal of PAC Status.** In case at any time an authority at any level becomes aware of an alternative source that is manufacturing a specific PAC item, the information should be sent to the higher/ Service HQ to review the grant of PAC for such item/ service. [MoD Draft 5.5.6]

#### 5.9 Electronic Reverse Auction (Rule 167 GFR 2017)

- (i) Electronic Reverse Auction means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- (ii) A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method, if:
  - (a) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
  - (b) There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured;
  - (c) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms; and
- (iii) The procedure for electronic reverse auction shall include the following, namely:
  - (a) The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and
  - (b) The invitation shall, in addition to the information as specified in e-procurement, include details relating to access to and registration for the auction, opening and closing of the auction and Norms for conduct of the auction.
  - (c) In case where pre-qualification of bidders is considered necessary, reverse auction may be carried out after a separate PQB (electronic or otherwise) among the successful bidders only.
- (iv) Items for Reverse Auction may be selected carefully. Items of strategic, critical and vital nature, items in short supply in market and where there are only a few suppliers are not good candidates for

reverse auction. Items in the nature of commodities, Commercially-off-the-shelf items, items having large number of suppliers and high value procurements may be more amenable to reverse auction.

- (v) The platform for e-reverse auction may be selected through transparent procedure/manner.

## 5.10 Single and Two Bid Systems

**5.10.1 Single Bid system:** For stores available commercially off-the shelf (COTS) and LP items, where qualitative requirements and technical specifications are clear, capability of source of supply isn't critical and value of procurement is low or moderate, the single bid system, where eligibility, technical/commercial and financial details are submitted together may be followed. The lowest responsive price bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful. <sup>[MoF Goods Manual 4.13.1]</sup> No sample should be called for in single bid system at the RFP stage.

**5.10.2 Two bid system:** For purchasing high value plant, machinery, equipment, IT and communication systems and for turnkey projects, etc., which are of a complex and technical nature. Bids should normally be obtained in two parts as follows:

- (a) Technical bid consisting of all technical details along with commercial terms and conditions; and
- (b) Financial bid indicating item-wise price for the items mentioned in the technical bid and all other commercial terms and conditions.

**5.10.3 Manner of submission of bids in two bid system:** The technical bid and the financial bid should be submitted separately. In case of manual tendering both the bids should be sealed by the bidder in separate covers duly super scribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed. The e-Procurement Portal facilitates separate submission and opening of Technical and Commercial Bids. The technical bids are to be opened and evaluated in the first instance. At the second stage, financial bids of only the technically acceptable offers should be opened for further evaluation and ranking before awarding the contract.

**5.10.4 Tender Sample Clause-** In case the organization has, as part of specifications, certain indeterminable parameters such as shade, tone, make-up, feel, finish and workmanship etc., the submission of tender sample at the time of technical evaluation should not be insisted upon. The organization should consider procurement of such items on the basis of detailed specifications and if required, provision for submission of an advance sample by the successful bidder may be stipulated before giving clearance for bulk production of the supply (CVC OM No. 2EE-1-CTE-3 dated 15.10.2003).

**5.10.5 Performance parameters:** The performance parameters should be verifiable and provide for the minimum essential military requirements. Fulfillment of essential parameters mentioned in the RFP would be the basis for further consideration by TEC (Technical Evaluation Committee).

## 5.11 Cost of Tender and Bid Security/Earnest Money Deposit

**5.11.1 The cost of the Tender document:** Tender sets in respect of Advertised (Open) Tender Enquiry will be sold on payment of the prescribed price given below. <sup>[Goods Manual 5.2.1]</sup>

	<b>Estimated value of the Tender</b>	<b>Price of the Tender set (Rs)</b>
1	Upto Rs 25 lakhs	500
2	More than Rs 25 lakhs but upto Rs 2 crore	1,500
3	More than Rs 2 crore but upto Rs 25 crores	2,500
4	More than Rs 25 crores but upto Rs 50 crores	5,000
5	Above Rs 50 crores	To be decided on case to case basis.

Cost of drawings and specification will be extra. This may be decided in consultation with integrated finance at the time of issuing the RFP.

**Note-** No cost of tender documents may be charged for the tender documents downloaded by the bidders. <sup>[GFR 161(iv)]</sup>

- 5.11.2 Bid security:** To safeguard against a bidder's withdrawing or altering his bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money Deposit) is to be obtained from the bidders. The bidders should be asked to furnish the bid security along with their bids.
- 5.11.3 Amount of Bid Security:** Amount of bid security should ordinarily range between two percent to five percent of the estimated value of the goods to be procured. The exact amount of bid security should be determined judiciously while processing the proposal for CFA's approval and indicated in the RFP.
- 5.11.4 Form of Bid Security:** The bid security may be accepted in the form of Fixed Deposit Receipt or Bank Guarantee from any **of the Scheduled Commercial Bank or payment online in an acceptable form, safeguarding the purchaser's interest in all respect.** <sup>[GFR170(i)]</sup>
- 5.11.5 Validity of the Bid Security:** The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period.
- 5.11.6 Refund of Bid Security of Bidders:** Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract. The Bid Security of the successful bidders should be returned, without any interest whatsoever, after the receipt of Performance Security from them as called for in the contract.
- 5.11.7 Exemption from Submission of Bid Security:** Bid security is not required to be obtained from **Micro and Small Enterprises (MESS) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME)** <sup>[GFR 170 (i)]</sup> **/MSEs registered with NSIC and under Udyog Aadhar Memorandum (UAM)** and those firms who are registered with the Central Purchase Organization or concerned Departments or Ministries of the Government of India for the same item/range of products, goods or services for which the tenders have been issued. Bid security need not be asked for if the value of the tender is Rs five lakh or less.
- 5.11.8 Forfeiture of the Bid Security:** The bid security/earnest money will be liable to be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect during the period between the deadline for submission of bids and expiry of the bid validity period. No separate order is required for forfeiture of Bid Security which follows on default and should be credited at once to the Government Account.
- 5.11.9 Bid Securing Declaration-** In place of a Bid security, the Organisation/Formation may require bidders to sign a bid securing declaration accepting that if they withdraw or modify their bids during the period of validity, or if they are awarded the contract and they felt to sign the contract, or to submit a performance security before the deadline defined in the request for bids document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit bids for contracts with the entity that invited the bids. <sup>[GFR 170 (iii)]</sup>

## 5.12 Tendering Process

- 5.12.1 Expression of Interest:** In those cases where specifications of the desired goods or services are not clear or the sources are not known and it is considered desirable to resort to pre-qualification of suppliers, a notice calling for expression of interest/information/prequalification may be issued and pre-bid conference may be held with the firms which fulfill the criteria prescribed in the notice to firm up the Qualitative Requirements (QRs)/specifications before issuing the Request for Proposal.
- 5.12.2 Pre-qualification Process-** In case a prequalification process is to be followed, offers may be invited from prospective bidders by giving wide publicity to the invitation to pre-qualify and the Procurement authority shall subsequently publish the particulars of the bidders who qualify as per the criteria given in the notice to prequalify, on the Central Public Procurement Portal. Only the pre-qualified bidders will thereafter be eligible for continuing in the procurement proceedings and RFP issued to them. The decision regarding bidders who have pre-qualified will be taken in accordance with the criteria set out in the pre-qualification documents. The pre-qualification criteria should not be restrictive. Integrated Finance will be involved in the vetting of the qualification criteria set out in the EOI/ RFI/ Notice for Pre-qualification of Bidders for a particular procurement. <sup>[MoD Draft 5.9.3]</sup>
- 5.12.3 Preparation of the Request for Proposal/Tender Enquiry:** The text of the bidding document should be self-contained and comprehensive without any ambiguities. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. The condition of prior turnover and prior experience may be relaxed for Startups

(as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document. The bidding document should contain, inter alia.

- (a) Description and Specifications of goods including the nature, quantity, time and place or places of delivery.
- (b) the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc. or limitation for participation of the bidders, if any.
- (c) eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc. which may require to be met by the successful bidder.
- (d) the procedure as well as date, time and place for sending the bids.
- (e) date, time and place of opening of the bid.
- (f) Criteria for evaluation of bids
- (g) special terms affecting performance, if any including trial methodology/trial directives where applicable.
- (h) Essential terms of the procurement contract
- (i) Bidding Documents should include a clause that “if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered.
- (j) Any other information which the procuring entity considers necessary for the bidders to submit their bids.
- (k) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder.
- (l) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document.
- (m) The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.
- (n) The specifications of the required goods should be clearly stated without any ambiguity so that the prospective bidders can send meaningful bids. In order to attract sufficient number of bidders, the specification should be broad based to the extent feasible. <sup>[GFR 173]</sup>
- (o) The user requirements should be expressed in terms of functional characteristics. Its formulation must not prejudice the technical choices by being narrow and tailor-made. Specific Quality Assurance requirements, if any, should be included in the RFP.
- (p) Special Instructions to contractors/Bidders for e-submission of bids online through e-procurement Portals may be adhered to. The details of the Earnest Money Deposit (EMD), documents submitted physically to the Organization/Unit and the scanned copies furnished at the time of bid submission online should be same otherwise the Tender will be summarily rejected. <sup>[Clause 15 of instruction to bidders CPP Portal]</sup>

RFP should be vetted by integrated finance in those cases where financial powers are to be exercised with their concurrence.

**5.12.4 Pre-bid Conference:** In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details of the plant, equipment and machinery etc. projected in the bidding document. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of bid opening date. The records of such conference shall be intimated to all bidders and, shall also be exhibited on the website(s) where tender was published. <sup>[GFR 173 (x)]</sup>



**5.12.5 Reference to Brand Names in the RFP:** Standards and specification, quoted in bidding documents in generic terms shall promote the broadest possible competition while assuring the critical performance or fulfillment of other requirements for the goods. Reference to the brand names, catalogue numbers, etc. in the RFP should be avoided.

**5.12.6 Format of RFP:** It must be borne in mind that no clause should be incorporated in the contract/supply order if it was not mentioned in the RFP as inclusion of clauses in the contract which did not figure in the RFP would amount to unfair denial of opportunity to other suppliers.

### **5.13 Receipt of tenders**

**5.13.1** It is mandatory for Departments of Ministry of Defence to receive all bids through e-procurement portals in respect of all procurements. The tender box may be utilized for physical submission of EMD instruments and certificates/documents etc. in case of e-procurement.

**5.13.2** Where exemption from e-procurement has been provided, a tender box is to be placed in an easily accessible but secured place, duly locked and sealed, clearly indicating the name of the department. The words "Tender Box" should be written on the box in bold font.

### **5.14 Amendment to the RFP and Extension of Tender Opening Date**

#### **5.14.1 Amendment to the RFP: -**

(a) In case any modification is made to the bidding document or any clarification is issued which materially affects the terms contained in the bidding document, the procuring entity shall publish or communicate such modification or clarification in the same manner as the publication or communication of the initial bidding document was made.

(b) In case a clarification or modification is issued to the bidding document, the procuring entity shall, before the last date for submission of bids, extend such time limit, if, in its opinion more time is required by bidders to take into account the clarification or modification, as the case may be, while submitting their bids.

(c) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or resubmit it, as the case may be, or withdraw such bid in case the modification to bidding document materially affect the essential terms of the procurement, within the period initially allotted or such extended time as may be allowed for submission of bids, after the modifications are made to the bidding document by the procuring entity: Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation. <sup>[GFR 173 (iii)]</sup>

**5.14.2 Extension of Tender Opening Date:** In those cases where extension of tender opening date does not become necessary because of amendment of the RFP (due to change of QRs/SQRs or terms and conditions of contract) but on request of the vendors, extension upto a maximum period of two months may be accorded by the CFA without consultation of IFA, even where CFA's procurement powers are exercisable with financial concurrence. For any extension beyond this period, the Competent Financial Authority, with the concurrence of integrated finance, where required as per delegation of financial powers, may extend the date of opening of the tender specified in the RFP but such extension should not exceed the total delivery period envisaged in the RFP. Any further extension would require approval of the next higher CFA. Such extensions and amendments should be published in the same journals/newspapers in which the original RFP was published and must be given publicity through the website if the original RFP was hosted on the website.

**5.14.3 Extension of Tender Opening Date After Due Date of Opening:** In exceptional circumstances, date of opening of the tender may be extended within a reasonable period after the due date of the opening of tenders for reasons to be recorded in writing, with the approval of the higher CFA and in consultation with the IFA, where financial powers are to be exercised with the concurrence of integrated finance.

**5.14.4 Withdrawal of bids:** In case a firm requests for withdrawal/return of his bid before the due date of tender opening, when such date has been extended by the purchaser, the bid may be returned to the concerned firm as the documents may be accompanied by EMD.

### **5.15 Tender Opening**

**5.15.1 Opening of Tenders Under Single Bid System:** The following procedure should be followed for opening of tenders:

- (a) All the tenders received on time should be opened in the presence of authorized representatives of the tenderers at the prescribed time, date and place by the official/Tender Opening Committee/Procurement Committee, to be nominated by the CFA in advance. The representative of integrated finance need not be a member of the tender opening committee, unless the CFA specifically desires to associate such a representative. The authorized representatives, who intend to attend the tender opening, would be required to bring with them letters of authority from the tenderers concerned.
- (b) The tender opening official/committee should announce the salient features of the tenders like description and specification of the goods, quoted price, terms of delivery, delivery period, discount if any, whether EMD furnished or not and any other special feature of the tender for the information of the representatives attending the tender opening.
- (c) After opening, every tender should be numbered serially, initialed, and dated on the first page by the official(s) authorized to open the tenders. Each page of the price schedule or letter attached to it shall also be initialed by them with date, particularly the prices, delivery period etc., which should also be circled and initialed indicating the date. Blank tenders, if any, should be marked accordingly by the tender opening officials.
- (d) Alterations in tenders, if any, made by the tenderers, should be initialed with date and time by the official(s) opening the tenders to make it perfectly clear that such alterations were present on the tenders at the time of opening.
- (e) Wherever any erasing or cutting is observed, the substituted words should also be encircled and initialed with date and time to make clear that such erasing/cutting of the original entry was present on the tender at the time of opening.
- (f) The tender opening official(s) should prepare a list of the representatives attending the tender opening and obtain their signatures on the list. The list should contain the representatives' names and the corresponding tenderers' names and addresses. The authority letters brought by the representatives should be attached with this list. This list should be signed by both the tender opening official(s) with date and time.
- (g) An on-the-spot report containing the names of the tenderers (serial number wise) salient features of the tenders, as read out during public opening of tenders should be prepared by the tender opening official(s) duly signed by them with date and time.
- (h) The tenders, which have been opened, the list of the representatives attending the tender opening and the on-the spot report should be handed over to the nominated officer of the procuring agency and acknowledgement obtained for the same.

**5.15.2 Opening of tenders under two bid system:** The procedure laid down in the preceding paragraph should be followed mutatis mutandis under two bid system also but only the technical bids should be opened in the first instance. Commercial bids of only QR-compliant tenderers should be opened only after evaluation of the technical bids and approval of the TEC report by the CFA. The commercial bids of other tenderers, who are not found to comply with the QRs as above, will be returned to the tenderers, in sealed and unopened condition as received.

**5.15.3 Return of Technical Bids-** Technical bids will not be returned to the vendors once they are opened, whether the bids are found to be compliant or non-compliant by TEC. These will be maintained as part of the file documentation for processing and award of the tender. Similarly, the commercial bids of vendors who are technically compliant but are not successful in getting the contract will be retained along with the papers/file relating to award of the contract.

## **5.16 Evaluation of Technical Bids**

**5.16.1 Opening of Technical Bids:** Where quotations are invited as separate technical and commercial bids, initially only the technical bids are to be opened in the presence of the tenderers or their duly authorized representatives.

**5.16.2 Evaluation of Technical Bids:** After opening of the technical bids, technical evaluation is to be carried by a duly appointed Technical Evaluation Committee (TEC).

- 5.16.3 Technical Evaluation Committee (TEC):** TEC, wherever formed, should invariably have representatives of the user, designated inspecting agency, maintenance agency, procurement agency and CFA, apart from the Chairman. Finance representative need not be associated with the TEC.
- 5.16.4 Objective of the TEC:** The main objective of the TEC is to prepare technical matrix showing how the technical parameters of bids received compare with the parameters mentioned in the tender document/RFP. If the offers conform to essential parameters they should be accepted.
- 5.16.5 Preparation of Compliance Report by TEC:** The TEC should prepare a compliance statement bringing out the extent of variations and differences, if any, in the technical characteristics of the equipment/ tendered item(s) offered by various vendors with reference to QRs and compliance or noncompliance with the essential parameters. If considered necessary, the TEC may invite those vendors who meet essential parameters for technical presentation/clarification.
- 5.16.6 Format of the TEC Report:** The TEC report should be prepared and following aspects should be kept in mind by the TEC:
- (a) The basic profile/character of technical offer must not be permitted to be changed.
  - (b) Opportunity for revision of minor technical details should be accorded to all vendors in equal measure to ensure fair play.
  - (c) No extra time should be given to any vendor to modify his offer to make it QR compliant.
  - (d) Original commercial quotes must remain firm and fixed and no loading/unloading in price should be permitted during TEC's discussion with the vendor.
  - (e) No conditional offer should be accepted which is not in conformity with the specifications mentioned in the RFP.
- 5.16.7 Mandate of the TEC as regards commercial aspects:** The TEC is not authorized to discuss commercial aspects of the case. However, the TEC should prepare a compliance statement in respect of commercial terms and conditions, such as bid security, warranty, etc., included in the technical bid as per the RFP. **In case bids are being rejected due to non-compliance of such commercial terms, advice of IFA may be sought prior to obtaining the decision of CFA.** [MoD Draft 5.13.7]
- 5.16.8 Association of IFA:** Whenever two bid system of tendering is followed, technical evaluation of the bid becomes a vital step not only for ascertaining conformity of the technical bids with the technical specifications mentioned in the tender, but also to bring all bidders on a level playing field in respect of qualitative requirements. While technical evaluation is to be carried out by the TEC and integrated finance need not be associated at this stage, CFA may, if considered necessary, evolve a system of associating the IFA or his representative in examination of the TEC Report in regard to compliance with the commercial terms and conditions before opening of the price bid. TEC report, once finalized, should be sent to CFA for acceptance.
- 5.16.9 Approval by the CFA:** The TEC report should be approved by the respective CFA. TEC report may be accepted by Defence Secretary and Special/Additional Secretary in those cases where Raksha Mantri and Defence Secretary respectively are the CFAs.
- 5.16.10 QR-compliant Offers:** Those offers which meet the essential parameters as per the TEC report, duly approved by the CFA, should be considered by the Procurement Committee (PC)/Commercial Negotiation Committee (CNC) which, in turn, should evolve methods for benchmarking of price and holding internal meetings to finalize approach for conducting negotiations with the L1 vendor, if considered necessary by the CFA, in consultation with the IFA where powers are to be exercised with the concurrence of integrated finance.

## **5.17 Evaluation of Commercial Bids**

- 5.17.1 Preparation of the Comparative Statement of Tenders:** After opening of the commercial bids (of QR-compliant tenderers in the case of two bid system and after approval of the TEC report by the CFA), the procuring agency should prepare a comparative statement of tenders (CST). The comparative statement of tenders should be prepared with due care showing each element of cost (basic cost, taxes, duties, freight, insurance, etc.) separately against each tenderer. The CST should be prepared soon after opening of the commercial bids and got vetted by the IFA as to its correctness, where financial powers are to be exercised with the concurrence of integrated finance.

- 5.17.2 **Commercial Evaluation:** Evaluation of commercial bids is the core activity in any purchase decision. If the correct evaluation of quoted basic rates of items, taxes, duties, installation, commissioning, freight, insurance, AMC and other requirements involved is not carried out as per the criteria incorporated in the RFP, purchase decision may become deficient and faulty.
- 5.17.3 **Commercial Negotiations:** Commercial negotiation may become necessary to ensure that the interest of the State is fully protected and the price paid is reasonable. **Negotiation may be resorted to only with the lowest evaluated responsive bidder.** [GFR 173 (xiv)] Commercial negotiations are invariably conducted in case of single tender situations, including PAC cases, or when price is considered high with reference to assessed reasonable price, irrespective of the nature of tendering. Such negotiations are invariably conducted by a duly appointed Procurement Committee (PC)/Commercial Negotiation Committee (CNC), which should include a finance member. **The justification and details of such negotiations should be duly recorded and documented without any loss of time.** [CVC Circular No. 4/3/07dated03.03.2007]
- 5.17.4 **Composition of CNC/PC:** Apart from the Chairman, there should be representatives of the User, Integrated Finance, designated Inspecting Agency, Maintenance Agency, Directorate concerned with post-contract management and the CFA, wherever applicable. CFA may nominate any other member, like a costing expert, in case of high value single vendor offers while constituting the CNC/PC. **TEC and CNC/PC are not to be chaired by the same person.**
- 5.17.5 **Chairman of the CNC:** The CNC may be headed by an officer one rank below that of the CFA. The CNC may be headed by a Joint Secretary where Raksha Mantri or Defence Secretary is the CFA. The CFAs in the Ministry of Defence may also authorize an officer from the Services Headquarters to be the chairman of a CNC, particularly in those cases where the proposal was initially processed under the delegated powers but on opening of the tenders the cost was found to have exceeded the financial powers delegated to the CFAs in the Services Headquarters.
- 5.17.6 **Price Reasonableness:** The basic objective of the PC/CNC is to establish reasonableness of price being paid by the Government. This is a complex task and many factors need to be considered. However, factors like the last purchase price (LPP), movement of price indices, the market intelligence regarding cost of the item or similar items, material composition, cost analysis of raw materials, technological complexities involved, whether the items are of current production or otherwise, maintenance requirements, requirement of spares and warrantee etc. need to be considered while examining price reasonableness.
- 5.17.7 **Responsibility of the PC/CNC:** Wherever negotiations are conducted by the CNC, minutes of the CNC meetings should be recorded clearly and expeditiously. CNC should determine L1 and make unambiguous and specific recommendations giving reasons for making the recommendations. Detailed record of discussions regarding compliance with tendered QRs, price and contract clauses held during the CNC should be prepared and placed on record in the form of minutes of the meeting. All the members of the PC/CNC should sign the minutes.
- 5.17.8 **Acceptance of CNC's recommendations and CFA's Sanction:** The recommendations of the CNC should be processed on file by the Procuring Agency for the approval of the CFA with the concurrence of the IFA, wherever required as per the delegation of powers. A sanction is a written authority from the CFA authorizing the expenditure. A sanction invariably indicates the reference to the authority under which expenditure is being sanctioned, the financial implication, the item for which the expenditure is approved and the budget code head. Whenever the final expenditure exceeds the sanctioned amount, revised financial sanction of the CFA, in whose delegated powers the total expenditure would fall, is required to be obtained. **While determining the CFA in foreign procurement cases, Foreign Exchange Rate of respective currency on the date of commercial tender opening, is to be taken into account. Future variation in the currency exchange rate shall not affect the CFA as long as the contract value is not changed in the respective foreign currency.** [Air HQ suggestion based on C&AG Audit Para]

**5.18 Lack of Competition-** The following situations would imply lack of competition:

- (a) The number of acceptable offers is less than two.
- (b) Ring prices have been quoted by all tenderers (Cartel formation).
- (c) The product of only one manufacturer has been offered by all the tenderers irrespective of the number of quotations.

- (d) Store under purchase is chronically in short supply against which the number of acceptable offers never exceeds two.

## 5.19 Resultant Single Vendor Situation

5.19.1 **Action to be Taken in Resultant Single Vendor Situations:** There are cases when only a single quote or a single valid acceptable quote is received even against LTE or OTE. This situation may arise in single bid tendering as well as in two-bid tendering before or after technical evaluation. This results in a single vendor situation indicating lack of competition. In such situations, the following aspects will be examined:

- (a) Whether all necessary requirements such as standard tender enquiry conditions, industry-friendly specifications, wide publicity, sufficient time for formulation of tenders had been taken care of while issuing the RFP;
- (b) Whether the RFP had been properly dispatched and duly received by the prospective vendors to whom these were sent.
- (c) Whether the SQRs, particularly in the LTE cases, could be reformulated and made more broad based to generate wider competition.
- (d) Whether time and criticality of requirement permits reformulation of the SQRs.

If the examination reveals that (a) and (b) had been complied with and (c) and (d) are not feasible, the proposal may be processed further treating it as a case **Single Tender Contract, if prices are reasonable**<sup>[GFR 173 (xxi)]</sup>, With the approval of the CFA. In case, however, there is any doubt about the tendering process or it is considered feasible to consider reformulation of SQRs without compromising on operational requirement, the RFP should be retracted and re-issued after rectifying the deficiencies and/or reformulating the SQRs.

## 5.20 Re-tendering

5.20.1 **Re-tendering:** Re-tendering may be recommended by the PC/CNC and approved by the CFA with the concurrence of integrated finance, where original sanction was accorded with the concurrence of integrated finance, with utmost caution, generally under the following circumstances:

- (a) Offer(s) do not conform to qualitative requirements and other terms and conditions set out in the RFP.
- (b) There are major changes in specifications and quantity, which may have considerable impact on the price.
- (c) Prices quoted are unreasonably high with reference to assessed reasonable price or there is evidence of a sudden slump in prices after receipt of the bids.
- (d) Where there is lack of competition and there are clear and reasonable grounds to believe that the lack of competition was due to restrictive specifications, which did not permit many vendors to participate. In such cases, which should, however, be rare as the specifications should normally be formulated with due care and after pre-bid conference, wherever required, CFA should consider if there is a possibility of reviewing the specifications to facilitate wider and adequate competition.

5.20.2 **Withdrawal of offer by L1:** In case the lowest tenderer withdraws his offer, re-tendering should be resorted to as per the instructions issued by the Central Vigilance Commission. While re-tendering RFP may not be issued to the vendor who had backed out and EMD, if any, of such a firm should be forfeited **and necessary action should be initiated as per Para 3.8 of this Manual.**

5.20.3 **Procurement of bare minimum quantity in case of re-tendering:** In cases where it is decided to resort to re-tendering due to unreasonableness of the quoted rates but the requirement is urgent/inescapable and re-tendering for the entire quantity is likely to delay the availability of the item(s) jeopardizing the essential operations, maintenance and safety, negotiation may be held with the L1 bidder for supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through re-tender, following the normal tendering process.

5.21 **Signing of Contract/Placing of Supply Order-** Once the PC/CNC recommendations are accepted by the CFA or approval accorded by the CFA in those cases in which no CNC is held, the contract should be signed or the supply order placed, as the case may be, immediately. It must be ensured that the

contract/supply order is as per the approved terms and conditions and the rates are correctly shown as finally negotiated and accepted by the CFA. Contracts/supply orders should be vetted by the IFA, wherever required as per delegation of financial powers, prior to acceptance of the purchase proposal by the CFA. Copies of the contract/supply order should be sent to all concerned, including the IFA, the audit authority and the paying authority, and their acknowledgement obtained.

**5.22 Cartel Formation / Pool Rates:** Sometimes a group of tenderers quote identical rates against a rate contract tender. Such Pool/Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Registrar of Companies, **Competition Commission**, National Small Industries Corporation etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Ministries/ Departments may also examine the desirability of bringing such unhealthy practice to the notice of the concerned trade associations like FICCI, ASOCHAM, NSIC, etc. requesting them, inter alia, to take suitable strong action against such firms. New firms should also be encouraged to get themselves registered for the subject goods/services to break the monopolistic attitude of the firms forming cartels. **Changes in the mode of procurement and packaging/slicing of the tendered quantity and items may also be tried.** [MoF Goods Manual 7.5.8] All requests for making reference to outside agencies, such as Registrar of Companies or trade associations, are to be made to the Ministry of Defence.

### **5.23 Procedure to be Followed for Procurement of Stores Involving Validation/Testing**

**5.23.1 Circumstances in Which the Procedure is to be Followed:** Due to constant changes in technology, various weapons, equipment, ammunition, etc., which are already in service, need to be replaced by newer variants or upgraded/refurbished/re-equipped/modified/ overhauled to incorporate advancements in technology. This may necessitate validation trials/testing of upgraded/refurbished/re-equipped/modified equipment, if considered necessary by the Service Headquarters concerned. The procedure set out in this paragraph would be applicable to cases processed at the level of the Ministry of Defence/Service Headquarters only and should be suitably indicated while seeking AON. Such cases will not be treated as new introduction into Service.

**5.23.2 Categories of Cases:** The cases to be processed under the provisions of this paragraph would generally fall into the following category:

- (a) Procurement of upgraded new versions of equipment, ammunition, vehicles, etc., which are classified as stores that can be procured from the revenue head, provided these conform to the existing laid down QRs and meet the prescribed performance parameters or certain enhanced parameters which have been incorporated as an amendment to the existing QRs.
- (b) Upgradation, refurbishment, re-equipment, modification, Technical Life Extension, Overhaul, etc. of weapon platforms/systems/aggregates which can be carried out under the provisions of this Manual and as per the existing orders. The upgradation, refurbishment, re-equipment, modification, overhaul, etc. may be carried out at OEM's premises abroad or in India, or partially in India and partially at OEM's premises abroad, or even at a venue such as a Repair Overhaul Plant (ROH) where the requisite facilities are available, which may neither be in India nor at the OEM's premises, provided it is certified by the OEM as having the technical capacity/capability.

**5.23.3 Procedure to be Followed for Procurement of Stores:** For procurement of items mentioned in paragraph 5.23.2(a) above, the Service Headquarters should decide whether a validation process would be required and, if so, it should be indicated in the proposal. If such validation process (trial/testing) is considered necessary, the scope and duration thereof should also be finalized and indicated in the RFP. It should be mentioned in the RFP that the vendors which are found technically compliant would be required to provide specified quantities of the item on 'no-commitment-no-cost' basis for trial evaluation/testing. The period within which the Vendor must submit the equipment/sample after being found technically compliant must be indicated in the RFP. The Technical evaluation will be a two-stage process. After the technical bids are opened, the TEC will short-list the vendors, which are technically compliant, and the TEC Report will be approved by the CFA. Thereafter, the technically compliant vendors will go through the process of evaluation/testing. The evaluation/testing should ideally be completed within a period not exceeding eight months from receipt of the equipment/sample from the vendors. The Validation Trial/Testing report will be again ratified by the TEC and approved by the CFA.

- 5.23.4 **Opening of Commercial Offer After Trial Evaluation/Testing:** The commercial offer should be opened only after acceptance of the TEC/ Validation Trial/Testing Report of those vendors who have been recommended as technically compliant. The commercial offer should normally have a validity period of twelve months from the date of submission of the offer to ensure that the offer is still valid when the commercial bid is opened, commercial negotiations held and the order placed. A shorter validity period may be prescribed commensurate with the period of trial/testing.
- 5.23.5 **Dispensing with Trial Evaluation/Testing:** For equipment available commercially off-the-shelf (COTS), which are upgrades of in-service items and have requisite IS/BIS or equivalent certification, the Service Headquarters may accept the equipment on the basis of self-certification by the vendor without going through the validation/testing process, provided it is confirmed by the QA Agency/AHSP or any other technical agency concerned. However, in such cases also TEC Report should be approved by the CFA.
- 5.23.6 **Procedure to be Followed for Upgradation, Refurbishment, Re- Equipment, Modification, Technical Life Extension and Overhaul:** For upgradation, refurbishment, etc., as mentioned in paragraph 5.23.2(b) above, the vendors should be short-listed with the prior approval of the CFA and with the concurrence of integrated finance and the short listed vendors may be provided an opportunity to survey the weapon platform/systems, etc., which is to undergo upgradation/refurbishment/ re-equipment/ modification/Technical Life Extension/Overhaul prior to issue of the RFP. In case the upgrade, refurbishment, etc. is to be done in India, the vendors should certify the capability and confirm the adequacy of the facility to the satisfaction of the Service Headquarters. If required, a Detailed Project Report (DPR) may be got prepared by the Service Headquarters after obtaining the AON but before issuing the RFP with a view to defining the scope and other technical details of the upgrade/OH programme.
- 5.23.7 **Special provisions to be made in the RFP:** The RFP for upgradation, refurbishment, etc. should invite technical and commercial offers separately and may also have a provision for pre-bid conference prior to submission of the offers so that the technical and other issues could be clarified to vendors. The RFP should ask the vendors to specify the location of the plant/factory where upgradation, refurbishment, etc. will be undertaken and whether the vendor owns the facility. If the facility is not owned by the vendor, a certificate of agreement between the OEM and the plant owner would be required to be submitted by the vendors along with their offer. There should be a provision in the RFP that one lead equipment (where there are more than one number) will be tested by the vendor along with the representatives of the Service Headquarters (either in India or abroad) before the balance equipment are taken up for upgradation, refurbishment, etc. In case of a single weapon platform, there should be a provision for concurrent testing along with the upgradation, refurbishment, etc.
- 5.23.8 **Approval of the Final TEC Report and Opening of Commercial Offer:** The TEC Report should be approved by the CFA and the commercial offer of the vendors who have been recommended as technically compliant should be opened only thereafter. This would be applicable in respect of cases covered by paragraph 5.23.2 (b).
- 5.23.9 **Validity of the Offer:** The commercial offer should have a validity of up to eighteen months from the date of submission of the offer, depending on the period required for completing the technical evaluation, so as to ensure that the offer remains valid till the time the order is placed/contract signed.
- 5.23.10 **Assessment of the Vendor's Facility:** If required and considered necessary, a composite delegation of representatives of the User Department, **Quality Assurance Agency**, CFA and integrated finance may be deputed to visit the plant/factory of the vendor finally recommended by the CNC to assess the capability/capacity of the selected vendors to carry out upgradation, refurbishment, etc. before commercial negotiations are finalized and approved by the CFA.
- 5.24 Instruction to Bidders- Instruction to Bidders:** Subject to other specific provisions in this Manual, the broad instructions for the prospective bidders are as follows:
- (a) **Eligibility:** A firm registered with any Procurement/Registering Authority for the manufacture/supply of the tendered goods/services would be eligible to bid. An unregistered firm may get itself assessed for capacity/competency to manufacture/supply the tendered goods/services to become eligible to participate in tendering.
- (b) **Clarification regarding contents of the Bidding Documents:** A prospective bidder who requires clarification regarding the contents of the bidding documents shall notify the purchaser in writing

and the purchaser will respond in writing to the clarifications sought not later than fourteen days prior to the date of opening of the tenders. Copies of the query and clarification by the purchaser shall be sent to all prospective bidders who have received the bidding documents.

- (c) **Quotations to be submitted under original memos:** Bids should be forwarded by vendors under their original memo /letter pad, inter alia, furnishing the TIN No./GST No., Bank Address with EFT account No. and the complete postal and e-mail address of the firm.
- (d) **Amendment of Bidding Documents:** At any time prior to the date of submission of bids the purchaser may, whether at his own initiative or in response to a clarification requested by a prospective bidder, may modify bid documents by amendments. The amendments shall be notified in writing to all prospective bidders. In order to afford prospective bidder a reasonable time to take the amendment into account in preparing their bids, the purchaser may, at his discretion, extend the deadline for submission of bids.
- (e) **Bid Validity:** A bid shall remain valid for ninety days in case of single bid RFP and one hundred twenty days in case of two-bid system, unless otherwise specified, from the date of the opening of the tender. A bid valid for shorter period can be rejected by the purchaser, as being non responsive. In exceptional circumstances the purchaser may request the consent of the bidder for an extension to the period of bid validity. Such requests shall be made in writing. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.
- (f) **Late Bids:** In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered.
- (g) **Modification and Withdrawal of Bids:** A bidder may modify or withdraw his bid after submission provided that the written notice of modification or withdrawal is received by the purchaser prior to deadline prescribed for submission of bids. A withdrawal notice may be sent by fax but it should be followed by a signed confirmation copy to be sent by post and such signed confirmation should reach the purchaser not later than the deadline for submission of bids. **Such withdrawal/alterations/modifications are received duly sealed and marked like original tender, upto the date & time of receipt of tender** <sup>[MoF Goods Manual 5.1.4 (vi)]</sup>. No bid shall be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity specified. Withdrawal of a bid during this period will result in Bidder's forfeiture of bid security.
- (h) **Clarification regarding contents of the Bids:** During evaluation and comparison of bids, the purchaser may, at its discretion, ask the bidder for clarification of his bid. The request for clarification shall be in writing and no change in prices or substance of the bid shall be sought, offered or permitted. No post bid clarification on the initiative of the bidder shall be entertained.

## **5.25 Instruction to the Purchase Officers**

5.25.1 **Instruction to the Purchaser:** Subject to other specific provisions of this Manual, the broad instructions for the purchase officers are as follows:

- (a) **Preliminary Examination:** Purchaser shall evaluate the bids to determine whether they are complete; whether any computational errors have been made; whether required sureties have been furnished; whether essential documents such as the technical literature and Agency Agreement in the case of medical stores, etc., as specified in the RFP have been furnished; whether the bid documents have been properly signed; and, whether the bids are generally in order.
- (b) **Discrepancy in quoted price:** If there is a discrepancy between unit price and the total price, the unit price shall prevail. If there is a discrepancy between words and figures, the amount in words shall prevail. If a supplier does not accept the correction of the errors, his bid should be rejected and the bid security may be forfeited.
- (c) **Trivial errors:** Trivial errors such as omission to (i) enter the rates in words, (ii) initial any alteration in rates or (iii) sign both the tender and the schedules(s) may be corrected, initialed and dated both by the officers opening the tenders and signed and dated by subsequently by the tenderer.



- (d) **Responsiveness of the bid:** Prior to detailed evaluation, the purchaser should determine the substantial responsiveness of each bid to the bid documents. A substantially responsive bid is the one which conforms to all terms and conditions of the bid documents without material deviations. Deviations from or objections or reservations to critical provisions like Bid Security, Warranty & Guarantee, Applicable Law, Taxes and Duties and non-submission of documents such as valid Agency Agreement and technical literature in the case of medical stores should be deemed to be a material deviation.
- (e) **Evaluation and comparison of substantially responsive bids:** The evaluation and comparison of responsive bids shall be done on the prices of the goods offered **inclusive of all taxes and duties**, and other charges such as packing and forwarding, freight and insurance, AMC etc., as indicated in the price schedule of the Bid document.
- (f) **Award Criteria:** The purchaser will award contract to the successful bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the bidder is found to be technically, commercially and financially acceptable and whose goods have been type-approved/validated by the purchaser. The purchaser reserves the right to counter offer price(s) against price(s) quoted by any bidder.
- (g) **Waiver of QRs/parameters:** There should be no waiver of parameters after the issue of RFP as this may result in denial of opportunity to firms which could have met the revised essential parameters, had this been reflected in the RFP ab initio. This is particularly relevant in single vendor/resultant single vendor cases where waiver of essential parameters after issue of RFP and receipt of tenders would be prejudicial to the interest of other firms which might have submitted their bids as per the revised parameters but could not because of the essential parameters mentioned in the RFP.
- (h) **Pre-bid conference:** To obviate the possibility of the RFP fetching no response, resulting in a single vendor situation or resulting in generation of limited competition, technical specifications should be firmed up in a pre-bid conference in two-bid tender, particularly where the goods/services to be procured are not available commercially off-the-shelf or are of complex and highly technical nature.

### **EVALUATION OF QUOTATIONS AND PRICE REASONABILITY**

#### **5.26 Introduction**

**5.26.1 Cost Estimation:** Correct estimation of rates/cost is vital for determining the CFA and establishing the reasonability of the offers received from the suppliers. It is, therefore, important that the rates/cost are worked out in a realistic, objective and professional manner on the basis of the prevailing market rates, last purchase price, economic indices for raw material/labour, other input costs and assessment based on intrinsic value etc. It is equally important to evaluate the quotations/offers received in response to the RFP correctly to select the best offer. This Chapter contains guidelines for assessment of rates/cost, evaluation of quotations and determining price reasonability.

#### **5.27 Costing of Procurement Proposals**

- 5.27.1 Need for costing:** The first stage at which costing needs to be done is when the proposal is initiated by the Procuring Agency. It is necessary to work out the complete cost of a procurement proposal to determine availability of funds to meet the expected cash outflow and the level at which it would need to be approved. It is, therefore, essential that the cost is assessed realistically and comprehensively. The entire, all inclusive assessed cost should be the basis for determining the CFA.
- 5.27.2 Basis of costing:** The cost of a procurement proposal may be assessed on the basis of the Last Purchase Price (LPP), Professional Officers' Valuation (POV), Budgetary Quote (BQ) to be obtained from one or more prospective sellers, Market Survey (MS), or any other method as may be appropriate in the context of a particular purchase proposal. These methods are not mutually exclusive. The method of costing should be clearly recorded while seeking CFA's approval.
- 5.27.3 Cost to be worked out in INR:** Wherever applicable, the assessed cost should be converted into the common denomination of Indian Rupees (INR) and shown both in terms of the foreign currency and INR while seeking CFA's approval. The exchange rate adopted should be as on the date of opening of the price bids. The conversion factor should be clearly indicated. The method of conversion is given in this Chapter.

## 5.28 Evaluation of Quote

**5.28.1 Evaluating financial implication of offers:** While RFP is issued on the basis of the assessed cost, as approved by the CFA, the next important stage in the process is the stage at which the bids received in response to the RFP are required to be evaluated to work out the total financial implication and reasonability of each offer. The first step in arriving at the decision regarding reasonability of price or otherwise is to determine the exact cost of the proposal. In order to ensure that all offers are compared in an equitable and fair manner and the vendors are provided a level playing field, all elements of cost, including the terms and conditions with financial implications are to be taken into account. The criteria to be adopted for this purpose should be indicated in the RFP and the quotations should be ranked as per those criteria. In the case of medical equipment **or other special equipment**<sup>[MoD Draft 13.3.1]</sup> where **extended maintenance support** is provided for **three years or more** beyond the warranty/ guarantee period, firms may be asked to quote comprehensive AMC rates for such period (on expiry of warranty/ guarantee) and these may be loaded in CST and taken into consideration while deciding the L<sub>1</sub> vendor. However, this evaluation criterion would be clearly indicated in the RFP in such cases.

**5.28.2 Basis of comparison of cost:** The basis for comparison of cost in different situations would be as follows:

- (a) Normally, the comparison of the responsive tenders shall be on total outgo from the Procuring Entity's pockets, for the procurement to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including all taxes, duties, freight insurance etc. Therefore, it should normally be on the basis of CIF/FOR destination basis, duly delivered, commissioned, as the case may be;
- (b) In the case of goods manufactured in India or goods of foreign origin already located in India, GST and other similar taxes and duties, which will be contractually payable (to the tenderer) on the goods are to be added;
- (c) In the case of goods of foreign origin offered from abroad, customs duty and other similar import duties/taxes, which will be contractually payable (to the tenderer) on the goods, are to be added.<sup>[MoF Goods Manual 7.4.3]</sup>

**5.28.3 Determining CIF/CIP**<sup>[MoD Draft]</sup> **cost:** When the quotations of foreign vendors are also to be compared with the quotation of indigenous suppliers, CIF/CIP cost of foreign supplier is to be taken into account but difficulty arises when only FOB/FCA cost is indicated by a foreign supplier. There cannot be any standard formula for arriving at the CIF value in such cases. It would not be desirable to add a notional additional cost as a percentage of FOB/FCA cost to arrive at the CIF cost. To avoid a situation like this, it should be clearly indicated in the RFP that the foreign vendors should indicate the CIF/CIP cost.

**5.28.4 Comparative Statement of Tenders:** On receipt of all accepted tenders, the Procuring Agency should collate them in the form of a Comparative Statement of Tenders (CST). The prices quoted in foreign currencies should be converted into INR indicated in the CST. The rate of conversion of foreign currency into INR prevailing on the date of opening of the price bid may be taken into account for converting the quoted price into INR. The rate can be obtained from SBI Parliament Street, New Delhi. The CST should be exhaustive and it must include all details given in the quotations. Any deviation from the tender documents is to be brought out in the CST. LPP, wherever available, should be indicated in the CST for a fair comparison of the offered prices. The purchase officer should sign the CST and it should be vetted by the IFA/IFA's representative with regard to original quotations, indents and other supporting documents, where financial powers are to be exercised with the concurrence of integrated finance.

**5.28.5 Determination of lowest acceptable offer:** **Procuring Agency will determine the lowest acceptable offer, L1, based on the overall evaluation criteria indicated in the RFP for all non CNC/PC cases. Wherever CNC/PC is formed, only CNC/PC will determine the lowest acceptable offer (L1 bidder) based on the evaluation criteria indicated in the RFP for award of the contract/supply order.**<sup>[DRDO PM 8.5.1]</sup>

**5.28.6 Negotiations:** In multi-vendor cases, on opening of commercial offers, once L1 vendor is identified, the contract should be concluded with him and there would be no need for any further price negotiations. However, negotiations can be held in exceptional circumstances where valid logical reasons exist and such negotiations should be held only with L1. The exceptional situations include

procurement of proprietary items, items with limited sources of supply and items where there is suspicion of cartel formation. The justification and details of such negotiations should however be duly recorded and documented without loss of time and convincing reasons must be recorded by the authority recommending the negotiation. Negotiations through a CNC/PNC should be conducted in case of single tender situations including PAC cases. Negotiations may also have to be conducted in multi-vendor cases where the offered price is considered high with reference to the assessed reasonable price taking into account inter alia, the competition observed from the response of the trade to the inquiry. In each case the CNC/PNC should record its recommendations regarding the reasonableness of the price offered by the L1 bidder and the need for negotiation or otherwise with detailed justification. In case negotiation with the L1 bidder are considered necessary, these may be undertaken by the TPC/PNC/CNC with the approval of the CFA and concurrence of integrated finance as per delegation of financial powers. In cases where a decision is taken to go for re-tendering, but the requirements are urgent, negotiations may be under taken with L1 bidder(s) for the supply of a bare minimum quantity in accordance with para 3 of CVC instructions dated 3rd March 2006 (not reproduced in this Manual).

**5.29 Benchmarking** : It would be advisable to work out the estimated reasonable rate or the benchmark, to judge acceptability of the L1 offer based on available information. **Benchmarking of price should be done before opening of the price bids to ensure complete objectivity and fairness and the fact that decision to negotiate or not itself depends upon such an assessment. Data may be collected from trade journals/internet/technical literature/industry/sources/ international or domestic market survey or Cost Estimation & Reasonability Committee (CERC) may be constituted to arrive at an assessed reasonable price through cost break-up analysis or by surveying the products performing similar functions or using similar components/materials/technology etc.** <sup>[DRDO PM 8.7]</sup>

**5.29.1 Approach to Benchmarking**: There can be multiple methods of arriving at a benchmark for assessing reasonability of prices quoted. It may be acknowledged that a budgetary quote can at best be an indicative price but not an assessment of reasonability of cost. Therefore, following approaches either singly or in combination may be adopted:

- (a) Ascertain element wise breakup of cost. For e.g. the quote/selling price would generally constitute elements such as material cost, labour cost, overhead cost along with applicable warranty and profit.
- (b) Ascertain the Last Procurement Price (LPP) of similar item, supplied by the vendor recently to same service or other sister services/ organizations. If LPP is of an earlier period then Price Level (PL) is required to be fixed as per last delivery of item and applicable escalation to be given on that PL till year of delivery.
- (c) Escalation will have to be worked out on the basis of material composition and analysis of raw materials used to make the item. The movement of price indices of raw materials (year on year average), wholesale price indices, consumer price indices, global metal indices such as London metal indices, US indices, UK MM19 etc. may be used to assess the escalation rate.
- (d) Delivery period is to be ascertained and if the delivery is scheduled for more than one year then midpoint of delivery period is to be taken for deciding escalation. Month wise escalation from date of LPP may be given or if it is yearly then seven months or more may be considered for one additional year's escalation. For e.g. if item has to be delivered in the year 2014-2018 and LPP is for 2010, then the prices have to be escalated from the year 2010 till 2016.
- (e) Budgetary Quote (BQ) obtained from one or more prospective Sellers may also form the basis of benchmarking cost. If there is huge variation in BQ, the aberrations have to be marginalized.
- (f) Prevailing market rates obtained through Market Survey (MS) or prices available from open sources like internet etc. may be taken for benchmarking. However, these should be referenced in the CNC regarding source & authenticity.
- (g) Labour cost has to be broken down into labour hours used and the Man-hour Rate (MHR). In case of procurement of major item, the apportionment of estimated hours required by the vendor and the MHR of the vendor, where available, is to be used for working out the labour cost.
- (h) Professional Officers' Valuation (POV) may be considered in case no other prices are available of that particular item.

- (i) Discounts may be factored-in while benchmarking viz. on account of Long Term Business Agreements (LTBA) with other OEMs or economies of scale. In case of Bought out Foreign terms or indigenous items with substantial import content, LPP plus Exchange Rate Variation (ERV) since last purchase, if any, have to be factored-in benchmarking.
- (j) Factors such as obsolescence/ Redundancy, Freight & Insurance, Profit & Warranty, etc. may be factored in while arriving at benchmark price.
- (k) Taxes and duties may not be factored while benchmarking.
- (l) In case of DPSUs, the parameters of cost as per Pricing Policy or Govt. of India letters, if any, may be factored-in while arriving at benchmark price.<sup>[DRDO PM 8.9]</sup>

**5.30 Reasonableness of Prices in Competitive Tendering** The approach to be adopted for assessing reasonability in different contingencies is given in the succeeding paras.

**5.30.1 Evaluation against Bench-Mark:** The Benchmark price is an estimated price and will not be taken as a cut-off price in deciding the reasonableness of the quoted price. It will be used as a basis/yardstick for comparison with the quoted price. Further, no percentage deviation from the benchmark price can be prescribed as a thumb-rule and the decision would have to be taken by the CNC on a case to case basis for justifiable reasons, depending on the accuracy with which the benchmark price could be assessed, nature of the item, volatility of prices and the urgency for meeting the requirement.

**5.30.2 Determining Reasonability of Prices:** In the case of competitive tendering where two or more vendors are competing independently to secure a contract, the competitive bids form the basis for determining reasonableness of prices. Database maintained on cost, based on concluded contracts, price of the product available through market, etc. should also be used to assess reasonableness of the price offered.

- (a) Evaluation of tenders is to be made on the basis of the ultimate cost to the user.
- (b) As a general principle, no offer involving any uncertain or indefinite liability or any condition of unusual character should be considered.
- (c) The reasonableness of the price proposed has to be established by taking into account the competition observed from the response of the trade to the enquiry, last purchase price, estimated value as given in the indent, database maintained on costs based on the past contracts entered into, market price, wherever available and changes in the indices of various raw materials, electricity, whole sale price index, and statutory changes in wages, rates etc.
- (d) For procurement of spare parts, consumables and small value contracts which are supplied in the past, the price reasonableness can be determined after comparing with last purchase price and factoring in changes in price indices published by the Government sources.
- (e) The reasonableness of price may also be examined by resorting to Cost Analysis in situations where there is a wide variance over the LPP, not explained by corresponding changes in indices.
- (f) Effort should be made to check cost break up details to the extent possible.

**5.30.3 Last Purchase Price as a determinant of reasonable price:** LPP is one of the relevant factors in deciding price reasonableness. However, following needs to be considered while comparing the quoted rates with the LPP:

- (a) LPP of more than three years' vintage is not a real scale for comparison. However, such LPP could be used as an input for assessing the rates by adding yearly escalation, if considered necessary. The rate of escalation may differ from case to case depending on the type of goods being procured. This escalation factor should be carefully worked out on the basis of data of past purchases of the same/similar items or as per the Pricing Policy Agreements, if any. The escalation factor should be worked out by Procuring Agencies of the Services after mutual consultation so that different escalation factors are not applied by different Procuring Agencies for the same/ similar items and in respect of the same source or should be worked out as per pricing policy where such pricing IGA is in place.
- (b) LPP should pertain to a past successfully executed order of similar magnitude and scope of supply.

- (c) Factors like basket price and bulk discount offered need to be taken in to account while using LPP as a scale for comparing prices.
- (d) Price variation clause, if any, and the final cost paid by the user in respect of last purchase to which LPP pertains needs to be considered.
- (e) Factors like items supplied against LPP being of current production or ex-stock supply need to be taken into account.
- (f) Market conditions and other factors like re-starting production lines due to obsolescence may also have to be considered.
- (g) Where no other option to assess reasonable rate is feasible, LPP of more than three year vintage may also be taken into account.

#### 5.30.4 **Adoption of Discounted Cash Flow Technique (DCF)**

- (a) **Discounted Cash Flow:** The Discounted Cash Flow is defined as “the method of evaluation by which cash flow of the future are discounted to current levels by the application of a discount rate with a view to reducing all cash flow to common denomination and make comparison”. DCF is also defined as “a method of investment appraisal under which today’s cash outflows are compared with today’s cash inflows”
- (b) **Net Present Value Analysis:** The DCF procedure is to reduce both cash in-flows and out-flows into Net Present Values (NPV through a more scientific and reliable method. The use of NPV analysis is based on the concept of time value of money. Money has a time value because of the opportunity to earn interest or the cost of paying interest on borrowed capital. This means that a sum to be paid today is worth more than a sum to be paid in a future time. The cash out-flows/in-flows and the average cost of capital i.e., cost of borrowing becomes an important constituent in evaluation process. The following formula is to be used for calculating NPV of a bid:<sup>[DRDO PM 8.10.1]</sup>

$$NPV = \sum \frac{A_n}{(1+i)^t}$$

Where:

NPV = Net Present Value

A<sub>n</sub> = Expected cash flow for the period mentioned by the subscript

i = Rate of interest or discounting factor

t = The period after which payment is done

n = Payment Schedule as per the payment terms and conditions

When comparing among the various bids for the contract, the bid with the lowest NPV should be declared as L1.

- i. **Steps involved in NPV:** The application of NPV analysis in defence procurement would involve the following five steps:
  - Step 1: Selection of the discount rate
  - Step 2: Identifying the cash out flows to be considered in the analysis
  - Step 3: Establishing the timing of the cash outflow
  - Step 4: calculating the NPV of each alternative
  - Step 5: Selecting the offer with the least NPV
- ii. **Discounting Rate:** Discounting rate to be used under the method is to be the lending rate of the State Bank of India on the date of opening of price bids.<sup>[DRDO PM 8.10.4]</sup>
- iii. **Models for structuring cash flows:** Following are the suitable models for structuring cash flows for tenders/bids:
  - (a) **Structuring cash flows for tenders/bids received in the same currency**

- (i) The first step would be to exclude the unknown variables like escalation factors etc. while determining the cash flows.
- (ii) Thereafter the cash out flow expected as per the contract schedule from different tenders should be taken into consideration and where the cash out flows are not available from the tender documents, the same should be obtained from the vendors.
- (iii) Once the out flows of different tenders become available, NPV of different tenders is to be calculated using the formula given above and the one with the lowest NPV is to be selected.

**(b) Structuring cash flows for tenders/bids received in different currencies**

- (i) Where bids are received in different currencies/combination of currencies, the cash out flow may be brought to a common denomination in rupees by adopting a base exchange rate as on the day of opening of price bid. Thereafter, the procedure as described above in the case of tender bids received in the same currency should be applied to arrive at NPV. Conversion of foreign currency bid into rupees is to be done by taking into account the BC selling rate of the Parliament Street Branch of State Bank of India, New Delhi on the date of the opening of the Price bid.
- (ii) Any standard software, pre-loaded as part of a personal computer could be used for NPV analysis.

**iv. When is the DCF to be used?:** The alternative with the smallest payment of net present value in the procurement is the obvious choice. The DCF may be made use of to facilitate determination of L1 in following procurement situations:

- (a) To compare different payment terms of the vendors to a common denomination for determining L1 status.
- (b) To deal with the cases where entering into AMC over a period of **more than 1 year**<sup>DRDO PM 8.10.6(b)]</sup> is part of the contract for evaluating for L1 status. Determination of L1 by merely adding arithmetic values spread over a long period of time would be an incorrect procedure for determining L1 and the correct procedure would be to reduce cash out flows into present values through the DCF technique, for which the discounting rate to be adopted should form part of the RFP.

**5.31 Analysis of offers from Foreign Suppliers**

5.31.1 **Analysis of offers:** Apart from the parameters enumerated earlier in this Chapter regarding analysis, cost break up and price indices wherever feasible, efforts should be made to analyse:

- (a) The price fixation procedure/methodology prevailing in the country of the vendor.
- (b) The prices of similar products, systems and subsystems wherever available should be referred. The database maintained in the respective division connected with the procurement of such type of stores should be accessed.

5.31.2 The foreign vendor may be asked to provide the details of past supplies and contract rates, if any, of similar kind of product to other buyers. DRDO and Production Agencies should be involved in assessing the reasonability of prices in such cases of high value.

**5.32 Data Base to be maintained**

5.32.1 **Data Base on Cost & Prices:** Each service HQrs, should ideally have a costing expert who would advise on reasonableness of price, escalation clauses, cost verification where prices are fixed subject to a ceiling price. Service HQrs, OFB and DRDO should maintain data base on past contracts showing details of items procured, their essential spec(s), unit rate, quantity, total value, mode of TE, number of tenders received, number of tenders considered acceptable, reasons for exclusion of overlooked tenders, un-negotiated rates of L1 and contract rates in order to help in ascertaining reasonability of prices of future procurements.

5.32.2 **Price Indices:** For price indices, internet should be accessed by officers dealing with purchases/associated with CNC from important sites. In regard to price indices of indigenous items, website of Ministry of Industry **www.eaindustry.nic.in** should be accessed for the latest indices/trends. For metals and other minerals access **www.mmr.online.com** for updates. The other

useful sites are [www.tradintelligence.com](http://www.tradintelligence.com) and [www.cmie.com](http://www.cmie.com). The monthly report of CMIE (Centre for Monitoring Indian Economy). PROWESS Package of CMIE giving updates on performance of listed Indian companies, RBI monthly bulletin, Economic survey and its Appendix containing statistical tables are excellent reference material for market trends. The World Economic Outlook – a monthly report from IMF, gives inputs on price trends of different countries. LME (London Metal Exchange) gives price trends of nonferrous details, which often show volatile trends. Indices of electronic items often show lower trends. Instructions issued by Ministry of Finance on its website [www.finmin.nic.in](http://www.finmin.nic.in) should be assessed as also CVC's site [www.cvc.nic.in](http://www.cvc.nic.in). Important publications like RBI Monthly Bulletin, CMIE'S monthly report, business/commercial newspapers, MMR etc should be subscribed to.

- 5.32.3 **Expert Agencies:** Expert agencies may be approached for market intelligence forecasting trends and best practices. Public Sector Banks, particularly SBI, may be consulted before firming up major payments involving LC, Performance Bank Guarantee, reputation of foreign banks etc.
- 5.32.4 **General Analysis of Financial/Cost Ratios:** In assessing the reasonableness, general analysis of Financial/Cost ratios from published accounts and evaluation of Commercial/Technical information of the Vendor/Bidder may be undertaken. The allocation of overheads should be as per established principles of costing. Assessment should be made on the vendor's approach to controlling cost, adherence to delivery schedule, Cost Accounting System and other factors affecting contractor's ability to meet cost/schedule targets.
- 5.32.5 **Data Sharing:** The Service Headquarters must put in place a system for data sharing and data networking, both within the Service and among the Services in order to widen the procurement sources and obviate different prices being paid for the same item by different Procuring Agencies within a Service or Procuring Agencies of different Services.
- 5.32.6 **Transparency in assessment process:** Assessing of reasonableness of price is an arduous task, especially where price data is not available or in case of overseas purchases. In such cases, it is important to place on record efforts made for arriving at the acceptable price and taking the procurement decision.

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## CHAPTER 6

### CONTRACT & CONDITIONS OD CONTRACTS

#### 6.1 Law

**6.1.1 Elementary Law:** The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are contained in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. The law relating to redressal of disputes is laid down in the Arbitration and Conciliation Act, 1996. Some of the salient principles relating to contracts are set out briefly in this chapter.

**6.1.2 Applicability to Defence Procurement:** Government contracts, including those for defence procurement, are governed by the same laws which are applicable to contracts between private parties.

#### 6.2 Elementary Legal Terms and Practices

**6.2.1 Contract:** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement, if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract

**6.2.2 Proposal or Offer:** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

**6.2.3 Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

**6.2.4 Agreements that are Contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable.

- (a) Competency of the parties
- (b) Freedom of consent of both parties
- (c) Lawfulness of consideration
- (d) Lawfulness of object

**6.2.5** All contracts and agreements executed, and licenses and permits, notices and forms of tender issued by or on behalf of the Central Government should be issued bilingually, in Hindi and English in terms of Article 3(3) of the Official Language Act, 1963.

#### 6.3 Competency of Parties

**6.3.1 Who Can Enter Into Contract?:** Under law any person who has attained majority, is of sound mind and not disqualified or debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

**6.3.2 Categories of Parties to the Contract:** Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads: -

- (a) Individuals
- (b) Partnerships
- (c) Limited Companies
- (d) Corporations other than limited companies

**6.3.3 Contracts with Individuals:** Individuals tender either in their own name or in the name of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted upon. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.



- 6.3.4 Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.
- 6.3.5 Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person, which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.
- 6.3.6 Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Cooperative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one of such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said associations.
- 6.3.7 Parties to Defence Contracts:** The parties to defence contracts are the President of India as the purchaser acting through the authority signing the Contract/Agreement/Purchase Order etc., and the supplier named in the contract.

#### **6.4 Consent of both the Parties**

- 6.4.1 Consent of Both Parties:** Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with an agreement may occur in the following cases: -
- (a) When the misunderstanding relates to the identity of the other party to the agreement;
  - (b) When it relates to the nature or terms of the transactions;
  - (c) When it relates to the subject matter of the agreement.
- 6.4.2 Free Consent of the Parties:** The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true.
- 6.4.3 Consent Given Under Mistake:** In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.
- 6.4.4 Mistake of Fact and Law:** Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

#### **6.5 Consideration**

**6.5.1 What is Consideration?** Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise, which in contemplation of law has no value, is no consideration and likewise an act or a promise, which is illegal or impossible, has no value.

## **6.6 Lawfulness of Object**

**6.6.1 Lawfulness of Object:** The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

## **6.7 Communication of an Offer/Proposal and Acceptance**

**6.7.1 Communication of an Offer or Proposal:** The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

**6.7.2 Communication of Acceptance:** A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

**6.7.3 When is communication of Acceptance Complete?** The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

**6.7.4 Acceptance to be Identical with Proposal:** If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof. If the subject matter of the contract is impossible of fulfillment or is in itself in violation of law such contract is void.

## **6.8 Withdrawal of an Offer/Proposal and Acceptance**

**6.8.1 Withdrawal of an Offer or Proposal:** A tenderer firm, which is the proposer, may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer. Such withdrawal, revision or modification must reach the accepting authority before the date and time of opening of tender. No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

**6.8.2 Withdrawal of Acceptance:** An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

## **6.9 Signing, Acceptance and Stamping of the Defence Contracts**

**6.9.1 Who can Sign the Defence Contracts?** All defence contracts are in the name and on behalf of the President of India. However, the contract, after due approval of the CFA, may be signed by a staff officer, duly authorized by the CFA in writing. The specimen signature of such staff officer is to be sent to all concerned, including the paying and inspecting authorities. As for the contractor, the person signing the contract is deemed to have been authorized by the supplier.

**6.9.2 Acceptance of the Defence Contracts:** Any contract, when not signed by both parties, namely the purchaser and the supplier, is deemed to come into force with the acceptance of the tender as per mutually agreed terms and conditions contained in the RFP and the firm's offer. However, in the case of supply orders, the firm should check the supply order and convey acceptance of the same within seven days of receipt of the supply order. If such an acceptance or communication conveying their objection to certain parts of the contract is not received within the stipulated period, the supply order is deemed to have been fully accepted by the firm. In case of foreign contract, normally both parties sign the document thus conveying their acceptance of the contract.

**6.9.3 Stamping of Defence Contracts:** Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty.

## **6.10 Types of Contract and General Principles for Contracting**

**6.10.1 Types of Contracts:** Government contracts can be of many types depending on the nature of the item being procured, work to be executed, services required to be rendered and support to be provided. The provisions contained in this Manual are not applicable to the contracts for works and projects. These will apply to all other types of revenue contracts. The general types of contract could be as follows:

- (a) Contract/Purchase order for items of stores, spares or equipment.
- (b) Rate Contract.
- (c) Price Agreement.
- (d) Service Contract.
- (e) Annual Maintenance Contract (AMC)/ Comprehensive Maintenance
- (f) Consultancy Contract.
- (g) Development Contract.
- (h) Works Contract/Project.

**6.10.2 General Principles of Contracting:** The following principles are laid down for the guidance of the authorities who have to enter into contracts or agreements involving expenditure from public funds:

- (a) The terms of contract must be precise and definite and there must be no room for ambiguity or misconstruction therein.
- (b) Standard forms of contracts should be adopted, wherever possible, and the terms of the contract should be subjected to close prior scrutiny. The alternatives used in the standard forms, which are not applicable, should be invariably scored out.
- (c) As far as possible and where mandated, particularly if standard format of contract is not to be adopted, legal and financial advice should be taken in drafting of contracts and before they are finally entered into.
- (d) The terms of a contract, including the scope and specification once entered into, should not be materially varied. Wherever material variation in any of the terms or conditions in a contract becomes unavoidable, the financial and other effects involved should be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments obtained, before varying the conditions. All such changes should be in the form of an amendment to the contract duly signed by all parties to the contract.
- (e) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent financial authority.

- (f) Whenever practicable and advantageous, contracts should be placed only after tenders have been openly invited.
- (g) In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.
- (h) Even in those rare cases where a formal written contract is not made, no order for supplies, etc., should be placed without at least a written agreement as to the price.
- (i) Adequate provision must be made in the contracts for safeguarding Government property entrusted to the service provider.
- (j) No work of any kind should be commenced without proper execution of an agreement/contract.
- (k) Contract document, where necessary, should be executed within 21 days of the issue of letter of acceptance. Non-fulfilment of this condition of executing a contract by the Contractor or Supplier would constitute sufficient ground for annulment of the award and forfeiture of Earnest Money Deposit.
- (l) Cost plus contracts should ordinarily be avoided. Where such contracts become unavoidable, full justification should be recorded before entering into the contract. Where supplies or special work covered by such cost plus contracts have to continue over a long duration, efforts should be made to convert future contracts on a firm price basis after allowing a reasonable period to the suppliers/contractors to stabilize their production/execution methods and processes.
- (m) Lump sum contracts should not be entered into except in cases of absolute necessity. Where lump sum contracts become unavoidable, full justification should be recorded. The contracting authority should ensure that conditions in the lump sum contract adequately safeguard and protect the interests of the Government.
- (n) Departmental issue of materials should be avoided as far as possible. Where it is decided to supply materials departmentally, a schedule of quantities with the issue rates of such material are required to execute the contract work should form an essential part of the contract.
- (o) In contracts where government property is entrusted to a contractor either for use on payment of hire charges or for doing further work on such property, specific provision for safeguarding government property (including insurance cover) and for recovery of hire charges regularly, should be included in the contracts. <sup>[GFR 225]</sup>

**6.10.3 Placement of Supply Order/Signing of Contract:** The decision to issue a supply order or sign a formal contract will be taken on the basis of the following broad guidelines: -

- (a) Purchase/supply orders containing basic terms and conditions may be issued in the case of purchases upto Rs **two lakhs fifty thousand**. <sup>[Local Procurement Committee Limit- GFR 155]</sup>
- (b) Purchase/Supply orders may generally be placed for purchases valuing between Rs **two lakhs fifty thousand** to Rs ten lakhs in single bid cases, local purchase of commercially off the shelf items, items with standard specifications, etc.
- (c) In case of orders for purchases valued between Rs **two lakhs fifty thousand** to Rs ten lakhs, issue of the purchase order and the letter of acceptance thereof, will result in a binding contract where the tender documents include the General Conditions of Contract, Special Conditions of Contract and detailed scope of work.
- (d) A contract document should generally be executed for purchases valuing above Rs ten lakhs.
- (e) However Purchase/Supply orders should be placed in all cases when the purchase is made against Rate Contracts/Price Agreements centrally concluded by the Central Procurement Authorities/Departmental authorities who are empowered to do so.
- (f) A Contract document should invariably be executed in respect of all turnkey projects or agreements for maintenance of equipment and provision of services.

## 6.11 Changes in the Terms Of/Amendment to a Concluded Contract

- 6.11.1 Changes in the Terms of a Concluded Contract:** No variation in the terms of a concluded contract should normally be made, unless the contract specifically provides for it, in which case this can be done with the specific written consent of the parties to the contract.
- 6.11.2 Amendment to a Concluded Contract:** Amendment to a contract already concluded may become essential in certain situations when either party to the contract requests for an amendment and the proposed amendment is acceptable to other party to the contract.
- 6.11.3 Enhancement in Rates:** No enhancement in rates/prices should be made unless the contract specifically provides for it. Such situations may arise in those cases where the contract provides for price variation clauses or the change is due to variation in GST/Custom Duties/other Government taxes & levies and the contract provides for payment of these duties on the basis of actual rates, provided the supplies are made during the original delivery period. Consultation with Integrated Finance in such cases would be required if the original contract was concluded with the concurrence of Integrated Finance or, after increase in value, the contract falls within the delegated powers of the CFA, exercisable with the concurrence of Integrated Finance.
- 6.11.4 Vetting of Price Variation Clause:** Financial Advisor should be consulted for vetting of price variation clauses/exchange rate variation clauses.
- 6.11.5 Imposition of LD While Granting Extensions:** While granting extensions of delivery period on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery and it must be decided while granting extension whether it would be with or without imposition of Liquidated Damages.
- 6.11.6 Liability on Account of Taxes etc in the Event of Grant of Extension of Delivery Period:** While granting extension of delivery period, any increase in the taxes and levies would not be payable, unless the contract specifically provides for it or it is expressly agreed to with the concurrence of the Integrated Finance, duly recording the reasons and justification thereof.
- 6.11.7 Consultation with IFA :** All amendments to contracts, which have financial implications, including short closing and delivery period extensions (with or without LD) should be approved by the CFA in consultation with the IFA, where the original contract was concluded with the concurrence of integrated finance.
- 6.11.8 Amendments of Minor and Non-financial Nature:** Amendments of minor nature concerning Drawing No., Part Nos., etc., which do not have financial implication, may be approved by an authority one step below the contract approving authority, if such authority is specifically authorized by the CFA.

## **6.12 Termination of Contract**

- 6.12.1 Termination of a Concluded Contract:** A contract may be terminated in the following circumstances:
- (a) When the supplier fails to honour any part of the contract including failure to deliver the contracted stores/render services in time.
  - (b) When the contractor is found to have made any false or fraudulent declaration or statement to get the contract or he is found to be indulging in unethical or unfair trade practices.
  - (c) When both parties mutually agree to terminate the contract.
  - (d) When the item offered by the supplier repeatedly fails in the inspection and/or the supplier is not in a position to either rectify the defects or offer items conforming to the contracted quality standards.
  - (e) Any special circumstances, which must be recorded to justify the cancellation or termination of a contract.

## **6.13 Contract Effective Date**

- 6.13.1 Contract Effective Date:** The contract effective date is normally the date on which the contract is signed by both the parties unless otherwise mutually agreed to and clearly indicated in the contract as per agreed terms and conditions.

## CONDITIONS OF CONTRACT

### **6.14 Conditions of Contract**

**6.14.1 Conditions of Contract:** A contract is a legal document and must be governed by certain terms and conditions to protect the interest of both the parties to the contract. It is important that every purchase officer is not only thoroughly familiar with each condition of a contract, but that he is also able to take appropriate and timely action to safeguard the rights and honour of the Purchaser. It is also desirable that the conditions of a contract are practical, fair and just for both the Purchaser and the Supplier. The conditions of contract become binding for both parties on signing/acceptance of the mutually agreed contract.

**6.14.2 Standard Conditions of Contract (SCoC):** In order to facilitate clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms at the time of registration itself. It is desirable that the SCoC are publicized on the Defence website also. The Request for Proposal should contain standard as well as special conditions that the bidders would be required to abide by. The contract must also include the standard as well as special conditions specific to a particular case, as mentioned in the RFP. The standard and special conditions of contract are included in the format of the RFP as well as the supply order and contract.

**6.14.3 Applicability of SCoC to Supply Orders:** The Standard and Special Conditions of Contract are applicable to Supply Orders. Acceptance of Supply Order by the Firms/PSUs is essential to make the same as a legally valid document.

**6.14.4 Special Conditions of Contract:** Special conditions of contract are supplementary conditions applicable to a specific tender and contract. Such conditions become essential particularly in cases of contract for supply of services or even equipment. **Special conditions of contract can be included on case-to-case basis.** In addition, there may be a need to stipulate conditions like stage inspection, acceptance trials, installation, setting to work, and commissioning or pre-defined stages of payment for services. Such conditions should be decided while processing the proposal for CFA's approval and mentioned in the Request for Proposal as well as the contract/supply order.

### **6.15 Applicability of Conditions of Contract**

**6.15.1 Applicability of all terms and conditions:** The formats of the RFP and the contract agreement contain all the standard and special conditions of contract. The clauses given in the Standard Terms and Conditions and Special Terms and Conditions of RFP, as applicable in a particular contract, may be included in the RFP and subsequently in the Contract. Generally all applicable clauses will be included. Standard Conditions of Contract in the RFP/Contract, to the extent considered feasible in a specific case/type of procurement, while there will be a greater flexibility in selection of the Special Conditions of Contract. CFAs would be competent to take a decision in this regard in consultation with Integrated Finance, wherever such consultation is required for sanctioning the proposal. Legal opinion may be sought, if considered necessary, before making any such alteration.

**6.15.2 Amplification of the terms and conditions:** The terms and conditions included in the specimen format of the RFP and the contract are self-explanatory. However, some of the salient terms and conditions are also explained in the succeeding paragraphs for better understanding.

### **6.16 Effective Date of Contract**

**6.16.1 Effective Date:** The effective date of commencement of contract should be invariably indicated in each contract as per agreed terms and conditions. Normally the date of signing of the contract is the effective date, except when specifically provided otherwise in the contract. Where specifically agreed to by the parties to the contract, effective date may be the date on which any or the last of the following conditions, as applicable, is complied with:

- (a) Furnishing of the Performance Bond in the form of PBG by the Seller.
- (b) Obtaining of the Export License for supply of stores by the Seller and a confirmation in writing sent to the Buyer within specified days of signing of the contract.
- (c) Receipt of Bank Guarantee for advance payment.
- (d) Date of Issue of the End User Certificate. (The purchaser should normally provide the End User Certificate within 30 days of the signing of the contract.)

## **6.17 Payment of Advance:**

- 6.17.1 Advance Payment to Suppliers:** Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:
- (a) Advance payments are demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.
  - (b) Advance payments demanded by firms against fabrication contracts, turnkey contracts, etc.
- 6.17.2 Quantum of Advance:** Advance payment should not exceed **fifteen (15%)** percent of the contract value or the amount payable for six months in case of maintenance contracts.
- 6.17.3 Relaxation of the Prescribed Ceilings:** The ceilings mentioned above may be relaxed only with the approval of the Secretary of the concerned Department of the Ministry of Defence and Secretary (Defence Finance)/FA (DS).
- 6.17.4 Stage/Part Payments:** If stage/part payments are proposed to be made on achievement of milestones, it should be clearly mentioned upfront in the RFP with the approval of CFA and the concurrence of the IFA, wherever required as per the delegation of financial powers.
- 6.17.5 Securing the Advance:** While making any advance payment, adequate safeguards in the form of bank guarantee, etc., should be obtained from the firm.

## **6.18 Price Variation Clause/Price Adjustment Clause**

- 6.18.1** Normally a contract should be entered into on a fixed price basis. Nevertheless, in the fluctuating market conditions it may sometimes become necessary in the case of long term contracts to consider variable price quotes given by the suppliers. The following guidelines will be followed in cases where a price variation provision is sought to be included in the contract:
- (a) Price Variation Clause can be provided only in long-term contracts, where the delivery period extends beyond 18 months. In short-term contracts, firm and fixed prices should be provided for. (Where a price variation clause is provided, the price agreed upon should specify the base level viz., the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year.)
  - (b) A formula for calculation of the price variations that have taken place between the Base level and the Scheduled Delivery Date should be included in this clause. The variations are calculated by using indices published by Governments or Chambers of Commerce periodically.
  - (c) The Price Variation Clause should also specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates.
  - (d) The Price Variation Clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both. The buyer should ensure a provision in the contract for benefit of any reduction in the price in terms of the Price Variation Clause being passed on to him.
  - (e) The clause should also stipulate a minimum percentage of variation of the contract price above which price variations will be admissible (e.g. where resultant increase is lower than two per cent no price adjustment will be made in favour of the supplier).
  - (f) Where advance or stage payments are made, there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment.
  - (g) Where deliveries are accepted beyond the scheduled Delivery Date subject to levy of liquidated damages as provided in the Contract, the liquidated damages (if a percentage of the price) will be applicable on the price as varied by the operation of the Price Variation Clause.
  - (h) No price variation will be admissible beyond the original Scheduled Delivery Date for defaults on the part of the supplier.
  - (i) Price variation may be allowed beyond the original Scheduled Delivery Date, by specific alteration of that date through an amendment to the contract in cases of Force Majeure or defaults by Government.

- (j) Where contracts are for supply of equipment, goods, etc., imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item. The mode of calculation of variations in duties and taxes and Foreign exchange rates and the documents to be produced in support of claims for such variations should also be stipulated in the Contract.
- (k) The clause should also contain the mode and terms of payment of the price variation admissible.

## **6.19 Exchange Rate Variation (ERV)**

**6.19.1 ERV Clause:** This clause is only to be included in the contracts concluded with Defence PSUs, in case the delivery period exceeds one year from the date of contract which involves import content (foreign exchange). The offer should indicate the import content. In case DP is re-fixed/extended, ERV will not be admissible, if this is due to default of the supplier. Base exchange rate of each major currency used for calculating FE content of the contract is to be indicated. The base date for ERV to be admissible would be the contract date and variation on the base date can be given upto the midpoint of manufacture unless the firm has already indicated the time schedule within which materials will be exported by the firm. Other conditions as above for price adjustment would be applicable.

**6.19.2 Documentation for Claiming ERV:** The following documents would need to be submitted in support of the claim on account of ERV:

- (a) A bill of ERV claim enclosing worksheet.
- (b) Banker's Certificate / debit advice detailing FE paid & Exchange rate.
- (c) Copies of import orders placed on the suppliers.
- (d) Invoice of supplier for the relevant import orders.

## **6.20 Performance Security Deposit**

**6.20.1 Performance Security:** Performance security is payable by the supplier at the rate of **5%-10%** of the contract value and is to be taken from every successful bidder irrespective of the registration status of the firm. **The amount of PBG should be clearly mentioned in the contract.** In the AMC/ Services contracts the amount of PBG held with the buyer may be reduced proportionately after satisfactory completion of service each year. Performance Security deposit payable to the Purchaser is furnished by the Supplier in the form of a Performance Bank Guarantee (PBG) issued by **Scheduled Commercial bank in India. It may also be taken in the form of Fixed Deposit Receipt (FDR) from a Scheduled Commercial bank or online payment in an acceptable form safeguarding the purchaser's interest in all respects.** <sup>[GFR 171 (i)]</sup> **However, Demand Draft/Banker's cheque etc. which have a short validity period of 3 months, should not be accepted.** The performance security deposit is meant to compensate the Purchaser for any loss suffered due to failure of the supplier to complete his obligations as per the contract. The PBG/WBG will remain valid throughout the duration of the contract upto completion of supplies and continue thereafter as Warranty Bank Guarantee upto sixty days beyond the date of completion of all contractual obligations including warranty. This obviates the need to obtain a fresh Warranty Bank Guarantee from the supplier on commencement of the warranty period, with corresponding return of the Performance Guarantee. In case the execution of the contract is delayed beyond the contracted period and the purchaser grants extension of delivery period, with or without LD, the supplier must get the BG/FDR revalidated, if not already valid.

**6.20.2 Bank guarantees submitted by the tenderers/suppliers as Performance securities need to be immediately verified from the issuing bank before acceptance.** <sup>[MoF Goods Manual 6.1.4]</sup>

**6.20.3** PBG may not be taken in case of small value purchases upto Rs five lakhs, particularly for off the shelf/common user items or branded commercial products which are to be accepted on the manufacturer's guarantee. In the case of Defence PSUs/OFs, an Indemnity bond may be accepted in lieu of PBG, as per current practice. As regards non-Defence PSUs/ other Govt undertakings a decision may be taken on case to case basis.

## **6.21 Payment**



### 6.21.1 Payment Terms:

- (i) Payment terms are of great importance both for the purchaser and the supplier as the cost of finance plays a very important role in deciding the cost of an item or service being contracted for. Normally, 95% of the contract amount is released against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 5% is released after the stores have been properly checked and accounted for. Some suppliers prefer 100% payment after delivery and accounting, which may be accepted. In many cases, suppliers request for allowing part supply and corresponding part payment. Such requests can also be considered by the CFA for acceptance on merit of individual cases.
- (ii) In case of consultancy/services, payment is based on a schedule agreed to in contract, often based on certain milestones or outputs. The terms and condition of such payment are set out in the contract wherein the amount of advance payment, if any, is specified, as are the timings of the payment and the amount of advance payment security to be provided by the consultancy firm. The advance payment is set off by the procuring entity in equal instalments against monthly billing statements until it has been fully set off. [MoF Consultancy Manual 8.12]

**6.21.2 Paying Authority:** The specific office of the Principal Controller/ Controller or the Unit Accounts Office, which would be responsible for making payment, should be clearly mentioned in the RFP and the contract.

**6.21.3 E-payments:** It will be mandatory for the suppliers/vendors to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/NEFT/RTGS mechanism instead of payment through cheques. A copy of the model mandate form prescribed by RBI to be submitted by suppliers/vendor for receiving payments through ECS. The details given in the mandate form should also be incorporated in the supply order/contract.

**6.21.4 Documents to be Submitted for Claiming Payment:** The documents to be submitted for audit and payment depend upon the nature of procurement and the terms and conditions of a particular supply order/contract. However, essential documents that are required for audit and payment are as follows:

**(a) Documents to be Submitted to the Audit Authority Along With Advance Copy of the Supply Order/Contract:**

- (i) Ink signed/ digitally signed copy of the Supply Order/Contract Agreement/ Accepted Tender (AT) Note
- (ii) An ink-signed/ digitally signed copy of sanction of the CFA indicating UO Number and date of IFA's concurrence, where applicable
- (iii) A copy of the techno-commercial evaluation and rejection details, if any, in case of two bid system
- (iv) A copy of the Comparative Statement of Tenders (CST) with price bids
- (v) A copy of TPC/PNC proceedings, if held
- (vi) PAC certificate/OEM's Certificate/ any other certificate that may be peculiar to the procurement
- (vii) Specimen signatures of sanctioning and countersigning authorities (in case of ink signed documents).
- (viii) GST/Service Tax Registration No./PAN No.

**Note:**

1. The budget allotment letter(s) conveying allocation of funds under the concerned code-heads of expenditure are required to be sent as and when the allocations are made.
2. In case documents listed above are not sent in advance to the audit authority, they may be called for by such authority at the time of payment of bills/post audit, where applicable.

**(b) Documents to be submitted to Paying Authority for payment along with the Bill**

- (i) An ink-singed copy of the Contingent Bill/Seller's Bill
- (ii) An ink-signed copy of the Commercial Invoice

- (iii) A copy of the Supply Order with UO No. and date of IFA's concurrence, where required under delegation of financial powers.
- (iv) CRVs in duplicate
- (v) Inspection note
- (vi) Relevant documents/proof of payment in support of the claim for statutory and other levies, such as GST challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF / ESIC contribution with nominal roll of beneficiaries, etc., as Applicable
- (vii) Exemption certificate for GST/Customs duty, if applicable
- (viii) Bank Guarantee for advance, if any
- (ix) Guarantee/Warranty Certificate
- (x) Performance Bank Guarantee/indemnity bond, where applicable
- (xi) DP extension letter with CFA's sanction, UO No. and date of IFA's concurrence, where required, indicating whether extension is with or without LD
- (xii) Details for electronic payment, if these details are not incorporated in the Supply Order/Contract or in case there is a change in these details
- (xiii) User acceptance
- (xiv) Any other document/certificate that may be provided for in the supply order/contract

[Note: Depending upon the peculiarities of the procurement being undertaken, documents may be selected from the list given above and specified in the RFP and supply order/contract.]

## 6.22 Delivery

**6.22.1 Delivery:** Timely delivery as per the delivery period (DP) stipulation in the Contract/Purchase Order is one of the most important procurement objectives as timely availability of items is vital, particularly for the department of defence. **The delivery period should be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract. The delivery period stipulated in contracts should be specific and practical. Vague and ambiguous terms should be avoided while framing the delivery period as these will not be legally binding.** [MoF Goods Manual 9.7.1]

The stores are considered to have been delivered only when these are handed over to the consignee after due inspection by the designated inspecting agency. Most contracts stipulate door delivery at the consignee's end by road. In some cases, the stores are also dispatched by rail, in which case the delivery is deemed to have been made on receipt of RR and inspection note. In certain cases where the contractor offers stores for inspection during the last few days of contract DP or on the last day of the contract DP, the inspector can inspect the store and sentence it as per standard franking clause.

[As per the standard franking clause, the fact that the stores have been inspected after the delivery period and accepted by the inspectorate does not bind the purchaser to accept delivery, unless at his discretion, he agrees, to accept delivery thereof. The stores are accepted without prejudice to the right of the Purchaser.]

**6.22.2 Correctness of the Quality and Quantity:** On receipt at the consignee's premises, the stores are checked for ascertaining the correctness of quantity, quality and documents. In case the stores are found deficient in any way, the consignee has the right to reject the stores even if these were inspected and cleared by the inspector.

**6.22.3 Failure to deliver within the DP:** When the supplies do not materialize by the stipulated contract delivery date, the purchaser has the option of:

- (a) **Issuing a performance notice.** [MoF Goods Manual 9.7.6]
- (b) Extending the delivery date with imposition of LD and denial clause, which implies denial of increase in price, taxes, duties, etc. taking place during the extended period.
- (c) Re-fixing the delivery date.
- (d) Canceling the contract and repurchasing the non-supplied quantity.
- (e) Initiation of punitive action as per the terms and conditions of the contract.

**6.22.4 Deciding the Course of Action in the Event of Failure of Supply:** For deciding on these options the Procuring Authority has to balance the time factor required for making repurchase and whether the supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative sources and in the latter case whether the indenter can reasonably wait to take advantage of lower trend in prices. Extension shall be granted only where the CFA is convinced that supplier would come forward during extended DP.

**6.22.5 Maximum Period of Extension:** The maximum period of extension of delivery that can be granted by the CFA under delegated powers should be such that the total period - the original delivery period plus the extension – does not exceed twice the original delivery period. Extensions beyond this period would require the sanction of the next higher Service/Administrative authority/CFA in the chain of Command.

**6.22.6 Re-fixation of Delivery Period-** The delivery period can be re-fixed only in the circumstances mentioned below-

- (a) Where manufacture is dependent on approval of advance samples and delay occurs in approving the samples even though submitted in time.
- (b) Extension is granted due to omission on the part of the purchaser to enforce delivery date within the stipulated time.
- (c) Where the entire production is controlled by the Government.

**6.23 Liquidated Damages (LD)**

**6.23.1 Liquidated damages:** Compensation of loss on account of late delivery where loss is pre-estimated and mutually agreed to is termed as the Liquidated Damage (LD). Law allows recovery of pre-estimated loss, provided such a term is included in the contract. For imposition of LD, there is no need to establish actual loss due to late supply. The legal position with regard to claim for liquidated damages is as follows:

- (a) Whatever the quantum of the loss sustained, the claim cannot exceed the sum stipulated in the contract.
- (b) Only reasonable sum can be calculated as damages, which in given situation may be less than the sum stipulated.
- (c) What is a reasonable sum would depend on facts.
- (d) Court may proceed on the assumption that the sum stipulated reflects the genuine pre-estimates of the parties as to the probable loss and such clause is intended to dispense with proof thereof.
- (e) The distinction between penalty and LD has been abolished by the Indian Contract Act and in every case, the Court is not bound to award more than ‘reasonable compensation’ not exceeding the amount so named.

**6.23.2 Quantum of LD:** Liquidated Damages (LD)<sup>45</sup>. In the event of the SELLER’s failure to submit the Bonds, Guarantees and Documents, supply the stores/ goods, perform services, conduct trials, installation of equipment, training and MET as per schedule specified in this contract, the BUYER may, at his discretion withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 1/100 of the delay percentage {Delay percentage = (Period of Delay in Delivery in Weeks) x 100 / (Delivery Period in weeks as per contract)} of the contract price of the delayed/ undelivered stores/ services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the contract price of the value of delayed stores/ services (Any extension given by the buyer for delay attributable to buyer or Force Majure Clause to be factored in delivery period)<sup>[Para 6 of Appendix L to Schedule I of Chapter II of DPP]</sup>

**6.23.3 Guidelines for levying of LD:** The following guidelines would be followed while taking decision for imposition of LD:

Sr No.	Circumstances	Quantum of LD
1	Delay in supplies resulted in actual/ demonstrable monetary loss and the	Full LD as per the provisions of paragraph 7.10.2, subject to the LD not exceeding 10% of the total value of goods/services

	Supplier was responsible for the delay	delayed beyond the original date of delivery/completion of supplies/service as indicated in the contract/supply order.
2	Delay in supplies resulted in actual/demonstrable monetary loss but the Supplier was responsible only for a part of the delay and the remaining part was beyond Supplier's control	Full LD for the period for which the Supplier was responsible for the delay, subject to the LD not exceeding 10% of the total value of goods/services delayed beyond the original date of delivery/completion of supplies/service as indicated in the contract/supply order.
3	Delay in supplies resulted in actual/demonstrable monetary loss but the entire delay was due to circumstances beyond the control of the Supplier	LD may be waived in full
4	Actual/demonstrable monetary loss cannot be certified and no inconvenience has been caused	LD may be waived in full

**6.23.4 LD in Consultancy Contracts:** An appropriate liquidated damages clause should be incorporated in all consultancy contracts to safeguard the interest of the organization. The Contract Monitoring Committee (CMC) shall be responsible for monitoring the progress of the Consultancy assignment and to levy appropriate liquidated damages as per the terms and conditions of the contract in case of delay/deficiencies. [MoF Consultancy Manual 8.2]

**6.23.5 LD in Outsourcing Contracts:** An appropriate liquidated damages clause should be incorporated in all outsourcing contracts to safeguard the interest of the organization. The service provider shall pay liquidated damages to the procuring entity at the rate per day stated in the contract for delays in performance. The total amount of LD shall not exceed the amount defined in the contract. [MoF Consultancy Manual 9.15.7]

**6.23.6 Waiver of LD:** Liquidated damages may be waived in full or part, as per the guidelines contained in the preceding paragraph, with the approval of the CFA and the concurrence of the IFA, wherever such concurrence is mandated as per delegation of financial powers. In all such cases, adequate reasons should invariably be recorded for waiving the Liquidated Damages.

**6.23.7 Consequential Damages:** Consequential damage is imposed over and above LD in case of time critical Turn-key Projects. Where considered necessary, it should be included in the RFP and the contract.

## **6.24 Warranty Clause**

**6.24.1 Warranty Clause:** A warranty clause should be incorporated in every contract, requiring the supplier to, without charge, repair or rectify defective goods or to replace such goods with similar goods free from defect. Any goods repaired or replaced by the supplier shall be delivered at the buyers premises without costs to the buyer. [GFR 225 (xvii)]

## **6.25 Arbitration**

**6.25.1 Arbitration:** If a dispute arises between the Purchaser and the Supplier and it does not get resolved through mutual discussions, the parties may agree for arbitration. MOD/CFAs should prepare a panel of arbitrators for selection by the Defence Secretary /CFA's who appoint an arbitrator, whose decisions taken after due consideration of factors brought out by both parties are considered final. The option of approaching Ministry of Law for appointment of Arbitrator can also be exercised. Services Headquarters have the power to appoint Arbitrators within their delegated financial powers. **The standard Arbitration clauses should be as per arbitration Act.**

**6.25.2 Appointment of Arbitrators through Court:** There may be situations when either party approaches a court of law for appointing an independent arbitrator. Purchase officers must consult the Legal Advisor (Defence) and Government counsel in all cases of arbitration.

## **6.26 Force Majeure**

**6.26.1 Force Majeure:** As per this clause, neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earthquake and other acts of God, as well as War, Military operations, blockade, Acts or Actions of State Authorities or any other circumstances beyond the control of the parties that might arise after the conclusion of the contract.

## **6.27 Option Clause and Repeat Order Clause**

**6.27.1 Repeat Order and Option Clauses:** Provision for repeat order and option clause should not be made as a matter of course in the RFPs as these clauses have an impact on price. Either or both these clauses may be provided in the RFP only in exceptional circumstances, where the consumption pattern is not predictable, with the stipulation that while exercising one or both these clauses the overall ceiling of fifty percent of the originally contracted quantity will not be exceeded. Repeat Order and/or Option Clause may be exercised more than once, provided altogether these orders do not exceed 50% of the original order quantity.

**6.27.2 Option Clause:** Under this clause, the Purchaser retains the right to place orders for additional quantity up to a maximum of 50% of the originally contracted quantity at the same rate and terms of the contract. Such an option is available during the original period of contract provided this clause had been incorporated in the original contract with the supplier. Option quantity during extended DP is to be limited to 50% of balance quantity after original Delivery Period. This clause may be exercised in case of procurement from single vendor/OEM also subject to there being no downward trend in prices. However, in multi vendor contracts, great care should be exercised before operating the option clause. The delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order. [MoF Goods Manual 9.3.1(v)]

**6.27.3 Conditions governing Option Clause:** Against an outstanding indent for which acceptance of necessity has been approved by CFA, it may be advantageous to the Purchaser to exercise the option clause in accordance with the terms and conditions of contract. The option clause may be exercised on approval of the CFA, within whose powers total value of original supplies plus value of the option clause falls, in consultation with IFA, where applicable as per the delegation of financial powers, during currency of the contract. It should be ensured that there is no downward trend in the market prices. No fruitful result will accrue by floating fresh RFP when items are urgently required. If the contract also contains the repeat order clause, it may be kept in mind while placing order under the option clause that the total quantity under the option clause and the repeat order cannot exceed fifty percent of the originally ordered quantity.

Caution should be exercised while invoking option clause in case a supplier has not supplied any items within the original delivery period. If it becomes necessary to do so in exceptional cases, due justification will be advanced by the sponsoring authority for necessity of placing further orders on such contractor. The consent/ confirmation of acceptance of option order quantity will be obtained from the vendor prior to processing of the order for approval of CFA in consultation with IFA, where required, as per delegated financial powers. [MoD Draft 7.14.3]

**6.27.4 Repeat Order:** Wherever considered necessary, provision may be made in the RFP and the contract for Repeat Order. A Repeat order against a previous order may be placed at the same cost and terms and conditions as per the original order/contract with the approval by the CFA and concurrence of integrated finance, wherever required as per the delegation of financial powers.

**6.27.5 Conditions Governing Repeat Order:** A Repeat Order may be placed subject to the following:

- (a) Items ordered against the previous order had been delivered successfully.
- (b) Original order should not have been placed to cover urgent/emergent demand.
- (c) Repeat Order is not placed to split the requirement to avoid obtaining the sanction of the next higher CFA.
- (d) The original order should have been placed on the basis of lowest price negotiated and accepted by CNC, and not on the basis of delivery or any other preference.
- (e) There is no downward trend in the price of the item. (A clear certificate should be recorded to that effect by the purchaser.)

- (f) The requirement is for stores of identical nature/ specifications, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence should not be precluded from the purview of repeat order but this aspect should be very carefully examined from the point of view of interchangeability of the product offered as an improved substitute.
- (g) The repeat order is to be placed within six months from the date of completion of the supply against the original order.
- (h) The repeat order quantity is to be restricted to a maximum of 50% of last order quantity in case of indigenous and foreign procurement, where the contract does not also include the option clause. In case of orders for small quantities (1 to 7), the Repeat Order quantity may be rounded off to the next whole number.
- (i) This provision may be exercised in case of PAC/Single vendor OEM also. However, care should be taken before exercising this provision in multi-vendor situation.
- (j) Where the contract also includes an Option clause, Repeat Order may be placed only for such quantity, which, along with the quantity for which Option clause may have already been exercised, does not result in the total quantity under the Option clause and the Repeat Order exceeding 50% of the originally ordered quantity.
- (k) The CFA will be decided taking into consideration the value of the originally ordered quantity and the Option clause/Repeat Order quantity.

## **6.28 Risk and Expense Purchase**

**6.28.1 Risk & Expense Purchase:** Risk and expense purchase clause may be included in the RFP and the contract, if considered necessary. Risk and Expense purchase is undertaken by the purchaser in the event of the supplier failing to honour the contracted obligations within the stipulated period and where extension of delivery period is not approved. While initiating risk purchase at the cost and expense of the supplier, the purchaser must satisfy himself that the supplier has failed to deliver and has been given adequate and proper notice to discharge his obligations. Whenever risk purchase is resorted to, the supplier is liable to pay the additional amount spent by the Government, if any, in procuring the said contracted goods/ services through a fresh contract, i.e. the defaulting supplier has to bear the excess cost incurred as compared with the amount contracted with him. Factors like method of recovering such amount should also be considered while taking a decision to invoke the provision for risk purchase.

**6.28.2 Risk and Expense purchase clause not mandatory:** Risk purchase at the cost and expense of the supplier may not always be a practical proposition as it may not be feasible to enforce recovery without legal action. This clause is rarely invoked in case of import contracts for this reason. In such cases where the item is of proprietary nature or there is only one qualified firm to supply the items and there is a remote possibility of procuring the same item from an alternative source, it will be essential that instead of having risk and cost clause in the contract, the contract should have performance guarantee clause to cover any such default.

## **6.29 Apportionment of Quantity**

**6.29.1 Apportionment of Quantity:** In global and limited tender enquiry cases, if there is an apprehension that the L1 may not have the capacity to supply the entire requisite quantity, it should be mentioned in the RFP that the order may be placed on L2, L3 and so on for the balance quantity at L1 rates, provided this is acceptable to them. Even if there was no prior decision to split the quantities and it is discovered that the quantity to be ordered is far more than what L1 alone can supply, the balance quantity will be offered to the L2 for supply at L1 rate and if the later is unable to meet the requirement or the rate is not acceptable to him, then the offer will be made to L-3, L-4 etc. in that sequential order before moving to the next higher bidder to supply the remaining quantity at L1 rate. Where it is decided in advance to have more than one source of supply (due to vital or critical nature of the item) the ratio of splitting should be indicated in the RFP.

## **6.30 Acceptance of Excess or Short Deliveries**

**6.30.1 Acceptance of Excess or Short Deliveries:** There may be occasions when excess or short supplies are made by the vendors due to various reasons like, exact multiples of the standard units of measure, or where it is difficult to mention exact weight in case of steel plates etc. A clear indication should be made in the RFP if this clause is to be applied in any particular case. These variations in supplies

may be accepted with the approval of CFA, subject to the value of such excess/short supplies not exceeding 5% (five percent) of the original value of the contract. CFA will be determined with reference to the value of the original order plus excess/short supply.

### **6.31 Buy Back Offer**

- 6.31.1 Buy Back Offer:** When it is decided to replace an existing old item(s) with a new item(s), a suitable clause should be incorporated in the RFP so that the prospective and interested bidders may formulate their bids accordingly. Depending on the value and condition of the old item(s) to be traded, the time as well as the mode of handing over of the old items to the successful bidder should be decided and relevant details in this regard suitably incorporated in the RFP. Suitable provision should also be made in the RFP **asking the bidders to quote the prices for the items to be offered by them with rebate for the old item and also without any rebate (in case they do not want to lift the old item)** <sup>[GFR 176 & MoF Goods Manual 8.3]</sup>, to enable the Purchaser either to trade or not to trade the old item(s) while purchasing the new one(s).

### **6.32 Fall Clause**

- 6.32.1 Fall Clause:** In cases where contracts have to be concluded with the firms, whose rate contract with central procurement agencies has expired and renewal of RC has not taken place, a 'fall clause' should be incorporated in the Supply Order/Contract to the effect that during the currency of the Supply Order/Contract, in case rates are found to be lower on conclusion of rate contract, the lower rates as in the rate contract shall be applicable.

## CHAPTER 7

### PROCUREMENT OF GOODS AND SERVICES FROM FOREIGN COUNTRIES & STANDARD CONDITIONS OF CONTRACTS

#### 7 Introduction

7.1.1 Import of spares and equipment from the revenue budget constitutes a sizeable portion of the overall defence expenditure. The Defence Services have been acquiring latest state-of-the-art equipment and weapon systems from various foreign countries. To ensure their serviceability at all times, it is essential that spares and equipment support is provided at the right time, ensuring value for money spent. Hence, it is of paramount importance to lay down comprehensive procedures and policies in respect of foreign procurement in line with international procurement practices for implementation by all concerned with the process. While proposals for procurement of goods and services are also to be processed generally as per the procedure laid down in previous chapters of the Manual, some special features of procurements from abroad are explained in this Chapter.

#### 7.2 Registration of Foreign OEMs and Vendors

7.2.1 **Registration of Foreign Firms (OEMs/Vendors/ Service Providers):** Foreign OEMs and vendors may be registered by the Service HQrs as per existing procedure prescribed to meet their specific needs till common guidelines are framed. Defence Attachés and Commercial Counsellors in the Indian Embassies /High Commissions abroad would be approached to verify the credentials and capability of the foreign firm, as far as possible, prior to registration. The following broad guidelines may be followed mutatis mutandis by registering authorities for registration of foreign firms:-

- (a) **Information Gathering.** Information received from all possible sources like Purchase / Professional Directorate, Capital Acquisition Wing of MoD and SHQs, Indian Embassies / High Commissions abroad, Embassies / High Commissions of foreign countries in India, web sources, direct communication from vendors etc. may be used to initiate the process of registration. The Vendor Registration Board (VRB) at SHQs should maintain a centralised data base of such information.
- (b) **Assessment Stage.** Credentials and capability of the foreign firm may be verified with the help of the Defence Attachés and/ or Commercial Counsellors in the Indian Embassies / High Commissions abroad. Comments / recommendations of the Defence Attaché / Commercial Counsellor may be sought with respect to the following factors:
  - (i) Grant of export license to the firm by the Country's Government for export of military/ dual use goods, as applicable.
  - (ii) Technical capabilities of the firm in terms of manufacturing facilities, process capability, skilled manpower, testing equipment and process, capability to develop and/or read technical standards and product specifications.
  - (iii) Quality Assurance system of the firm.
  - (iv) Organisational soundness of the firm to discharge the business commitments (including financial, managerial, statutory compliances etc.)
  - (v) Financial Credibility and soundness to undertake export of goods. Dealings with other countries for export of military goods.
  - (vi) Firm's willingness to accept SCOC/RFP terms as per DPM. If the firm is not itself the OEM, arrangement / agreement between the firm and the OEM for product / spares support for the equipment.
  - (vii) Verification of location, address and channels of communication with the firm.
- (c) On receipt of recommendations/ comments from the Defence Attaché/ Commercial Counsellor (and even in case of non-receipt of such report within an acceptable timeframe), the Vendor Registration Board at SHQ would frame its recommendations based upon available details and facts. Registration of foreign firms would be approved by the concerned PSO / Head of Logistics Branch at SHQ. [Para 3.2.10 of MoD Draft]

#### 7.2.2 Enlistment of Indian Agents Representatives of Foreign Firms

- (a) **Policy for Enlistment:** Compulsory Enlistment of Indian representatives of foreign OEMs will be necessary in those cases where the foreign OEMs/ Principals do not sell their products



directly in India but only through their authorized Indian representatives/ subsidiaries/ authorized representatives/ service providers etc. Involvement of such representatives may be allowed where they perform certain functions on behalf of the foreign OEMs such as participate in processing of bids, provide assistance in trial evaluation of systems, price negotiations, provide after sales service, resolve performance and warranty issues etc. as authorized. In such cases the obligations/ services to be rendered by the authorized representatives on behalf of foreign OEM have to be clearly stated in the RFP and Contract for the equipment. Any charges/ payable to such Indian representatives for fulfillment of obligations on behalf of foreign OEMs have to be shown upfront in the response to RFP and Contract. This enlistment should not be considered equivalent to the registration of the suppliers with the Central Purchase Organisations. The onus for verifying the authenticity of the agreement with the supplier, any statutory requirement of the import or the quality of the stores to be supplied rests with the purchasers. The purchasers must exercise due diligence in this regard. A note to this effect may be given in the enlistment letter to the firm. [Para 9.3.1 of MoD Draft, Rule 152 GFR & para 3.6 of MoF Goods Manual]

- (b) **Procedure for Enlistment:** The Central Purchase Organisations at Service HQs will undertake the enlistment of Indian representatives of foreign firms in the above circumstances in terms of Rule 152 of GFRs 2017. The enlistment will be done by a Board of Officers set up by DG/PSO/Head of Logistics, comprising members from the Procurement authority, reps of respective technical directorate/ QA agency etc. as required will be co-opted. A suitable clause will be incorporated in the RFP to specify that in case foreign OEM will be participating only through his Indian representative, the bid should be accompanied by a written undertaking from OEM/ principal, in the “Manufacturers Agency Agreement” for the enlisted Indian representative indicating the obligations to be performed by such authorized representative/ firm/ subsidiary. Indian representative of Foreign OEM who are not enlisted but submit the bid on behalf of the OEM/ Principal will be given suitable time frame for enlistment (e.g. till approval of TEC Report), failing which their bid will be rejected. The charges will be payable to the representative in Indian currency, to be specifically provided as such in the RFP/ Contract agreement. [MoD Draft 9.3.2]
- (c) **Participation of Foreign OEM/ their Indian Agents Representative:** As per CVC Circular No. 03/01/12 dated 13 Jan 2012, in any procurement tender, either the Indian Representative of the Foreign Principal/ OEM can bid or the principal/ OEM itself, but both cannot bid simultaneously for the same item/ product in the same tender. Further, if an representative submits a bid on behalf of the principal/ OEM the same representatives cannot submit a bid on behalf of another Principal/ OEM in the same tender for the same item/ product. Such bids will be liable for rejection. [Para 9.3.3 of MoD Draft]

### 7.3 **Vendor Selection**

- 7.3.1 **Prospective vendor(s) to be indicated in the Indent:** Details of registered vendors and likely sources of supply are to be indicated in the indent. Vendors already registered with Army, Navy, Air Force, Ordnance factories, DRDO, DGS&D and Defence PSUs for similar items will be treated as registered vendors and may be considered for issue of Limited Tender Enquiry. The registering agency should include all foreign vendors registered with different departments of MOD. However, specific needs of the organizations/establishments are to be kept in mind and complied with.
- 7.3.2 **Selection of vendor:** A careful selection of the authorized and registered vendors is to be made for the range of items/components/spares listed in the Schedule of Requirement by the Procuring Agency for the purpose of issuing the RFP.
- 7.3.3 **Technical Specifications:** All verifiable and measurable technical parameters in terms of size, weight, performance, quality, operating environment, power, utility life, storage and shelf life, etc., as applicable to the equipment being procured should be listed clearly, objectively and unambiguously. The specification should meet the basic needs of the organization without including superfluous and non-essential features, which may result in unwarranted expenditure. [GFR 144(ii)]
- 7.3.4 **Inspection Clauses:** The RFP should clearly provide for Pre-Dispatch Inspection (PDI) and/or Joint Receipt Inspection (JRI), as required. In the case of Pre-Dispatch Inspection, to the extent possible, the RFP should mention the broad scope of such inspection, the likely number of such inspections, the composition of the team and duration of inspections.

- 7.3.5 Quality Assurance:** The goods supplied under the contract should conform to the standards, which should be clearly mentioned as a part of the technical specifications in the RFP. The latest authoritative standards, issued by the concerned institution, applicable in the country of origin, to the goods to be procured could also be considered as acceptable standards and, if so decided, it should be mentioned in the RFP. In such situations, the RFP should also state that the details of such standards would be submitted by the prospective bidder while submitting his bid. All the items should be supplied and accepted along with OEM certification only. The quality assurance requirements should be specified both in terms of testing norms and methodology. **In case of medical devices/equipment wherever the Indian standards are available, these would be sufficient and the indenting organization shall not insist on any specification or standards like USFDA or CE certification etc. In case of Medical devices/equipment where Indian standards are not available, in order to ensure quality of the devices/equipment being purchased, the indenting organization would be free to lay down the standards of ISO or USFDA or CE certification in such cases..** [MoH&FW OM No. 11035/379/2015-DFQC(Pt) dt 20 Feb 2018]
- 7.3.6 OEM Certificate in Case of Vendors/Stockist:** In case the bidder is not the OEM, it would be necessary for the bidder to furnish the agreement certificate with the OEM from whom the spares are to be sourced by the bidder. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification. **In case of weapon platforms/major equipment where the production line no longer exists, and production thereof by OEM has ceased, stockists also purchase bulk spares in auctions (sold by the OEMs). In such cases, the stockists can be treated as authorized vendors for the spares, provided they can furnish a certificate from the OEM from whom these are bought, regarding genuineness of the spares.** [MoD Draft 9.7.14]
- 7.3.7 Mode and Terms of Delivery and Transportation:** The delivery terms are to be expressed in terms of Incoterms as per UCPDC 600. As per the revised policy of the Government, all Public Procurement import contracts involving (ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/FAS (Free Alongside Ship) basis and in case of any departure there-from, prior approval of the concerned administrative Ministry/Department may be obtained. However, imports involving ocean freight of general liner: cargoes, project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/FAS (Free Alongside Ship) or CFR (Cost & Freight)/CIF (Cost, Insurance & Freight) basis. All importing Government Departments/PSUs are now allowed to make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping. As per the extant directive of the Government, airlifting of imported goods from abroad will be done only through the national carrier, that is, Air India, wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed. [MoF Goods Manual 5.1.4(xii) (c)]
- 7.3.8 Delivery Schedule:** The prescribed delivery schedule should be firm and not open-ended. Normally the delivery schedule should be fixed in such a manner that it is completed within ninety to one hundred and eighty days of the signing of contract, unless the circumstances warrant a longer delivery schedule. A staggered delivery schedule may be laid down, if necessary. It should be clearly mentioned in the RFP that the delivery schedule shall be counted from the date of signing of the contract by both the parties and include a reasonable time (which should also be specified) for the supplier to affect the supplies and then claim the payment. The date of delivery of the goods will be the date of Freight Forwarder's receipt, Master AWB or Bill of Lading as applicable. As per the mode of payment, the normal delivery schedule for spares procurement should be indicated in the RFP as follows:
- (a) **L/C Payments:** Six months from the date of signing of contract which will include:
    - (i) Obtaining export license and giving notification of readiness for opening of L/C by seller – 45 days.
    - (ii) Obtaining Foreign Exchange Release and opening of L/C through CDA by buyer – 45 days
    - (iii) Validity period of L/C – 90 days. The LC will be opened three months prior to the expiry of delivery period only.
  - (b) **DBT Payments :-** Preferably within three months of signing of the contract

- 7.3.9 Mode of payment:** The normal mode of payment to foreign vendors is through irrevocable Letters of Credit or Direct Bank Transfer (DBT). The paying authority is the organization of the Principal Controller/Controller concerned. For contracts below USD 1,00,000.00, it should be specified in the RFP that the payment would be made through DBT.
- 7.3.10 Terms of Payment:**
- (a) Where the payment is to be made through Letter of Credit, it should be opened within forty five days of receipt of notification of readiness of goods for delivery from the foreign vendor. The vendor should normally be given forty five days from the date of signing of contract for notifying such readiness. The period may be varied, as per requirement, but it should be decided while processing the proposal and indicated in the RFP. The period for notification of readiness of goods and opening of LC should be so fixed that LC is opened three months prior to the expiry of the delivery period. The period mentioned in the RFP should not be varied, particularly in Global Tender Enquiry and Limited Tender Enquiry cases. **If the seller is ready for early delivery, vis-à-vis the stipulated original delivery period, based on the readiness notification, LC may be opened earlier also, on the Seller's request. However, the last date of delivery/latest date of shipment in the SWIFT 700 application will be shown as "within the validity period of the LC". Extension charges in respect of the LC in such cases shall, if required be borne by the Seller.** [PCDA New Delhi suggestion]
  - (b) It should also be mentioned in the RFP that the LC would be valid for ninety days from the date of its opening, on extendable basis by mutual consent of both the buyer and the seller, unless it is a revolving LC. The period may also be varied, as per requirement, but it should be decided while processing the proposal and indicated in the RFP. All expenses related to Letters of Credit outside India should be borne by the foreign vendor.
  - (c) In case of extension of delivery period, both LC and delivery period **shall** be extended and **if the delay is attributable to the vendor, the extension of LC charges shall be borne by the supplier. In such cases of extension in the Delivery period, the vendor shall invariably extend the validity period of the ABG/PBG/PWBG.** [PCDA New Delhi suggestion]
  - (d) Payment through Direct Bank Transfer (DBT) should preferably be made for all payments below USD one hundred thousand and such payments should be made within forty five days of receipt of clear payment documents or as specified in the contract unless insisted otherwise by the foreign vendor.
  - (e) **No part LCs would be opened for part shipments unless staggered delivery is specifically provided for in the contract, in accordance with the Delivery Schedule.** [MOD Draft 9.7.18(c) & PCDA New Delhi suggestion]
- 7.3.11 Installation, Commissioning and AMC:** If the equipment/spare parts are required to be installed and/or commissioned, and training imparted relevant information in this regard should be provided in the RFP and concomitant modifications made in other clauses of the RFP. In case Annual/Composite Maintenance Contract is required, the period for which such contract is required and the scope of services expected of the vendor should be clearly spelt out.
- 7.3.12 Life Time Product Support:** If there is a requirement for life time product support for spares, maintenance advice, defect investigation and information on product upgrade, etc., it should also be mentioned in the RFP.
- 7.3.13 Apportionment of Quantity:** Provisions of paragraph 6.29 of this Manual will be applicable in the case of foreign procurement also.
- 7.3.14 Acceptance of Excess or Short Deliveries:** Provisions of paragraph 6.30 of this Manual will apply in this regard.
- 7.3.15 Force Majeure:** As mentioned in paragraph 6.26 of this Manual, wherever considered necessary, this clause may be included in the RFP and the contract relating to foreign procurements also.
- 7.3.16 Claims:** It should be clearly mentioned in the RFP that the purchaser shall promptly notify the supplier in writing of any claims arising during inspection at consignee's end. The time period generally acceptable for notifying the claim, which may be indicated in the RFP, is as follows:

- (a) **For quantitative discrepancy** - Within ninety days from the date of delivery of the consignment in case of delivery by Air or road and within one hundred and twenty days from date of delivery in case of delivery by Sea.
- (b) **For qualitative discrepancy** – The Buyer reserves the right to inspect the stores on arrival in India and discrepancy or defects found shall be reported to the Seller within fifteen months. The seller shall rectify the same within ninety days of receiving the intimation. [MoD Draft 9.7.28(b)/DPM 2009 10.5.2(h)]
- (c) **For quality claims on account of defects or deficiencies:** The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within forty five days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than forty five days after expiry of the guarantee period.

**7.3.17 Warranty Clause:** The warranty should remain valid for twelve months after the goods or any portion thereof, as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen months after the date of shipment from the place of loading, whichever period concludes earlier. [DPM 2009 Para 9.7.28(b)]

**7.3.18 Applicability of Law:** It should be mentioned clearly in the RFP that the contract will be made, interpreted and governed in accordance with the laws of the Republic of India.

**7.3.19 Exchange Rate:** Exchange Rate applicable for various currencies prevailing on the date of opening of commercial bid as indicated in the RFP for two bid cases and date of bid opening for single bids will be taken into account for working out the prices in Rupee Terms for comparison. The exchange rate as per BC Selling rate of the State Bank of India on the date of opening of Price Bids shall be taken.

**7.3.20 Determination of L1 on Entire Package:** In case an RFP contains a large number of items of spares and it is indicated in the RFP that L1 will be decided based on the package price, the L1 offer should be determined on the basis of the cash outflow for the entire package. After determining L1 in this manner, negotiations should be held with that firm in respect of items for which rates quoted by the firm are higher than those quoted by other vendors. In such cases, negotiation with L1 vendor would have to be done with reference to the lowest bid for that item (items). In case the L1 vendor does not reduce his price reasonably for high value item(s), possibility of concluding a fresh contract by issuing a separate RFP for such item(s) may be considered keeping in view the operational requirements.

**7.3.21 Signing of the Contract/Placement of Supply Order:** The draft contract, duly vetted by the IFA, where required as per delegation of financial powers, should be put up for CFA's approval before concluding the contract with the vendor. The contract/supply order should be signed by an officer authorized to do so. The contract /supply order should be signed on each page by the authorized representative of the vendor and duly acknowledged as accepted.

**7.3.22 Standard Conditions of Contract - Foreign Procurement:** The Standard conditions of contract will apply to all contracts made/supply orders placed as per the procedure laid down in this Manual, except to the extent that any clause thereof has been modified in any particular contract/supply order.

## **7.4 Special Provisions**

**7.4.1 Where OEMs are not permitted to deal directly:** If the legislation of a foreign country does not permit the OEMs and/or other vendors/suppliers to respond directly to the RFPs, as in the case of Russia, RFPs may be issued to the government designated agency (e.g. Rosoboronexport in the case of Russia) on Single Tender Enquiry basis. RFPs to such agencies may be issued in addition to the vendors who are permitted to respond directly to tender enquiries.

**7.4.2 Procurements governed by General Contracts:** In case of procurements under long term General/Umbrella contracts/Main agreements between the Government of India and the Government of the country concerned, provisions of such contracts/agreements will prevail in respect of the format of the RFP, quotations, general terms and conditions, time of submission of quotations, LD Clause, etc. However, provisions of this Manual shall apply in respect of those aspects that are not covered by such contracts/agreements. [Note: The authorities concerned should review such existing contracts/agreements and consider the possibility of amending them to bring them in conformity with the provisions of this Manual to the extent feasible.]

**7.4.3 Urgent procurement through Indian Embassies abroad:** Spares/components that are required urgently from sources abroad may be procured through the Indian Embassies/ High Commissions. On acceptance of necessity, an urgent indent should be forwarded to the concerned embassy for procurement under the financial powers of the concerned Commercial or Defence Attaché (DA). The concerned attaché should register the indent and obtain quotes. He should obtain the expenditure angle sanction in consultation with the Councillor (Coord) or any other officer with technical/procurement/financial background designated by the Ambassador/High Commissioner for this purpose. In case the quotes received are higher than the delegated financial powers of the DA and the vendor does not agree to reduce the cost, the case should be referred to the concerned Service Headquarter/Department of the Ministry of Defence for seeking expenditure angle approval of the appropriate CFA.

## **7.5 INCO TERMS**

**7.5.1 INCO TERMS:** Since 1936 INCO terms are used in International Documentary Credits in respect of mode/style of delivery of goods, which have been recognized as practical, cost saving tools, used worldwide for smooth international trading practice. The RFP should indicate the applicable INCO terms for delivery of goods and incorporate them in the contract to avoid disputes at a later date.

## **7.6 Insurance**

**7.6.1 Insurance:** Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, insurance may cover “all risks” including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the Procuring Entity for receiving the goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rupees Five crore. Procuring Entities who are entering into large number of imports contracts, may enter into annual Insurance arrangements for all imports during the year with Insurance Companies, instead of insurance of each individual imports separately on the basis of “Open Cover (all risk)”. Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser. [MoF Goods Manual Para5.1.4(xii) (d)]

## **STANDARD CONDITIONS OF CONTRACT - FOREIGN PROCUREMENT**

### **7.7 Introduction**

**7.7.1 Standard Conditions of Contract (SCoC):** In order to facilitate a clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms dealing with the department. The Standard Conditions of Contract (SCoC) are made available to the firm at the time of registration itself. It is desirable that the SCoC are publicized on the **Central Procurement Portal and Defence e-Procurement Portal**. The Tender Enquiry should invariably make a reference to the applicability of SCoC and bidders are expected to conform to the SCoC. The contract must stipulate that the SCoC are applicable in addition to any special conditions specific to the contract, which might have been mutually agreed to between the parties.

**7.7.2 Conformity of the contract with agreed terms and conditions:** All contracts must be in conformity with the standard and special conditions as mentioned in the RFP and the recommendations of the CNC, if held, as accepted by the CFA.

### **7.8 Prices**

**7.8.1 Prices to be lowest and all inclusive:** Unless specifically agreed to, all prices to be quoted by the seller should be the seller’s lowest export price and would be as per required delivery terms. Prices should be fixed and firm and should be inclusive of packing charges, taxes and duties etc. levied in the country of supply.

### **7.9 Terms of Payment**

**7.9.1 Intimation regarding readiness of goods for dispatch:** The Seller will be required to notify the Buyer within a specified period about the readiness of goods for dispatch. Provisions of paragraph 7.3.10 may be kept in view in this regard.

**7.9.2 Letters of Credit and Direct Bank Transfer:** The payment should be arranged by way of Letter of Credit (LC)/ Direct Bank Transfer (DBT) through any Bank authorized by the Ministry of Defence to the bankers of the foreign supplier. The provisions of paragraph 9.6.13 of this Manual may be kept in view as regards opening of the Letters of Credit. DBT payment should be made within **forty five**<sup>[PCDA ND]</sup> days of receipt of clean Bill of Lading/AWB/Proof of shipment and such other documents as are provided for in the contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the contract. No advance payments should be made, unless specified in the RFP. If so specified in the RFP and the contract, advance payment, not exceeding fifteen percent of the total value of the contract, may be made against appropriate Bank Guarantee as per the terms of the contract. Payment against a contract, the value of which does not exceed USD one hundred thousand should be preferably be made by Direct Bank Transfer unless insisted otherwise by the foreign vendor.

## **7.10 Terms of Delivery**

**7.10.1 Standard Terms of Delivery:** Paragraph 7.3.7 of this Manual provides for the mode of transportation, which should be decided keeping in view that timely delivery is the essence of the contract. Standard terms governing delivery of goods are as follows:

- (a) Delivery of Goods shall be effected within specified days from the date of signing of the contract.
- (b) The date of delivery shall be the date of clean-on-board bill of lading/Air Way Bill.
- (c) Where inspection by the Purchaser prior to delivery is provided for, no stores will be considered ready for delivery until the Purchaser or his authorized representative certifies in writing that the stores have been inspected and approved by him.
- (d) Each contract will clearly specify the date of delivery/ date on which the items will be ready for inspection. The prescribed delivery schedule should be firm and not open-ended.
- (e) The stores will be shipped by sea/air as specified in the contract, all costs of packing, internal transportation, fees of forwarding agents, warehousing charges, port trust, dock and harbour dues and all other expenses, as may be incurred for the purpose and upto the point of delivery of the stores on board the nominated ship/air craft, shall be paid by the seller.
- (f) The contract or any part thereof, if delivered in more than one installment, shall be deemed to be complete, and the contract price for the delivered goods would become payable to the seller, only when all terms and conditions relevant to that delivery as per the provisions of the contracts have been completed.
- (g) The Goods are considered as delivered by the Sellers and accepted by the Buyer when they conform to the following:
  - (i) **In respect of quantity** – according to the number of packages in sound external condition and the weight shown in the shipping documents.
  - (ii) **In respect of quality** – according to the quality stated in logbooks/passports.

## **7.11 Inspection**

**7.11.1 Self inspection:** Under normal circumstances, the stores ordered may be accepted on the guarantee and warranty of the supplier. Towards this end, for acceptance of the inspected items or the entire batch/lot, the Seller shall also get the stores inspected by its Quality Assurance Department and furnish a certificate that the stores conform to the specifications laid down in the contract.

**7.11.2 Inspection by the Buyer:** However, where the contract specifies actual inspection by the Buyer, the Seller will arrange for the inspection, in consultation with the Buyer. Subject to the provisions of paragraph 7.3.4 of this Manual, the following guidelines will apply where inspection is required to be carried out:

- (a) The stores shall be inspected in accordance with the provisions of the contract.
- (b) Where inspection by the inspector is specified, the seller will give him sufficient advance notice of the date in writing on which the goods will be ready for inspection. The seller will also provide the inspector all the necessary facilities including appliances, **technical documents**,<sup>[DGQA]</sup> tools, material and labour at no extra cost, to carry out the specified

inspection. When independent tests and analyses, in addition to those made by the inspector on the seller's or sub-seller's premises, are considered necessary, the seller shall provide testing at Seller's expense and deliver, free of charge, at such place as the purchaser may direct, such materials as he may require for tests or analysis.

- (c) If any of the products whether finished or in the course of production, are rejected by the inspector, they shall be marked and segregated in such a distinctive manner, to the satisfaction of the inspector, so as to ensure that they are identified as rejected products.
- (d) The Buyer shall not be liable for payment for any rejected supplies or any costs of inspection thereof.
- (e) The Seller shall at his own expenses and within the period of delivery, as specified in the contract, replace or make good, to the satisfaction of the inspector, any articles rejected on inspection.
- (f) The decision of the inspector regarding mode, method, rejection or acceptance of the specified items/ entire batch/ lot will be final.
- (g) The Buyer reserves the right to inspect the stores on arrival in India and discrepancy or defects found shall be reported to the Seller within fifteen months. The seller shall rectify the same within ninety days of receiving the intimation.

## **7.12 Packaging and Dispatch**

**7.12.1 Packaging and Dispatch:** The stores are required to be packaged to withstand normal conditions of shipment and short term storage in transit and in the country of destination and the following conditions will apply:

- (a) The Seller shall be responsible for any loss or damage or expenses incurred by the Purchaser because of inappropriate packages.
- (b) Packages containing articles classified as hazardous should be packed and marked in accordance with the requirements of the appropriate regulations governing their dispatch by sea or air.
- (c) The Seller shall also comply with the detailed packaging and dispatch instructions, if specified in the contract.
- (d) The responsibility of sending dispatch documents will rest with the Seller. Detailed shipping instructions issued from time to time by the Buyer will apply.

## **7.13 Warranty and Claims**

**7.13.1 Warranty and Claims:** All stores to be supplied should be free from all defects and faults in material workmanship and manufacture. They should be consistent with the established and generally accepted standards for material of the type used and in full conformity with the specifications, drawings, or samples and shall, if operable, operate properly. The Seller shall be bound to furnish a clear written warranty regarding the same. In the event of the ultimate consignee in India not finding the stores in accordance with the order, the Seller will be required to replace them free of cost inclusive of all freight and handling charges. Such replacement will be done within ninety days of the claim report raised by the purchaser. These standard conditions will also apply in respect of replaced stores. **The warranty should remain valid for twelve months after the goods or any portion thereof, as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen months after the date of shipment from the place of loading, whichever period concludes earlier** <sup>[DPM Para 9.6.29]</sup> or as specified in the contract.

**7.13.2 Warranty for use and storage in Indian conditions:** The Warranty shall be applicable for use and storage of stores in Indian Climatic Conditions **or any special conditions as specified in the RFP/Contract** <sup>[MoD Draft 10.7.2]</sup>.

**7.13.3 Technical Life:** Technical life of the unit to be delivered for replacement will not be less than the remaining technical life of the faulty/defective/deficient unit being replaced, or the actual life of such a unit as specified in the contract, whichever is more.

- 7.13.4 Time-frame for raising the claim:** The time frame for raising the claims for quantitative and qualitative claims, as well as quality claims on account of defects and deficiencies is given in paragraph 7.3.16 of this Manual.
- 7.13.5 Intimation regarding Force Majeure:** The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than ten days from the moment of their beginning.
- 7.13.6 Certification of Force Majeure:** Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances.
- 7.13.7 Extension of Time:** In such circumstances, the time stipulated for the performance of an obligation under the contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
- 7.13.8 Right to terminate contract:** If the impossibility of complete or partial performance of an obligation lasts for more than six months, either party to the contract reserves the right to terminate the contract totally or partially upon giving prior written notice of thirty days to the other party of the intention to terminate **the contract** without any liability, other than reimbursement on the terms provided in the agreement/ contract for the goods received.

#### **7.14 Penalty for Use of Undue Influence**

- 7.14.1 Undertaking by the Seller:** The Seller would be required to sign an undertaking to refrain from use of undue influence or inducement, directly or indirectly, to any person in service of the buyer or otherwise in obtaining or execution of the contracts. Any <sup>[MoD Draft 10.12.11]</sup> breach of the undertaking would attract penal action.

#### **7.15 Access to Books of Accounts**

- 7.15.1 Access to documents/information:** If it is found, to the satisfaction of the Buyer, that the Seller has engaged an agent or paid commission or influenced any person to obtain the contract as described above, the Seller on a specific request of the Buyer will be required to provide necessary information and inspection of the relevant documents/ information.
- 7.15.2 Integrity Pact:** This is to be signed by the Buyer and Seller for purchases exceeding Rupees one hundred crores.

#### **7.16 Patents And Other Industrial Property Rights**

- 7.16.1 Quoted prices to be inclusive of charges on account of copy right etc.:** The prices stated in the contract shall be deemed to include all amounts payable for the use of patents, copy right, registration charges, trade marks and any other industrial property rights.
- 7.16.2 Indemnity:** The Seller shall indemnify the Buyer against all claims, including claim by any third party at any time on account of the infringement of any or all the rights mentioned in the previous subparagraph, whether such claims arise in respect of manufacture or use. It shall be the responsibility of the Seller to complete the supplies irrespective of the fact of infringement of any such rights.

#### **7.17 Government Regulations**

- 7.17.1 Export licenses:** The Seller shall be responsible for obtaining and maintaining export licenses and permits, as also for complying with all the laws, orders, regulations or other instructions issued by the Government in the country of the manufacturer/supplier.
- 7.17.2 Passing on of the obligation to a third party:** The Seller shall not give, bargain, sell, assign or sublet or otherwise dispose of the contract or any part thereof, or the benefit or advantage of the contract or any part thereof, to any third party.

#### **7.18 Customs Duty Drawback**

- 7.18.1 Duty Drawback:** If any of the contracted stores are, on exportation, entitled to a drawback of customs duty in respect of themselves or the raw materials involved in their manufacture, the price to be charged by the Seller should be the net price after the deduction of all the entitled custom duty drawbacks.



**7.19 Nondisclosure Of Contractual Documents-Information**

- 7.19.1 Nondisclosure of specifications etc.:** Except with the written consent of the Buyer, the Seller shall not disclose the contract or any provision, specification, plan, drawing, pattern, sample or information thereof, to any person, other than a person employed by the seller for executing the contract.
- 7.19.2 Disclosure in confidence:** Any disclosure to any person permitted under the above clause shall be made in confidence and shall extend only so far as may be necessary for the purposes of contract.
- 7.19.3 Nondisclosure of information given by the Buyer:** Except with the written consent of the Buyer, the Seller shall not make use of any information supplied by the Buyer for purposes of the Seller or any specifications or other details mentioned in above clause otherwise than for the purpose of manufacturing the articles and the Seller shall not use any such information to make any similar article or part thereof for any other purpose.

**7.20 Training**

- 7.20.1 Training:** The Seller shall, if so indicated in the RFP, provide facilities for the practical training of trainees from India and/or their active employment on the manufacturing processes of the stores, as well as Quality Assurance procedures.

**7.21 Law**

- 7.21.1 Applicability of Laws:** The contract will be governed by and construed in accordance with the laws of India.

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## CHAPTER 8

### RATE CONTRACT

#### 8 General

**8.1.1 Objective:** The basic objective of a procurement agency is to provide the right items of right quality and in right quantity, at the right place and right price so as to meet the requirement of the users. One of the ways to ensure this is to conclude Rate Contracts for all common user items which are regularly required in bulk by the users and whose prices are likely to be stable and not subject to considerable market fluctuations. A Rate Contract (RC) enables procurement officers to procure indented items promptly and with economy of scale and also cuts down the order processing and inventory carrying cost. The RC system takes care of supply chain management and enables an efficient transaction both for the purchaser and the supplier.

**8.1.2 Definition:** A Rate Contract (commonly known as RC) or Price Agreement (PA) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum drawal guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser is/are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other giving thirty days. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract and the supplier is bound to supply the ordered quantity.

**8.1.3 Types of Items Suitable for RC:** The types of items which may be considered for RC are:

- (a) Items required by several users on recurring basis and having clear specifications, **if not available on Government e-Marketplace (GeM).** [GFR 148]
- (b) Fast moving items with short shelf life or storage constraints.
- (c) Items with minimum anticipated price fluctuation during the currency of the RC. Items with high probability of considerable price fluctuation should not be considered to be covered by RC except for short term contract.
- (d) Items that take long gestation period to manufacture and for which there is only one source for manufacturing.

**8.1.4 Purchase of goods directly under Rate Contract:** Goods for which Central Procurement Agency has rate contracts can be procured directly from the suppliers. Apart from the original Rate Contract holding firm, the term 'supplier' includes the authorized dealers/distributors/agents of the RC holding firm, provided the latter has pre-disclosed the name of these agents/authorized dealers at various locations or the local stockiest/authorized dealers can substantiate their claim by producing a certificate from the RC holding firm to the effect that they are the firm's authorized stockiest/distributor/agent/dealer or can show an agency agreement between the supplier and the RC firm as proof thereof. The purchase must be accompanied by a proper manufacturer certification. While resorting to such procurement it should be ensured that the prices to be paid for the goods do not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase are in line with those specified in the rate contract. The Purchaser should also make its own arrangement for inspection and testing of such goods, where required. In the case of drugs, consumables, FOL, hygiene chemicals, etc. the inspection may be done by DGQA/NABL but any costs incurred thereon should be borne by the Suppliers. Payment in such cases would be made by the concerned Principal Controllers/Controllers of Defence Accounts, their subordinate offices or other paying authorities as per the existing arrangement. Wherever Senior Accounts Officers/Imprest Holders are authorized, payment may be made by them.

**8.1.5 Items already on Central Procurement Agency Rate Contract:** No Rate Contract should normally be concluded for items in respect of which Central Procurement Agency Rate Contracts are already in place. If, however, it becomes necessary to enter into rate contracts for items which are already on Central Procurement Agency Rate Contract, the reasons for doing so should be recorded and CFA's approval taken after consulting integrated finance.

#### 8.2 Authorities Competent to Conclude Rate Contract/Long Term Product Support

**8.2.1 Authorities competent to conclude Rate Contracts:** Rate Contract or Price Agreement for goods and services should be concluded only by the authorized Central or local Procurement Agencies. The RC concluding agency should post the descriptions, specifications, price and other salient details of all the rate contracted goods, appropriately updated, on its website and Defence eProcurement Portal (<https://defproc.gov.in>) [MoF Goods Manual 8.1.3]

**8.2.2 Long Term Product Support:** The Price Agreement for long term product support should be concluded with the approval of the authorities to whom such powers have been specifically delegated.

### **8.3 Period of Rate Contract**

**8.3.1 Period of RC:** A Rate Contract should normally be concluded for one year. However, in special cases, shorter or longer period, not exceeding three years, may be considered. Any extension of the existing RC or conclusion of an RC beyond a period of three years would need the approval of the Ministry of Defence.

**8.3.2 Fixing of the Validity Period:** As far as possible validity period of RC should be so fixed as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts. Attempts should also be made to suitably stagger the period of rate contracts throughout the year. [MoF Goods Manual 8.1.7]

### **8.4 Determination of the Competent Financial Authority to approve RC**

**8.4.1 Competent Financial Authority:** Value of anticipated drawal over a period of one year should be taken into account while determining the level of CFA for conclusion of Rate Contract/Price Agreement.

### **8.5 Process of concluding Rate Contracts**

**8.5.1 Estimate/Indent/Requisition:** A Rate Contract can be concluded based on estimated annual requirements of various users under the authority processing an RC proposal. The contract concluding authority must scrutinize the estimates for their completeness in terms of authority for raising the indent, specification of the item, desired delivery schedule, packing and preservation, etc. Adequate budget provisions must be made and confirmed in the normal manner.

**8.5.2 Selection of Firms:** Rate Contracts should be normally concluded only with the registered firms based on their capacity assessment by the designated Registering/Inspecting Agency. In respect of new items being bought on Rate Contract for the first time, RC can be awarded to unregistered firms also on the basis of favourable technical capability, capacity and financial status. Past performance of a firm will be a major consideration while awarding a Rate Contract. The following aspects should be kept in mind while framing criteria for award of Rate Contracts:

- (i) The Rate Contracts shall be awarded after inviting online tenders;
- (ii) The Rate Contracts shall be awarded to the suppliers registered for broad category of items/products or services with eligible suppliers obtaining registry as registration or the suppliers having green channel status or BIS licences for the tendered items and fulfil the laid down eligibility and qualification criteria including availability of ISI mark, etc. Suitable stipulations are to be incorporated in the tender enquiry documents to this effect. In respect of new items being brought on rate contract for the first time where there is no registered supplier (for the subject items), the requirement of registration can be relaxed with the approval of competent authority. The award of such rate contracts will, however, be subject to the suppliers' satisfactory technical and financial capability;
- (iii) Some of the tenderers (who are otherwise registered) may also be holding current rate contracts and/or held past rate contracts for the required goods. Their performance against such earlier/current rate contracts shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut-off date is to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their tenders) to enable the purchaser to judge their performance and achievement against the past/current rate contracts. These criteria are to be evolved and decided by the purchase organization during procurement planning stage for incorporation in the corresponding tender enquiry documents. [MoF Goods Manual 8.1.8]

- (iv) No new RC should be placed with firms having backlog, which is likely to continue for major portion of the year.
- (v) If the RC holder is a defaulter in furnishing drawal report, this should be looked into, if the defaulter is bidding.
- (vi) The minimum performance level / performance criteria should be specified in the bid documents.

**8.5.3 Price Negotiation:** Price negotiation with the tenderers should be severely discouraged. However, in case the price quoted by the lowest responsive tenderer (L1) is not reasonable and unacceptable, the price may be negotiated with L1 only. [MoF Goods Manual 8.1.12] All Rate Contracts and Price Agreements should be processed through the CNC so as to ensure best value for money, quality assurance and transparency. Participation of finance member in all deliberations, particularly regarding the pricing and conditions of contract, is mandatory.

**8.5.4 Signing of Rate Contract:** RC concluded for various wings of the MOD will be signed for and on behalf of the President of India. RC itself may be signed by the authority to whom powers to enter into RC are delegated or an officer authorized to sign financial documents on his behalf, after CFA's approval.

## **8.6 Conclusion of Parallel RC**

**8.6.1 Parallel Rate Contracts:** In case it is observed that a single supplier does not have enough capacity to cater to the entire demand of an item or where it is desirable to have a wider vendor base due to criticality of the items, it may become desirable to conclude parallel RCs with more than one firm. The CFA, based on the merit of each case, may decide the number of firms to be awarded RC for an item so that Direct Demanding Officers will have a wider choice. Efforts should be made to conclude parallel RCs with firms located in different parts of the country to cater to users over a wider geographical spread. Parallel RC may be concluded with marginal price difference say up to 5%. In such cases approval of the next higher CFA is to be taken.

**8.6.2 All Direct Demanding Officers to operate the RCs:** Orders against a Rate Contract concluded by any authority may be placed on the same terms and conditions by all Direct Demanding Officers of Services/ Organizations/Units/Establishments under the Ministry of Defence, subject to there being no downward trend in prices. To facilitate such operation, a suitable provision should be made in the RCs and the details of the RCs posted on the website of the Service/Organization concerned.

## **8.7 Special Conditions Applicable for Rate Contract**

**8.7.1 Special Conditions:** Some conditions of rate contract differ from the usual conditions applicable for other contracts. Some such important special conditions of rate contract are as follows:

- (i) Earnest Money Deposit (EMD) is not applicable in case of registered firms but will apply in case of bids from unregistered firms.
- (ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawal may be mentioned without any commitment.
- (iii) The purchaser reserves the right to conclude more than one rate contract for the same item.
- (iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally thirty days.
- (v) The purchaser has the option to renegotiate the price with the rate contract holders.
- (vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
- (vii) Usually, the terms of delivery in rate contracts are free delivery at consignee's site. This is so, because the rate contracts concluded by Central Purchase Agency are to take care of the users spread all over the country. [MoF Goods Manual 8.1.9 (vii)] Supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the rate contract terms, are to be issued for obtaining supplies through the rate contract.
- (viii) The purchaser and the authorized users of the rate contract are entitled to place supply orders upto the last day of the validity of the rate contract and, though supplies against such supply

orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms and conditions of the rate contract.

(ix) The rate contract will be guided by “Fall Clause”.

**8.7.2 Fall Clause:** Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 15 (fifteen) days’ time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned earlier in this paragraph. It is, however, very necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not upto the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, terminating the contract, etc.

**8.7.3 Performance Security:** Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the authority concluding the Rate Contract(s) may consider obtaining performance security of reasonable amount from the Rate Contract holders. A suitable clause to this effect is to be incorporated in the tender enquiry documents. Performance Security shall, however, not be demanded in the supply orders issued against rate contracts.

## **8.8 Renewal, Extension, Termination and Revocation of Contracts**

**8.8.1 Renewal and Extension:** It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, which do not agree to such extension, are to be left out of consideration for renewal and extension. Period of such extension should generally not be more than three months. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

**8.8.2 Termination and Revocation of RC:** RC is in the nature of standing offer and a legal contract comes into being only when a supply order is placed by the CFA/Direct Demanding Officers. Being just a standing offer, embodying various terms of the offer, the contract holder may revoke it at any time during its currency. However, reasonable opportunity should be given to the supplier to represent against any revocation/cancellation of RC.

## 9 Introduction

**9.1 Peculiarity of Repair Contracts With Foreign/Indigenous Firms:** The contracts for repair of equipment by foreign/indigenous firms are generally formulated and processed in the same manner as the contracts for procurement of stores from foreign/indigenous sources. However, in some respects, repair contracts are different from procurement contracts as they have some unique features related to their processing, as also the terms and conditions of contracts, as set out in this chapter.

**9.1.1 Applicability :** The provisions of this chapter would apply to repair contracts with indigenous and foreign firms.

**9.1.2 Terms used in this Chapter:** The term “Customer” used in this Chapter shall mean the President of India acting through the officer signing the contract and the term “Contractor” would mean the firm undertaking the repair as per the contract.

## 9.2 Unique features related to processing of repair contracts

**9.2.1 Preparation of Indents:** The repair indent **will be prepared by the Repair and Maintenance Agency and**<sup>[MoD Draft]</sup>, should clearly specify the type of equipment, Quantity, type of repairs, history of previous major repair, name of the manufacturer, Total Technical Life (TTL), assessed cost of the repair, etc,. The amount should preferably be assessed or, if such assessment is not feasible, obtained through a non-obligatory budgetary quote from all the possible sources, including the OEM.

**9.2.2 Selection of Vender:** The repair should be carried out by the original equipment manufacturer. In case the original equipment manufacturer expresses inability to undertake the repairs, any agency authorized by the OEM may be approached. In the event of the OEM expressing difficulty to undertake repairs and there being no OEM authorized agency to undertake repairs, other possible sources **possessing the requisite capability to undertake the repairs**<sup>[MoD Draft]</sup> may be approached. **The technical capability to undertake repair should be verified and certified by the Repair and Maintenance Agency.** The contractor has to be made accountable for the performance of the equipment post repair. There should be suitable PBG and Warranty Guarantee provisions in the contract. In the case of Local Repair Contracts the repairs may be got done directly through trade, if considered feasible, within the delegated powers of the CFAs.

**9.2.3 Request for Proposal:** The Request for Proposal should be carefully drafted and should invariably include the following:-

- (a) Description/Part No. of item(s)/equipment for repair
- (b) Quantity
- (b) Year of manufacture of the equipment
- (c) Name of the manufacturer
- (d) Period of usage
- (e) Number and types of major repairs already carried out
- (f) Details of repairs/work required
- (g) Schedule for delivery of equipment for repair and completion of task
- (h) Any additional data/material, like photographs etc., indicating type of malfunction of the defective equipment
- (i) QA requirements including the acceptance testing norms and methodology of acceptance testing), wherever applicable
- (j) Any other relevant information

## 9.3 Terms and Conditions Unique to Repair Contracts

**9.3.1 Terms of Delivery:** The following terms of delivery of equipment, which are specific to repair contracts, should be included in the RFP and the contract:

- (a) The customer shall deliver the repairable equipment to the Contractor as per the terms of the Contract within thirty days of the signing of the contract. The period of delivery may be varied but it should be fixed in advance and indicated in the RFP.
- (b) The equipment shall be dispatched for repair in the condition as specified in the Contract, fully equipped with the details of all detachable and removable units/parts.
- (c) Together with the equipment, the Customer shall send the technical documentation (Certificates, Logbooks, etc.), containing the total usage time, usage time after repair, the number of repairs, the reason for dispatching of the equipment for repair, and also

information about the scheduled servicing. Documents shall have records of operating time and maintenance checks executed on the equipment.

- (d) The Customer shall not dispatch for repair incomplete or damaged equipment, which requires additional repair by the same Contractor and not provided for in the contract.
- (e) If available, the Customer shall provide the spares for replacement along with the equipment, as per the terms of the Contract.

**9.3.2 Unforeseen Repairs:** The following terms and conditions relating to unforeseen repairs should also be included in the RFP and the contract:

- (a) If during the process of repair it is found that the equipment is incomplete, damaged or cannot be repaired in terms of the contract, the Contractor shall, if possible, install missing parts of the equipment or change parts of the equipment which cannot be repaired only in consultation with the Customer.
- (b) The Customer shall pay additional cost to the Contractor for the new/changed spare parts (units, sub modules, PCBs, etc). The cost of such parts shall be mutually agreed upon by both the parties to the contract and an Additional Agreement shall be signed by the Customer within sixty days after the date of handing over of the equipment to the Contractor. If there is no possibility of installing missing parts, the Contractor shall inform the Customer about this within thirty days from determination of the technical condition of the equipment but not later than sixty days after receipt of the equipment for repair.

#### **9.4 Delivery**

**9.4.1 Date of Delivery to the Contractor:** The date of delivery of the equipment for repair is the date on which the delivery-acceptance report is signed by representatives of the Contractor and the Customer.

**9.4.2 Date of Delivery to the Customer:** The date of delivery of the equipment after repair is the date on which the delivery-acceptance report is signed by representatives of the Contractor and the Customer.

**9.4.3 Period of Delivery to Customer:** The Contractor should deliver the duly repaired equipment to the Customer within three months from date of opening of the Letter of Credit, or the period as specified in the Contract. The delivery should normally be effected on CIP/CIF Indian Airport/Seaport in case of foreign contracts, unless specified otherwise in the Contract.

#### **9.5 Terms of Payment**

**9.5.1 In the Case of Contracts with Foreign Firms:** Payment for repair of the equipment should be effected by the Customer by opening irrevocable divisible Letter of Credit or by Direct Bank Transfer in favour of the Contractor for the full contracted cost of repair, or for such other amount(s) linked with clearly identifiable milestones as is agreed upon and provided for in the contract. The Letter of Credit should be opened within the period specified in the contract after the receipt of equipment by the Contractor for repair.

**9.5.2 In the case of Contracts with Indian firms:** Payment to indigenous firms should be made as per the terms of the contract through the paying authorities concerned.

#### **9.6 Acceptance of Quantity and Completeness of Equipment**

**9.6.1 Acceptance of Quantity and Completeness of Equipment in Case of Foreign Contracts:** The equipment shall be considered as delivered by the Contractor and accepted by the Customer with regard to the quantity and completeness of the equipment in accordance with the quantity and completeness of equipment specified in the corresponding shipping documents.

**9.6.2 Acceptance of Quantity and Completeness of Equipment in Case of Indigenous Contracts:** The equipment shall be considered as delivered by the Contractor and accepted by the Customer with regard to the quantity and completeness of the equipment in accordance with the provisions of the contract.

#### **9.7 Claims**

**9.7.1 Claim of the Customer:** It should be specifically provided for in the RFP and included in the contract that the Customer has the right to make claim on the Seller for:

- (a) **Quality of the Repaired Equipment** – in case of its nonconformity to the quality specified in the Customer's Quality Assurance norms for repairs/overhaul/storage of the equipment, as specified in the Contract;
- (b) **Quantity of the Repaired Equipment** – in case of nonconformity of quantity to those specified in the packing list (shortage inside packing) on condition that the repaired equipment arrived at the place of destination in undamaged packing or in case the responsibility of the Carrier has not been specified/provided in this regard.

**9.7.2 Period for Lodging Claims:** The claims for shortfall in quality and quantity of the repaired equipment should be lodged (in case of proven fault of the Contractor) not later than sixty, ninety or one hundred twenty calendar days as per deliveries by Road (in the case of repair contracts with indigenous Contractors), Air or Sea respectively, from the date of receipt of repaired equipment by the ultimate consignee. This should be specified in the RFP and the Contract.

**9.7.3 Particulars to be Specified in the Claim:** The claim should specify the quantity and description of the defective repaired equipment, subject of and reason for the claim.

## **9.8 Guarantees**

**9.8.1 Guarantees regarding Technical Life, Breakdown, etc.:** The following terms relating to guarantee of the repaired equipment should be included in the RFP and the contract:

- (a) Technical life period of the repaired equipment shall be stated in passports, logbooks and other technical documents submitted by the Contractor to the Customer.
- (b) All the breakdowns and deficiencies which may occur within the warranty period without a fault of the Customer shall be set right within ninety days, all the expenses being paid by the Contractor.

**9.8.2 Warranty/Guarantee to be Specified:** Warranty and Guarantee periods of repaired/replaced parts should be specified in the RFP and the repair contract.

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## CHAPTER 10

### DESIGN, DEVELOPMENT AND FABRICATION CONTRACTS

#### 10.1 Introduction

- 10.1.1 General.** This Chapter lays down the procedures to be followed by the Defence authorities and Departments for conclusion of contracts for design, indigenous development (including indigenization) and fabrication of stores, equipment and spares required by the Defence Services. The general instructions contained herein have been made as flexible as possible to avoid time delays and to encourage the industry to come forward and undertake the design, development and fabrication of items, equipment, plant and machinery required by the Defence Services. Detailed Instructions on Procedures to be followed in-house for processing orders for items of a developmental nature/indigenisation may be drawn by the Services HQrs/ other development agencies like DRDO, CPOs etc. in consultation with the MoD (Finance) in broad consonance with the guidelines contained herein.
- 10.1.2 Decision for Indigenous Development.** The Technical Directorate/ Directorate of Indigenisation /Committee for Indigenisation of the concerned Service/ Department/ Command HQ should assess the economic viability of indigenous manufacture of a defence item in the civil sector in terms of volume, likelihood of future requirement and economies of scale, residual life of the equipment/item and a clear indication of requirement over a long period (of say 3-5 years). For this purpose necessary systemic changes in planning and provisioning may be carried out by the Services. In case the above conditions are not fulfilled, the feasibility of indigenising a package of similar range of items may be considered / decided by the CFA in consultation with the IFA keeping in view the volume, future requirement and economies of scale so as to make the package commercially viable. If it is not feasible to work out a package but the item is still required to be indigenised for strategic reasons, the requirement may be projected to the Department of Defence Production and Supplies for development by the OFB/Defence PSUs etc. where feasible. When design and development orders are placed on in-service agencies under MoD/Service e.g. DRDO, WESEE, Army Base Workshop, BRDs etc., who undertake design/development and value engineering projects, the procedure will be similar to that prescribed for processing of orders with the OFB. In such cases a direct work order/indent will be placed on the development agency/workshop which has been identified for the stated purpose, with the approval of the CFA. The order will be processed under the normal OTE/LTE powers of CFAs.
- 10.1.3 Partnership with Private Sector.** The Indian private sector Industry today offers scope for their greater involvement in the Defence Sector and possesses the requisite skills and infrastructure for undertaking defence production or may be willing to invest/share the cost of setting up of such infrastructure. The industry should be encouraged to make such investment by working out the Minimum Order Quantity to maintain the financial viability of development within the desired time schedules. As regards high technology complex systems, projects under this category should be identified, to be undertaken by Raksha Udyog Ratnas (RURs) /Indian Industry /DPSUs /OFB/ Consortia on a level playing field. This procedure may also be followed for all upgradations of equipment/parts under the 'Make' category. Outsourcing of development of equipment /systems having high technology content should be considered on the lines of parallel development for which the cost should be shared with the vendor.
- 10.1.4 Perspective Planning and Annual Plans:** A long-term Perspective Indigenization Plan of 5 to 10 years should be framed by each Service for equipment/ systems/ sub-systems that progressively need to be developed indigenously and product improvement and upgradation of items/ equipment/ systems/ sub-systems etc. acquired from abroad. Within this overarching Plan, a two years' Annual Roll-on Plan also needs to be prepared by the Indigenisation Directorates/ Committees of the Services, which will form the basis for approval of the Prioritised Annual Indigenization Plan for each Service within the budgetary allocations made during the particular Financial Year (FY). Approval of the Annual Indigenisation Plan prepared by the Indigenisation agency/ Committee/ Directorate of the respective Service, prior to commencement of FY, by the CFA in consultation with the integrated finance, will be deemed as acceptance of necessity for indigenous development of items/ stores / spares that figure in the Plan. However, cases may also be taken up for indigenization of critically required spares and for mid-course changes in the approved list of items/ re-prioritisation of projects included in the Annual Plan, as and when required, with due justification, with the approval of the CFA in consultation with integrated finance. <sup>[MoD Draft 15.2.2]</sup>

#### 10.2 Principles and Policy

**10.2.1 General Principles.** Whilst it is not possible to lay down any rigid rules covering all the contingencies that may arise in the finalization of specific development contracts, the following guiding principles may, however, be borne in mind: -

- (a) Exploration of sources for placement of development order should be as wide as possible, both in the public and private sector, to encourage competition.
- (b) Ability of the contractor to execute work of the desired quality to the required time schedule should be evaluated by a Technical Committee.
- (c) Development contracts may, as far as feasible, be concluded with two or more contractors in parallel, subject to the other vendor/s agreeing to match the price of L1 else, the full order may be placed on the L1 firm, subject to price being found reasonable.
- (d) Placing of parallel contracts on two parties is particularly necessary/desirable to have more than one source of supply at bulk production stage and also, apart from competition, to ensure successful completion of development if one of the contractors fails to develop the equipment in time.
- (e) The ratio of splitting of the supply order between various development agencies/firms in cases of parallel development, including criteria thereof, must be pre-disclosed in the RFP itself.
- (f) However, in case the requirement is meager and complex technology is involved, a single source having expertise in the requisite field may be considered with appropriate justification and due approval of the CFA in consultation with IFA where required as per delegation of financial powers.
- (g) The contractor or the firm should be such that it can, if so desired, take up bulk production orders subsequently.
- (h) During the **procurement** stage, 20% of the total order quantity may be earmarked for development. This would, however, not be considered as a case of dual procurement **and the overall indented quantity may be cleared for import depending on urgency of the requirement.** <sup>[MoD Draft 15.2.3(f)]</sup>
- (i) The information available with the the Defence Inspection Organisation (DGQA, DGNAI and DGAQA) **DRDO, Indigenisation Directorates/ Committees of the Services, NSIC, Department of MSME and other bodies in Indian industry and academia involved in similar developmental work** <sup>[MoD Draft 15.2.3(e)]</sup> may be availed of in selecting the firms to be entrusted with the development/fabrication contracts.
- (j) Items indented by the indenting authority through indents/Final Depot List/ Special Requisition should be the basis to proceed with the development after requisite quantity vetting has been done, as per laid down procedure.

**10.2.2 Collaboration between Indian Industry and Foreign OEMs:** In view of limitations of indigenous technology, there may be a need for seeking critical technologies from foreign OEMs/vendors for high-technology complex defence systems /platforms. Such projects, may be undertaken in partnership with an Indian vendor (including an Indian company forming joint venture/establishing production arrangement with foreign OEM), followed by licensed production/indigenous manufacture in the country with minimum 40% <sup>[Make I/II Policy of DPP]</sup> indigenous content. The RFP may seek an indigenization plan and a technology absorption plan. The vendors, while responding to the RFP, shall ensure that their foreign partner(s) from whom technology transfer is obtained should be OEMs or their authorised licensees, design agencies or government sponsored export agencies. In addition, such foreign partner(s) should not be debarred, banned, suspended or blacklisted by the Ministry of Defence. This underlines the urgency to increase the level of self-reliance in defence production. The challenge, therefore, is to utilize the expertise gained by the industry through limited transfer of technology to progressively reach a stage where the industry can, through its own research & development efforts, manufacture equipment required by the Armed Forces without critical dependence on, and without infringing the intellectual property rights of the foreign OEMs. More importantly, the Indian industry must aim at acquiring the capability to develop futuristic technologies. <sup>[MoD Draft 15.2.4]</sup>

**10.2.3 Processing of Development Orders.** Some of the important steps involved in the processing of development contracts are as follows :-

- (a) Identification/Selection of stores/items for indigenous development.
- (b) Generation of the Paper Particulars / drawings as per available stock samples.
- (c) Identification of vendors/firms.
- (d) Framing and Issue of RFP.
- (e) Techno-commercial evaluation of bids and holding of CNC/PNC.
- (f) Conclusion of Contract/ Supply Order.
- (g) Post Contract Management.
- (h) Registration of vendor through Defence Inspection Organisation, under the aegis of relevant Joint Service Guidelines.

**10.2.4 Selection of Items for indigenization/development-** The following broad guidelines may be adopted to arrive at the decision for indigenous development of items/equipment:-

- (a) When OEM is closing down or has closed down the Production line and spares are not available ex-import for equipment which has adequate residual life and population.
- (b) Items for which TOT has been taken.
- (c) Items including those which are low tech and the sample requisite technical and functional specifications are available and which it would be economic to develop.
- (d) Spares which are fast moving and the requirement is recurring in nature.
- (e) Goods for which the import price is exorbitant.
- (f) Items short-listed from MRLS and import list depending upon their criticality, technological processes involved and consumption rate.
- (g) Where an Indian firm offers to develop an item on 'No Cost : No Commitment' basis.
- (h) In special cases, where it is considered in the interest of the State to indigenize or for any other strategic reason to be recorded, e.g. Secrecy devices.

**10.2.5 Dispensation to firms undertaking Development Contracts.** The contract documents may be issued free of cost. Further, submission of earnest money deposit and security deposit may not be made mandatory in case of firms of repute/firms which are registered with DGS&D, DGQA/DGAQA or other Departments/Services on case to case basis. Development orders placed on firms may not have a liquidated damage clause, if it is found difficult to attract vendors to develop the item/ stores whose specification is normally not governed by any widely used standards like IS/BS, etc.

### **10.3 Paper Particulars and Design Aspects**

**10.3.1 Model. Development contracts are generally of the following two types:-**

- (a) Those where industrial engineering of Prototype models is to be done by the firm on the complete design data which has already been evolved in the Establishment/Department from <sup>[MoD Draft 15.5.3(a)]</sup> an existing/original model.
- (b) Those where designing, developing and engineering are completely done by a firm under technical guidance and advice from the developmental authorities. In this case, it may be possible to utilize the expertise available in the industry and ensure quick and smooth supply.

**10.3.2 Design Aspects.** In the case of contracts as at Para 15.3.1(a) above, the development contract would always be based on a draft technical / design specification and other information to be provided by the Establishment / Dte of Indigenisation/ Laboratory / Workshop / Depot. In case of contracts as at Para 15.3.1 (b) above, the contract should contain a provision for the development of industrially engineered models/equipment and supply of models/equipment at various stages with relevant types of drawing and other documents by the contractor, as required by the contracting authority. The design material, workmanship and performance of the equipment for a specific period should also be guaranteed by the contractor.

**10.3.3 Offloading of Design Work:** In case the material specifications are not clear, the Professional/Technical Directorate may be approached to provide equivalent material specifications

or lab testing got done at NABL Accredited/Govt Approved Laboratories. Further, in case of non-availability of requisite paper particulars required during RFP stage, the task of generation thereof may be outsourced on competitive basis with the approval of the CFA as per delegation of financial powers.

## 10.4 **Vendor Identification / Development**

**10.4.1 Identification of Vendors.** Identification of appropriate vendors is a vital step and must be well considered. Wherever possible, the vendors who are registered with DGAQA/DGQA/DRDO/OFs/DPSUs/Services indigenisation agencies/ NSIC should be approached. Suitable vendors can also be identified by the developing agency in consultation with other developing agencies apart from firms registered with DGQA or any other defence establishment. Unregistered firms may be considered taking into account their infrastructural facilities, capacity, technical competence and financial standing. Firms of national repute may also be considered based on self certification, with the approval of the Defence Secretary.

**10.4.2 Development of Source by Inviting Applications for Enlistment:** The following procedure will be followed:-

- (a) Open advertisement will be placed on the internet and advertised in leading newspapers every year, in respect of different products/components, for enlisting firms willing to participate in tenders issued by the Department/Organisation. The minimum number of products/components required to be submitted by the vendor for evaluation and likely demand for those products/components for the next two to three years will be indicated in the advertisement. **In case of equipment/platforms which are security sensitive in nature, open advertisement may not be insisted upon and their development may be undertaken by inviting EOI on case to case basis.**
- (b) Interested firms may visit the factory/workshop/depot as indicated in the tender to see the product/ component required to be developed. Thereafter, the firms showing interest in developing the product/component should be asked to submit the details of infrastructure available with them, as per the documents prescribed for vendor registration;
- (c) The infrastructure details submitted by the firms should be studied by a team of officers constituted to assess their manufacturing capability to verify their genuine potential for developing the product/ component.
- (d) Firms found capable of developing the product/component should be asked to submit the required number of samples (as advertised) of the identified product(s). On acceptance of samples, the firm will be eligible for participating in the LTEs for the said component / product.
- (e) A firm may not be willing to submit a sample due to requirement of a heavy investment. In such cases, the indigenisation agency/ Directorate may place a development order on the firm as follows :-
  - (i) The cost of the sample will be assessed through a Board of Officers having representation from Finance.
  - (ii) The firm will be asked to offer a quotation and if the price is found to be equal to or lower than the assessed cost, the development order will be placed on the firm at the price quoted.
  - (iii) If the firm quotes a price higher than the assessed cost, the price will be negotiated with the firm and development order placed at the assessed cost.

**10.4.3 Capacity Assessment.** Capacity assessment/verification of firms not registered with DGQA/DGNAI/DGAQA/Govt Agencies is to be undertaken by the developing agency by associating a member from the DGQA/DGNAI/DGAQA, other inspection agencies or other Technical Agencies/Committees on fast track to ensure that firms identified are capable to develop prototype equipment and systems as required. Where considered necessary by the CFA, IFA may be associated for assessment of the financial capacity of the firm. Once a firm has successfully executed an order within +/-5% tolerance in terms of quantity, it should be encouraged to get registered.

**10.4.4 Transfer of Technology (ToT).** When equipment is being bought from a foreign vendor, based on report of dedicated conduct of Maintenance Evaluation Trails (MET), the provision of ToT to an

Indian private/public firm for providing maintenance infrastructure may be considered and the foreign vendor would need to identify an Indian firm which would be responsible for providing base repairs (third line) and the requisite spares for the entire life cycle of the equipment. These firms would be DPSUs/OFB/RURs/or any other firm specially selected for this purpose. In addition Army Base Workshops/Naval Dockyards/Base Repair Depots of Air Force may also be considered for this purpose at RFP stage on a case to case basis in consultation with the DDP. The RFP would spell out the specific requirements of ToT for Maintenance Infrastructure which could cover the production of certain spares, establishment of base repair facilities including testing facilities and the provision of spares for the entire life cycle of the equipment. Both the foreign and the Indian firms would be jointly responsible for providing the maintenance facilities and support for that equipment.

## 10.5 **Framing and Issue of RFP**

- 10.5.1 **Request for Proposal (RFP).** Development/ indigenisation of an item may require design, generation of drawings, manufacturing, development of prototype equipment and system, quality assurance during development process, tests and trials and inspections at various stages. RFP is to be floated to firms who have the required infrastructure for the proposed development. In order to save on development time and in case of the classified nature of stores to be developed, quotations may normally be invited on limited tender basis from firms/contractors who are known to be capable of undertaking the particular development work. However, depending upon the specific requirements of the case, the developing agency may justify issue of RFP either on OTE, LTE or STE basis, as required.
- 10.5.2 **Pre-bid Conference.** In case of turnkey contracts or for development of sophisticated and complex equipment, a suitable provision is to be made in the bidding documents for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specification and other technical details of the plant, machinery and equipment projected in the bidding document. The date, time and place of the Pre-bid Conference must be indicated in the bidding document and should be sufficiently ahead of the bid opening date.
- 10.5.3 **Reasonableness of Price.** It would be mandatory for the vendor to submit the detailed break-up of cost under the headings materials (indigenous/ imported, quantity, cost), labour (number of man hours, man hour rates, etc.), design and development, drawings and details of overheads which will be vetted by a technical team of the Department /Organisation. The last purchase price (LPP) of imported item will be taken as the base price to arrive at the reasonableness of the quoted rates. In case LPP is not available the base price will be arrived at by the process of benchmarking which will be done prior to opening of the Commercial bid as per the procedure given in Chapter 5 of the DPM. L1 will be determined with reference to the development cost, including the cost of prototype and the total quantity for which the initial orders are placed. An indication of the quantities that would be required during the next two to three years should also be given in the RFP.

## 10.6 **TYPES OF CONTRACTS**

- 10.6.1 **Adoption of Contract Type.** Various types of contracts can be adopted depending upon the nature, complexity and time span of the development work /project. These are described below. However, normally Firm-Fixed-Price contracts, Fixed Price Contracts with escalation clause and Fabrication Contracts will be concluded. Contracts other than these three will be adopted only with the prior approval of Service Headquarters/ Head of Organisation /Department /Service / HQ Maintenance Command IAF in consultation with the respective IFA.
- 10.6.2 **Firm-Fixed-Price Contract.** Firm fixed price contract means a contract in which a lump sum amount is agreed upon for development/indigenisation and supply of the equipment based on data/specifications supplied and which is not subject to any adjustment during the performance of the contract due to any reasons whatsoever. The firm or the contractor assumes full financial responsibility in the form of profit or loss. This type of contract is best suited when reasonably definite design or performance specification is available and when Government can estimate reasonable price of development/indigenisation.
- 10.6.3 **Fixed Price Contract with Escalation.** This is the same as the firm fixed- price contract, except that upward or downward revision of contracted price can be allowed on occurrence of certain contingencies beyond the control of the firm/contractor such as increase/decrease in wages or cost of material. An escalation formula must be included in such contracts and a ceiling of escalation should also be fixed in the case of long term contracts. Price variation clause can be provided only in long

term contracts where the delivery period extends beyond 18 months. The conditions prescribed for price variation clause elsewhere in the DPM will apply whenever such a clause is included in the developmental contracts.

10.6.4 **Fixed Price Contract providing for Re-determination of Price.** This type of contract is intended to eliminate the impact of contingencies due to causes other than those foreseen in the case of fixed price contract with escalation. These contingencies may be due to the contractor's/firm's unfamiliarity with the raw materials or manufacturing processes, to long term contracts, lack of specifications or the use of performance rather than product specifications. In such cases prospective re-determination could be done –

- (i) On request by either party
- (ii) At stated intervals
- (iii) At a determinable time.

10.6.5 **Fixed Price Incentive Contract.** This type of contract is designed to provide a greater incentive to the firm / contractor to reduce the contract costs by providing higher profits if costs are reduced and lower profits when costs rise. These costs, the ceilings on target cost, target profit, a price ceiling and the formula for arriving at final cost are all settled before the execution of the contract. This contract type will only be applicable for ab-initio development contracts.

10.6.6 **Cost Plus Contract.** Cost Plus contracts should ordinarily be avoided. Where such contracts become unavoidable as no vendor is willing to undertake the development, full justification should be recorded before entering into the contract. In this type of contract the firm/contractor is reimbursed the costs incurred and also receives a negotiated profit for performing the contract, i.e., the profit of the firm/contractor and not the cost of development is fixed. Contractor's responsibility towards cost of the item is minimum except that he has to use the same care and prudence as is expected under fixed price contracts. This type of contract should be concluded only when the uncertainty which is involved in the contract performance is of such a magnitude that the cost of performance cannot be estimated with sufficient reasonableness to permit the type of fixed price contract. It is also necessary to ascertain that the firms/contractors have cost accounting machinery and that the cost is clearly defined. A strict R&D surveillance has got to be provided by the Dept to ensure that costs incurred by the firm are reduced to the minimum. The RFP should provide for the firm's books of accounts to be checked by the Order Placing Agency to verify the costs by inclusion of a book examination clause as per standard format. Where supplies or works have to continue over a long duration, efforts should be made to convert future contracts on a firm price basis, after allowing a reasonable period to the supplier/contractor to stabilise their production methods.

10.6.7 **Fabrication Contract.** Fabrication contract means a one time contract concluded with a contractor or a firm for fabrication and supply of component, sub-assemblies or an assembly, which are not commercially available, against design drawings/specifications to be supplied by the Directorate of Indigenisation/R&D Laboratory/Establishment/Workshop/Depot /Institution.

## 10.7 Conclusion of Development Contracts

10.7.1 **Conditions for placing Development Contracts.** The following points will be borne in mind by the authority entering into a contract:

- (a) Contracts in writing should be placed after calling for quotations from a number of firms/contractors unless STE is resorted to for which detailed justification would be necessary. The two bid system should be followed in design/development/fabrication contracts of a complex nature. In other cases, a single bid may be invited. A Pre bid conference may be held prior to submission of the tenders to clarify any doubtful areas and also to firm up the SQRs/QRs prior to submission of bids.
- (b) When the statement of case for sanctioning of various phases of the project or the indent is put up, the Head of Service or Establishment /Director/Purchase Dept concerned should mention the amount that is intended to be spent on development/fabrication contracts out of the total cost of the project. At this stage detailed particulars regarding the inquiries made with firms, if any, the number of prototypes intended for manufacture and the intention to get the prototype manufactured by one or more firms must be mentioned.

- (c) The financial status and technical capability verification reports as well as compliance with the techno commercial requirements will be taken into account at the TEC stage itself. 'Q' bids of only those firms will be opened who are cleared by the TEC.
- (d) Ordinarily advance payments need not be agreed to in the payment terms. If, however, advance payments have to be made, these should be made against a Bank Guarantee executed on proper stamp paper. If stage payments are to be made to the firm/contractor, the stages should be clearly defined and it should be ensured that the payments are in consonance with the work actually performed by the firm/contractor as per each stage, viz. Preliminary, Design Review, Detailed Design Review and Realisation of Prototype. The quantum of payment will generally not exceed 50% of the estimated expenditure incurred by the contractor upto that stage. The yardsticks for work measurement will be laid down in the contract.
- (e) Once a contract has been concluded, the terms and conditions thereof will generally not be varied. However, where this becomes necessary/inescapable any modification will be carried out with the prior concurrence of the appropriate CFA and the respective IFA, within whose powers the revised contract value falls.
- (f) Whenever stores are required to be issued to the firm/contractor for fabrication or prototypes or sub-assemblies are issued for guidance in fabrication, these should be issued against appropriate Bank Guarantee. In addition to the Bank Guarantee, appropriate insurance may be asked only where it is considered necessary.

**10.7.2 Standard and Special Conditions.** Standard conditions, which are applicable to the contract will only be given to the contractor. Any special conditions of contract considered necessary shall also be drawn out by the Establishment/ Indigenisation Directorate / Laboratory / Developing agency/Department concerned and issued to the tenderers along with other documents. The successful bidder will conclude an Agreement. **Some of the special conditions of contract which need to be considered for inclusion in indigenous development contracts/ contracts for upgradation/ product improvement are given below:-**

- (a) **Intellectual Property Rights (IPR).** The IPR developed under a developmental contract will be the property of Govt. of India if the contract is funded by the Govt. In such cases, the vendor will provide technical know-how/ design data for production of the item to the designated production agency nominated by the Contract Operating Agency. The vendor will, however, be permitted to receive, upon demand, a royalty free license to use these intellectual properties for its own purposes, which specifically excludes sale or licensing to any third party.
- (b) **Joint IP Rights.** In case of design, development and fabrication of equipment/ systems of complex nature, where no design and development input is provided and only broad specifications are given by the Contract Operating Authority, and/or the developer is sharing the developmental cost, joint IP rights may be considered. Even where joint IP rights are accepted, MOD/ GOI/ Contract Operating Authority reserves the right to develop an alternate source. In such cases it would be mandatory for the developer to transfer the know-how of the product to the agency designated by the Contract Operating Authority. However, in such cases the development partner would be eligible to receive license fee/ royalty as per mutually agreed terms.
- (c) **Access to Classified Documents/ Systems.** The nature of activity for developmental task demands a comprehensive knowledge of the complete system/ documentation. Development partner may be allowed to access pertinent classified details/documentation in the interest of execution of task, as deemed appropriate by the Contract Operating Authority. Association of the development partner will be desirable for effective rectification of design defects, if any, during trials of systems/ sub-systems, being developed as part of the contract. In all such cases, the development partner and his employees, connected with the assigned task, will be subject to the provisions contained in the Indian Official Secrets Act and required to render a certificate to that effect. Suitable safeguards and conditions may be incorporated in RFP/ Contract. [MoD Draft 15.9.2]
- (d) **Acquiring Manufacturing Drawings.** In order to rapidly develop alternative sources of supply of an item after this has been developed and productionised by one contractor, it is essential that the manufacturing drawings are passed on by the contractor to the Govt. Since the manufacturing drawings are evolved and finalised by the contractor who has initially

developed the item, it is likely that the contractor would claim his rights on such drawings and not agree to part with them. Accordingly, a clause should be included in the RFP clarifying that the manufacturing drawings prepared by the contractor for manufacture of the store required shall be the property of the Ministry of Defence and as such shall be passed on to the Purchaser and shall not be used by the contractor for any purpose other than this contract, without the written consent of the Competent Financial Authority, in consultation with the IFA.

- (e) **Patents and Other Industrial Property Rights.** All manufacturing drawings and design specifications prepared by the industry/vendor/contractor for development/manufacture of the items shall be the property of the Government of India/Ministry of Defence and shall not be used by the contractor for any purpose, without the written consent of indigenisation authority, who will be the custodian of the same. The industry/vendor/ contractor shall indemnify the Government of India/Ministry of Defence against all claims from a third party at any time on account of the infringement of any patents, copyrights, trademarks or any other industrial property rights, whether such claims arise in respect of manufacture or use. [MoD Draft 15.9.2]
- (f) **Change Management.** Once a contract has been concluded, the terms and conditions thereof will generally not be varied. However, unlike normal procurements, success of a development contract is not assured owing to indeterminable nature of work and high level of risks inherent in the development/ engineering processes. As such, firms/ prospective bidders may be reluctant to invest/ undertake such tasks. Hence, provisions of ‘Change-Management’ to include re-scheduling/ re-costing and ‘Short-Closure’ may be incorporated in development contracts with adequate safeguards where considered necessary. In case of developmental failure, a revised CNC may be undertaken to **re-determine**/ finalise the revised cost for closure of the contract. Any changes/ modifications will be done only with the approval of the appropriate CFA and the respective IFA, within whose powers the revised contract value falls [MoD Draft 15.9.2]
- (g) **Commitment Clause.** All development contracts should, preferably, include a commitment clause wherein the buyer gives a commitment to procure the item from the developing industry/vendor **for at least 05 years or for specified period.** The developing industry/vendor also needs to give a commitment to supply the item and provide the product support for that duration. Modalities of fixation of future procurement price shall be specified at the developmental RFP stage itself, excluding the initial development cost, but taking annual escalation into account. The same may be reviewed at regular intervals of two years. [MoD Draft 15.9.2]
- (h) **Modified Liquidated Damages Clause.** Development cases inherently have a number of indeterminable parameters due to complexities, processes and agencies involved. Therefore, development orders placed on industries/vendors may have a modified Liquidated Damage (LD) clause, so as not to dissuade private sector industry from participating in the indigenisation process. LD in case of development projects be invoked/applied after due deliberation on merits of each case. [MoD Draft 15.9.2]
- (i) **Approval of Milestones/ Activities:** Contracts having more than one process/ stage may require inspection/approval of completion of each process/ stage. The RFP and Contract should clearly address this issue. [MoD Draft 15.9.2]
- (j) **Sub-Contracting.** In case of development contracts of complex equipment/ items/ systems, a clause may be provided for the industry/ contractor to sub-contract any part/ process of work on prior mutual agreement with the indigenisation agency and would be entirely responsible for quality/ standard and timely execution of the sub-contracted work. The supervision of work and timely completion/ delivery for the sub-contracted jobs will be done by the Contractor. The Contractor can under no circumstance sub-contract the complete Scope of Work to a Third Party. The Third Party sub-contractor, should not be serving a ban/ debarment by the MoD or any other agency of the GOI. [MoD Draft 15.9.2]

10.7.3 **Fabrication Contracts.** The acceptance of quotation in this case would take the form of a supply order.

## 10.8 **Placement of Order**



- 10.8.1 In case of items considered economically viable for indigenous development, the first order may be placed for the Economic Order Quantity (EOQ) only, the balance number of items in the indent over and above the EOQ may be returned to the indenter and the latter may be asked to re-certify the funds for the EOQ only. The indenter may obtain his balance requirement, if any through import route or through any other sources. Generally, a period of two to three years may be provided for indigenous development of a defence item.
- 10.8.2 In case the quantity of the equipment/ spares is limited/small and may become uneconomic (Non - EOQ) if distributed between two vendors, the entire order would be placed upon the L1 vendor only.
- 10.8.3 If the indented quantity is found to be less than the assessed EOQ, the Indigenization Agency should first float the RFP and in case there is no response, it will not be taken up for indigenization unless its' development is considered essential for strategic reasons.
- 10.9 **Development of Second/New Sources**
- 10.9.1 **Procedure.** With a view to speeding up development of additional indigenous sources, the question of earmarking a prescribed quantity of the indent for developing a new source has been considered, and the following procedure may be adopted for procurement of items of a development nature, particularly for high value indents of Rs 10 Crs and above:-
- (a) Where there is only a single developed source, or where there is a felt need for development of more than two sources and where the quantity is divisible, 20% only of the second indent should be earmarked for placement as an educational order on the new source to be developed. The percentage may however be modified to ensure that the quantity covered is viable for economic production. This order for the earmarked 20 % should be placed by inviting tenders (OTE/LTE) as per the normal procedure laid down, and the source already developed will not participate in this.
  - (b) The balance 80% of the indent is to be procured from the sources already developed. The firms that execute the source development orders within 5% tolerance clause (of Quantity only), will be considered as established source subject to submission of bid for at least 50% quantity of the source development tender.
  - (c) Pending successful development of a new source, the order should be placed on the developed source(s) for the required quantity as indented by the Services by following the usual procedure laid down in this regard in order to ensure that the requirement of Services and of Production are met fully and without any delay.
  - (d) In case the new source on which the order for 20% of the indent was placed fails to develop the item, the order should be placed on another new source to be selected by following the usual procedure laid down.
  - (e) A second order to an undeveloped source which has secured one order will not be issued unless:-
    - (i) A Bulk Production Clearance (BPC) has been accorded to it for the subject item against the first order; and
    - (ii) It has made at least 50% of the supplies of the first Supply Order placed on it, which have been duly accepted.
- 10.9.2 **Items Developed by Defence PSUs/OFB.** The cases in which DRDO/ Defence PSUs/OFB /RURs have successfully developed an item for the Deptt of Defence or have taken Transfer of Technology (ToT) for Department of Defence would not be taken as single vendor cases and only a commercial RFP should be issued to them directly. Instead, they would be treated at par with the proprietary firms for any subsequent procurement, except that no PAC certificate is required. The case will be processed for approval as per delegation of financial powers for LTE/OTE procurements. It will, however, be checked prior to placing of orders that the technology absorption levels agreed to while concluding the ToT contract have been achieved.
- 10.9.3 **Certification of Development:** A Certificate/confirmation that the item has been developed by the Defence PSU specifically at the request of the Defence Services/Department or to meet the requirements of the Defence Forces will be rendered by the Purchase Organisation in the Statement of Case submitted for obtaining CFA approval. An endorsement in this regard would also be given in the sanction letter for the procurement.

## 10.10 **Terms of Payment**

- 10.10.1 **General .** The normal terms of payment are 100% payment within 30 days time after receipt and acceptance of the materials in good condition or the date of receipt of supplier's bill, whichever is later. However, an amount of 10% may be withheld as performance guarantee (where Security Deposit has not been taken) during the warranty period as mutually agreed with the contractor.
- 10.10.2 **Optional.** Alternatively, payment upto 90% against proof of dispatch taking into consideration aspects like the reputation and past performance of the suppliers and pre-inspection of the goods at the suppliers' premises may be considered where necessary. Such payments for dispatch by road will be made only if the goods are at suppliers' cost.
- 10.10.3 **Advance Payment to Suppliers.** Generally, no advance should be paid to the firms/contractors and payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary in the case of development and fabrication contracts or in case of turnkey projects to give an advance. In such cases it should be ensured that only a minimum reasonable amount, upto 15%, is given as advance at the time of placement of the order. Such advance payments will be made only against furnishing of a proper bank guarantee by the firm from Scheduled Commercial bank in India.
- 10.10.4 **Intermediate/Stage Payments.** If stage payment are to be made to the firms the stages should be clearly defined. The initial advance paid should be adjusted against the successive stage payments due to the supplier. The intermediary payments, if any, should be spread over the period of execution of the projects/contract and made in suitable instalments keeping in view various stages of development/manufacture. These stages should be pre-determined and it should be ensured that the payments made are in consonance with work actually performed by the firm/contractor and linked to verifiable milestones viz. Preliminary Design Review, Detailed Design Review, purchase of raw materials and realisation of prototype etc. The quantum of payment will generally not exceed 50% of the estimated expenditure incurred by the contractor upto that stage. About 20 to 25% amount as last installment should be released only after the completion of the project or rendering of the services/supplies to the entire satisfaction of the authority placing the order.
- 10.10.5 **Deviations.** Cases of advance payment over and above the limits prescribed above would require the approval of the Defence Secretary and concurrence of FA (DS)/Secy Def (Finance).

## 10.11 **Post Contract Management**

- 10.11.1 **Forwarding of Contract Documents.** Once a project has been sanctioned and a contract is concluded for development/fabrication, a copy of the contract will be forwarded to the Heads of Technical Directorates/Services at Headquarters / AHSP. Two copies of the contract (one for the CDA and the other for the LAO concerned) will be forwarded to CDA and IFA concerned for such action as may be considered necessary by them.
- 10.11.2 **Responsibility for Technical Matters.** The responsibility in technical matters relating to the development shall rest with the Head of the Service/ Establishment / Directorate of Indigenisation / Professional or Technical Directorate/ Laboratory/ Workshop / Depot / Institution concerned.
- 10.11.3 **Inspections.** There may be two to three inspections during the development stage and firms may be made more accountable for their product. They may be asked to furnish reports of various tests from the various laboratories as required by the Purchaser, The requirements are to be indicated in the approved Quality Assurance Plan (QAP). A clause should be provided that in case it is subsequently found that the firm has used fraudulent means to obtain the report/s and the item developed is not as per specifications indicated in the RFP the firm will be blacklisted for a minimum period of three years from any future tender. Once an item has been declared as free flow, for further procurement the inspection will be done by the DGQA/DGAQA as per normal procedure.
- 10.11.4 **Monitoring Progress.** Responsibility to monitor the progress and operation of the Development/Fabrication contract will rest with the authority that has entered into such contract. The customer will provide necessary guidance to the firm as required from time to time and will maintain close liaison with them to clarify any doubts. The progress of development will be monitored closely and in case the progress is not found to be satisfactory, suitable action will be taken as provided for in the contract.
- 10.11.5 **Return of Documents.** Documents, specifications, drawings issued to the firms/contractors or prepared by them should be taken over as these belong to the Govt. A provision to this effect should

be made in the contracts. Loss or damage to these documents shall be recoverable from the contractors.

#### 10.12 **Declaration of Free Flow**

10.12.1 **Declaration of Item as Developed.** The indigenization of an item will be considered complete and the item declared as free flow under the following conditions-

- (a) When the initial quantity is not large enough to be split and/or the equipment/ system / item is a high tech complex one requiring substantial investment even at the time of development in terms of plant and machinery, the development of a single source and successful delivery against the order placed may be considered sufficient to declare the item as developed.
- (b) In all other cases, when at least one successful purchase is made and at least two sources are fully established, which would not only ensure price competition but also avert Government's dependence on any single source.
- (c) Completion of codification of the item / equipment by the AHSP (applicable in all cases).
- (d) If a second source for the item is not developed under clause at serial (b) above within five years from the date of completion of the first supply order, the item may be declared as "free flow" i.e as developed thereafter; however, there could be exceptions with full justification where an item is declared free flow even earlier.

10.12.2 **Bulk Production by Agencies associated with Development.** After the item has been declared as developed, the first bulk order will be placed on the production agency / agencies associated with the HQrs/Department in the development of the item and the following procedure will be adopted for this purpose:-

- (a) There should be a reservation of quantity not exceeding 50% of the initial order quantity for production agency (ies) associated with the development of the product.
- (b) Where the initial quantity is not large enough to be split and / or the item is a high-tech one, requiring substantial investment even at the time of development in terms of plant and machinery, the ordered quantity shall be covered on such production agency (ies).
- (c) In the case of (a) above, the price will be settled on the basis of competitive quotations by issuing a tender enquiry to other agencies who, though not associated with the development of the product, are considered competent to productionise the item. In such a case if the production agency associated with the development of the product quotes a price higher than the lowest acceptable offer, such agency shall be asked to match the lowest price, failing which they can be considered, for a price preference not exceeding over the lowest acceptable offer.
- (d) In the case of (b) above, the quotations would be obtained only from the production agency associated with the development and price will be settled through a study of the various elements of cost, the data for which will be furnished by the concerned agency.
- (e) The dispensation as indicated above shall be given to the production agency associated with the development only where their association is with regard to the development of an item which can be separately procured.
- (f) Even in case the source is not already registered, the latest bulk order can be placed on them. However, their continuance as an established supplier of the item will be subject to their capacity verification and registration by the competent authority/ Department.

10.13 **Applicability of Other Chapters** All design, indigenous development, indigenisation and fabrication contracts will be processed as per the provisions and procedures given in this Chapter. The policy, procedures and provisions contained elsewhere in the DPM would be applicable to Design, Development, Indigenisation and Fabrication Contracts only to the extent the subject is not specifically covered in this Chapter.

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## **CHAPTER 11**

### **ICT Procurement**

**11.1 Introduction** -This Chapter sets out the policy and procedures to be followed for the procurement and management of integrated Information and Communication Technology(ICT) related goods, services, schemes and projects.

#### **11.2 Definitions:**

**11.2.1** Information and Communication Technology(ICT) goods and services refers to the entire range of IT equipment, Software, Off-the-Shelf automation solutions, customized/bespoke software development, solutions for enterprise-wide applications, ICT schemes and projects-turnkey procurement, integration; training; services for information security, Vulnerability Assessment (VA), consultancy, development, maintenance, support administration and management of ICT infrastructure.

**11.2.2** ICT equipment means desktop computers, laptops, servers, monitors, printers, audio-visual (AV) equipment, software, network equipment, Information Security related equipment (Firewalls Intrusion Detection/ Prevention System, Bulk Encryption Units (BEUS), other encryption equipment/ devices, IP Encryptors etc), portable IT devices (digital notebooks, digital data pads, palmtop computers etc), Kiosks, any kind of smart devices, related racks, cable trays, consumables, peripherals and ancillaries and any new IT equipment introduced by the industry in the future.

**11.2.3** Standard system bundle means all the components, combination of hardware, software, installation/commissioning services, consultancy/maintenance services, training and documentation included in a standard package where a ICT system/hardware/software is procured. For example, procurement of computing hardware with standard software and related maintenance services.

**11.2.4** AV equipment means audio-visual training/presentation materials or aids, including digital cameras and data projectors, video conference equipment, data wall, projection/ display screens (Plasma, LED etc).

**11.2.5** Peripheral and Ancillaries mean devices or units that operate separately from the CPU but are connected to or used along with it e.g. mouse, printers, networking equipment/ cables, monitors, touch screen devices, barcode readers, USB devices, card readers, external mass storage devices, scanners, biometric devices, hardware dongles, computer displays, speakers, UPS/ batteries, related cables/ chords, accessories and passive components etc.

**11.2.6** IT services refer to the application of technology and technical expertise to enable organizations in the creation, management and optimization of processes and procedures. IT services may include AMCs, hiring of equipment and services, consultancy, R&D efforts, design/ development/ implementation of Info Security solutions, patch management, Vulnerability Assessment/ Penetration Testing, environmental hardening of ICT equipment, maintenance/ administration support of ICT infrastructure (server farms, data centers, hardware, software, networking equipment etc.), digitization efforts, hiring of resident engineers/ software designers/ developers/ Cyber and Information Security professionals, training, hiring of Internet services, etc.

**11.2.7** Post Implementation Support is the expertise or technical support in terms of knowledge, hardware and services support to effectively manage the successful running of the program/ project after successful completion and implementation.

**11.2.8** Hand holding for Software projects implies providing the User with the technical expertise, guidance, updation/ upgradation (patch management), version control, assistance and information to implement and manage the software projects and will also include bug fixing and refinements based on User feedback.

**11.3 Applicability of Provisions** - The special procedures contained in this Chapter will apply for procurement of all ICT goods, services and projects, in addition to the general policies and procedures contained in various other Chapters of DPM.

**11.3.1** This procedure will, however not be applicable to acquisition of ICT enabled weapon systems/ aircrafts, ships and equipment platforms that are procured to enhance the combat capabilities of the Armed Forces.

#### **11.4 Planning stage**

- 11.4.1 Perspective Planning for ICT Projects**- The Perspective Planning process will comprise the ICT Road Map for each Service, which will be consolidated and prioritized by HQ IDS in consultation with the Services HQ, to formulate the Services Integrated ICT Five Year Plan. While formulating the plan, the Services should look at ICT systems development holistically and not with a piecemeal approach and commonality of software and platform within the service will be kept in view and isolated developments of system/software in the field with the same objective will be avoided to ensure standardization.
- 11.4.2 Annual Services ICT Plan** - The Draft Annual ICT Plans of the Services would contain the carry-over plans from previous year/s, schemes where AON has been accorded and new projects for which approval/AON is being sought during current financial year. Taking into account the schemes likely to be included in the Annual ICT Plans, HQ IDS would work out the annual budgetary requirement for each Service in consultation with the latter, indicating whether the expenditure is to be met from the Revenue or Capital Budget of the Service. The Annual Plan would be projected to HQ IDS well in time for examination and approval prior to commencement of the Financial Year to which it relates.
- 11.4.3** The complex ICT projects would require expression of interest and/or engagement of consultant/Detailed project report stage(s) to firm up the scope, technical details, implementation aspects and cost estimates of the project before obtaining AON. For simple projects, EOI/engagement of consultant/DPR stage(s) can be dispensed with and AON may be taken straight away after approval of Annual Plan.
- 11.5 Expression of Interest(EOI)** In the case of complex ICT projects, the project idea needs to be shared in advance with the industry and pre-RFP consultations should be done. The EOI stages should be undertaken before the RFP is formulated in order to minimise the need to issue clarifications/ amendments thereto later. During these stages an attempt should also be made to ascertain the available technological choices, bidder base and capability of these bidders to execute the project in order to encourage competition while ensuring participation of those who have the requisite financial capability, technical expertise and proven track record for delivering such projects. An EOI should be issued under the following circumstances:
- a) Scope of work/specifications is not clear, hence, an EOI could help the nodal agency to define and refine the scope of work/specifications/identify suitable technologies through discussion with potential consultants.
  - b) To conduct a market assessment for possible sources, services providers and consultants.
  - c) Multiple approaches are possible and hence require expertise in identifying the best approach.
- 11.6 Engagement of Consultants**: In complex and turnkey ICT projects, where there is lack of in-house expertise for processing various stages of procurement, it may become necessary to engage external experts, institutions, consultancy firms/ academicians from premier academic institutions having required specialized knowledge/capability to provide assistance in accomplishing various activities, for example, formulation of project configuration, selection of appropriate technology, converting the functional requirements into the desired technical specifications and assistance in preparation of RFP etc. The governing guidelines for this purpose will be the ones contained in Rule 178, 180 and 181 of GFR 2017 and Chapter-12 of this Manual. Consultants may also be engaged by nomination, duly complying with the provisions contained in Rule 194 of GFR 2017. For projects having longer gestation/implementation period, a strategic/long term consultant may be engaged to oversee overall implementation of the project.
- 11.7 Preparation of the Detailed Project Report (DPR)**. Depending upon the size and complexity of the project a multi-disciplinary team may be set up by the Sponsor Branch/ Dte to prepare the DPR. The Team may comprise of internal reps of the Services and/ or external consultants who may be engaged for this purpose from various Institutions/ Industry segments/ Academia etc. Apart from the detailed project plan, technical specifications, implementation roadmap etc. the DPR will also clearly bring out the approximate overall cost and the estimates for each of the packages to be executed as part of the project.
- 11.8 Acceptance of Necessity (AON)** – Once the ICT Plan/projects are approved, the same would be taken as a go-ahead to commence processing of the individual project proposals contained in the approved plan. The projects/ schemes included in the approved ICT plan would be processed for approval of the Competent Authority as per delegation of financial powers, depending upon the

respective budget head from which the expenditure on the project is to be met. The ICT component of the project (HW/SW & other equipment and IT Services) should not be less than 60% of the total package cost for a case to qualify as an ICT project.

**11.9 Bidding process** – All bidding activities like , Preparation of RFP, Issue of RFP, Bid opening, Processing of bids, Techno-Commercial evaluation, Price evaluation, negotiations, etc may be followed as per procedure given in relevant chapters of this Manual . Following features peculiar to ICT Procurement may be kept in view during the bidding process-

#### **11.9.1 Pre-qualification of Vendors.**

- (a) For complex ICT projects, defining pre-qualification criteria for bidders based on professional competency, past accomplishments, turnover etc. may be considered for shortlisting proposals from only the genuine and reputed consulting agencies. The criteria should include the skill sets that the personnel working on the project must possess, not only by way of basic qualifications but experience on execution of projects. Pre-eligibility criteria evaluation should be through a quantifiable matrix. Following guidelines should be considered while establishing a set of pre-qualification/eligibility criteria: -
  - (i) Ensure that the criteria or conditions to participate in the bidding process are flexible and practical, allowing maximum bidders to participate in the process.
  - (ii) The criteria have direct and perceptible linkage with the scope of work, project's financial worth and risk.
  - (iii) The criteria are focused towards quality of solutions and bidder competence.
- (b) Some of the guidelines which may be followed for defining pre-qualification criteria are as given below. These may be included or suitably modified to meet project specific requirements, depending on the nature of the project/scope of work envisaged: -
  - (i) **Sales Turnover Criteria-** Minimum sales turnover criteria needs to be quantified, for example, minimum of five times of the estimated value of the project being tendered may be considered.
  - (ii) **Experience in similar projects-** User may prescribe suitable criteria regarding experience in similar projects required from the bidders with reference to the context of the solution to be delivered, as defined in the tender documents. The definition of “similar” work should be clearly defined with reference to domain, sector or industry and functional area of scope of work.
- (c) **Manpower Requirements-** Wherever specific type/specialist manpower requirements for project execution are specified, it may be included as a pre-qualification criterion by specifying that the bidder should have certain number of required manpower on full time/near full time basis. In such cases, the consulting/IT consulting manpower requirements should not be more than the 5 times the estimated requirement of consulting/IT consulting manpower on full time/near full time basis. For e.g. if the estimated requirement of consulting/IT consulting manpower is 10 resources on full time/near full time basis, then the responding company must have on its rolls consulting staff of at least 50 technically qualified personnel in the area of ICT project management, ICT infrastructure, ICT security and procurement who poses relevant qualifications/credentials with prior experience in providing the above consultancy services.
- (d) **Security Audit-**Technology Provider must commit to provide all support required to address any security concerns and share their source code software and the equipment design details to the user or its designated agency for sanitization, verification and audit to confirm that their equipment and software is free from any malware, trapdoors or other facilities that may lead to security breaches. Technology Provider must also commit to security audit of developed systems by CERT-in empaneled agencies.
- (e) **Quality/International Certifications-**
  - (i) The requirement of quality certification should be included only if it is inherently linked to the scope of work, e.g., Gartner Quadrant/ISO 9001/CMMi3 or more

(specifying development/service/acquisition models) certification for quality systems, ISO 27001 certification for information security projects etc.

- (ii) Requirement of compliance with international standards like IEEE, ITU etc may be included depending upon the nature/type of project or solution required.

**11.9.2 Eligibility Criteria** While framing the eligibility criteria following aspects should also be taken into consideration:

- (a) In case there is a change in the eligibility conditions with reference to the last successful procurement of same item, or if the goods are being procured for the first time, then before issue of RFP it should be checked that sufficient bidders would meet the eligibility criteria. A Bidder conference, before issue of Notice Inviting Tenders (NIT), with established Sellers, Original Equipment Manufacturers (OEMs) must be held.
- (b) The domestic Industry must be given preference for all the Defense procurements in ICT products and all the provisions as mentioned in the Preferential Market Access Policy 2012 will be applicable to all the Procurements of Defense in ICT sector.
- (c) There should not be any export control restrictions on the technology used in the Bided product.
- (d) ICT Technology Provider should not be from any country with which India has been at war in the past.
- (e) On award of contract, Technology Provider MUST deposit their software code and design documents in an escrow account, which will be triggered in case of a default in their support commitments. The offered systems should comply with standards defined by International bodies such as MEF, IETF, IEEE and ITU.
- (f) Undertaking from Technology Provider MUST be insisted that the User shall not be subjected to any network audit or verification of end-use of any product by any foreign agencies/government. User shall not have any restriction in terms of end-use of the equipment and shall be free to use and customize the equipment as per its needs. User will not require any approvals of any Technology Provider or any government for any use or customizations, regardless of the jurisdiction under which the Technology Provider falls.
- (g) Technology Provider/System Integrator should provide long-term support commitment of at least 10 years, with a commitment to redesign obsolete hardware, provide long-term spares, customized software upgrades, root-cause analysis, and provide software-interfaces and support required to integrate their equipment with other elements of the project including the OSS. Any pre-standard implementation must be upgraded for compliance with approved standards. The Technology Provider should have a defined roadmap for offered products for next three to five years.
- (h) Technology Provider/System Integrator must also have in-country labs/R&D labs and facilities for doing network testing. This clause would be relevant only for ICT projects involving network design and implementation.
- (i) The bidder or the technology provider should not have been blacklisted or debarred from participating in any government contracts.
- (j) The bidder will be required to give an undertaking that his firm is not involved in and/or being investigated for malpractices. If, at a later stage, it is found that undertaking is false, entire bid security will be forfeited.
- (k) Technology Provider Must have India-based expertise in relevant field and facilities for training, and they should be able to provide support for the goods/services contracted throughout India/specified locations through Resident Engineers, or otherwise with acceptable response time (to be indicated in the Tender document).

**11.9.3 Framing of the Request For Proposal (RFP)**- RFP for ICT projects should be prepared carefully, duly taking inputs from the EOI stage/Consultant report/DPR. It should be framed in such a manner as to encourage maximum participation from competent vendors. Technical specification should be framed duly keeping the provisions of Rule 144 of GFR 2017 in view. The RFP clauses should be framed with objective, clear, measurable and functional parameters;

duly incorporating specific technical, qualitative and performance characteristics, keeping in view the scope of the project and needs of the procuring organization, without including superfluous, ambiguous and non-essential features. The RFP should be vetted by integrated finance in those cases where financial powers are to be exercised with the concurrence of finance. If pre-qualification is decided upon, RFP should be given only to pre-qualified bidders.

**11.9.4 Evaluation Criteria-** Based on the nature and complexity of project and scope of work envisaged, one of the following evaluation criteria may be used:-

- (i) **Least Cost Method or L1 Method.** L1 evaluation criteria may be used where the requirement is basic or of highly standardized nature. Evaluation will be based on the cost of the complete asset or cost of service.
- (ii) **Quality and Cost Based (QCBS) Method.** Quality-cum-cost bases (QCBS) method of evaluation may be adopted for complex/high value projects by assigning suitable weightage to technical specifications/superiority of solutions suggested, provided the weights to be assigned to technical features/business criteria etc. are objective and stated upfront in the RFP. The Technical and Financial proposals will be given the weightage in the ratio 70:30 or any suitable ratio depending upon scope of work/complexity of project and will be evaluated as follows-
  - a) The technical proposal will be evaluated first and points will be allotted to each of the bidders. The minimum Technical Score (ST) to be obtained for considering Financial proposal will be specified in RFP. Detailed and objective technical evaluation criteria out of 100 points will be specified in RFP.
  - b) The financial evaluation will be done for only those proposals which obtain the minimum technical score. The Financial Scores (SF) of all proposals will be calculated as -
    - $SF = 100 \times FP_{min} / FP$  where
    - SF= Financial score of proposal under consideration
    - $FP_{min}$  = Price of lowest financial proposal
    - FP = Price of proposal under consideration
  - c) Proposals will be ranked according to their combined technical and financial scores as per the following formula (for 70:30 ratio):
    - $S = ST \times 0.7 + SF \times 0.3$  where
    - S= Final combined score
    - ST=Technical Score
    - SF= Financial Score
  - d) The bidder achieving the highest combined Technical and Financial score (S) would be considered for the award of the contract.

**11.9.5 Special features:**

- (i) **Change Management** Following mechanism may be put in place at various stages of processing to cater for rapid changes in technology: -
  - (a) **Preparation of RFP-** Technical specifications should include use of words “or higher” after the indicated specifications to cater for technology upgrades.
  - (b) **Between AoN and issue of RFP-** Any change/upgradations (except minor corrections) in specifications of hardware or software (without change in envisaged scope or cost of project) may be approved by concerned CFA in consultation with respective technical directorate/department.
  - (c) **After issue of RFP-** Any amendments (except minor corrections) if required after issue of RFP for changes that may have financial implications, will be made in consultation with the Integrated Finance and with approval of CFA. Amendments/acceptance of any deviations without any financial implications may



be undertaken with the approval of concerned CFA in consultation with respective technical directorate/department/ Technical Evaluation Committee. Reasons/justification must be recorded while seeking such approvals. Such changes must be promptly notified to all bidders and suitable extension of response time should be given to all. If such changes materially alter the complexion of the RFP, fresh RFP needs to be issued.

- (d) **Mid-Course Correction-** The RFP/contract should provide for a mid-course correction during the execution phase to cater for technological/environmental changes and refinements. Flexibility should also be catered in the RFP and contract with the OEM for technology change, upgrades, additional integration and provision for any mid-course corrections which are out of the initial scope of work of the contract as Paid Change Requests, if required during the post contract phase provided the equipment/system has sufficient residual life from the same seller, without invoking the provisions of STE.
- (e) **Accepting Minor Variations-**In case of ICT equipment and software, it is not always possible to lay down all kinds of technical parameters. The Technical Evaluation Committee and the Equipment Acceptance Committee, giving due reasons, should therefore accept any minor variations in a technical parameter as long as it satisfies the functional requirement/objective of the user and is not of a specification lower than that specified in RFP.
- (ii) **Need for System Integrators.** For faster turn-around of projects, the divide between the HW supplier /OEM and the Software Development Agency needs to be bridged, and where feasible, the responsibility for both aspects may be given to a System Integrator (SI) to offer the complete solution while ensuring the interests of economy and efficiency.
- (iii) **Maintenance Support.**
  - (a) Seller should provide maintenance support for all ICT projects/products for a minimum period of five years including warranty, maintenance and support.
  - (b) To cater for life cycle support during implementation/use of bespoke/customized software projects, scope of maintenance support should include resolution of bugs, incorporation of user feedback and associated changes/additional features/refinements required for better exploitation of the software.
- (iv) **Proof of Concept-** The need to include provision for ‘Proof of Concept (POC)’ in the evaluation process should be considered carefully on case-to-case basis, and if decided upon, it should be undertaken in 2-3 clearly defined scenarios followed by strict evaluation of the failures/successes.
- (v) **Clauses to safeguard Government interest-** Selling customized solutions to some other country (replication) may not be allowed due to security reasons. Suitable protective clauses may be built in the contract to safeguard the interest of the buyers. Buyer may also include suitable IPR clause for critical and strategic applications.
- (vi) **Information Security-** In order to ensure mitigation of cyber/ information security threats in ICT procurement, selection of OEMs and System Integrators (SIs) with strong pedigree in information and cyber security is recommended. Based on project specific requirement, the procurement process may focus on selection of trusted SIs and OEMs having established and proven credentials/ track record.

**11.10** If considered necessary, the Procurement Entity may take inputs from guidelines issued by Ministry of Electronics and IT in procurement of ICT systems. In particular, following documents (available in web site <http://meity.gov.in>) may be suitably adapted in such cases-

- a) Model RFP Templates and guidance notes for Implementing Services
- b) Model RFP templates and Guidance Notes for Consulting Services
- c) Contract Agreement for selection of System Integrators/Implementation Agencies.

## Chapter-12

### Procurement of Consultancy services

**12.1** **General** – “Consultancy services” means any subject matter of procurement, which as distinguished from ‘Non-Consultancy Services’ (as covered under Chapter-13), involves primarily non-physical project-specific, intellectual and procedural processes where outcomes/deliverables would vary from one consultant to another, and which is other than goods or works, except those incidental or consequential to the service and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a procuring entity but does not include direct engagement of a retired Government servant. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

**12.2** External professionals, consultancy firms or consultants (referred to as consultant hereinafter) may be hired for a specific job, which is well defined in terms of content and time frame for its completion. The engagement of consultants may be resorted to in situations where the Procuring Entity does not have requisite expertise. The consultancy services may be outsourced in the following circumstances–

- (a) The inadequacy of Capability or Capacity of required expertise in-house;
- (b) The need to have qualified consultant for providing a specialized service;
- (c) Need for expert advice from a consultant acting independently from any affiliation, economic or otherwise to avoid conflicts of interest;
- (d) The need in some cases for transfer of knowledge/training/capacity and capability building as a by-product of such engagement;
- (e) Need to acquire information about/identifying and implementing new methods and systems;
- (f) Need for planning and implementing organizational change;
- (g) There may be internal capacity/capability to do the job but there are considerations of economy, speed and efficiency in relation to additional requirement/commitment/usage of Staff/Management/ Organization; Technological and Material Resources; Money and Time/Speed of execution.

**12.3** Fundamental principles of Public Procurement as mentioned in Chapter-2 are also equally applicable to Procurement of Consultancy and other services. To ensure value for money during Procurement of Consultancy services following additional principles shall be considered –

- (i) Services to be procured should be justifiable in accordance with Para 12.2 above;
- (ii) In case of Consultancy Services - well-defined scope of work/Terms of Reference (TOR) and the time frame, for which services are to be availed of, should be determined consistent with the overall objectives of Procuring Entity;
- (iii) Transparency and Integrity in the selection process (assignment proposed, awarded, administered and executed according to highest ethical standards);
- (iv) In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted Bidders or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided.

**12.4** **Types of Consultants/Service Providers** The term consultants/service providers includes a wide variety of private and public entities, including consultancy firms, engineering firms, architectural firms/consultants, construction management firms, management consultants, investment and merchant bankers, legal advisory firms, universities/educational institutions, research institutions, Government agencies and individuals/experts or their joint ventures. The nature and type of consultancy to be outsourced depends on the specialized/expert services required and complexity of the assignment. These can be grouped as under-

**12.4.1** **Consortium of Consultants/Service Providers** – In large and complex assignments consultants/service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal and make larger pools of experts available or for other reasons. Such an association may be for the

long term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a Joint Venture (JV) or a sub consultancy.

**12.4.2** **Consultancy or Service Providing Firms** –The main source of consultants and service providers is Consultancy or Service providing bidders of diverse specializations that provide teams to Clients. These bidders provide project preparation services, project implementation, supervision services, training, advisory services and policy guidance.

**12.4.3** **Individual Consultants/Service Providers** – Individual consultants or service providers are engaged for similar activities as Consultancy/ Service providing firms when a full team is not considered necessary. They may be independent experts not permanently associated with any particular firm, or they may be employees of a firm recruited on an individual basis. They may also be employees of an agency, institution, or university. Individual consultants/service providers are not normally engaged for project preparation unless the proposed project is simple and, generally, a repeat of an already established and successful project.

**12.4.4** **Specialized Agencies and Institutions** - Specialized agencies or institutions (including Government/Semi-Government agencies, universities, technical and professional institutions) may also from time to time be engaged to provide Consultancy/other services. These services may be provided by individuals (as discussed above) or by teams.

## **12.5 Procurement of Consultancy Services Process:**

**12.5.1** **Identification of Services-** After careful examination of its requirements, the organization should clearly identify the service/specialized area/domain in which it does not have requisite expertise, duly ensuring it meets the criteria outlined in para 12.3. At this stage, it must be ensured that the requirement of consultancy is assessed at a sufficiently high echelon in the hierarchy addressing the commonality aspect within the organization, so that lower formations do not engage consultants for same/similar objectives. In principle approval of the Competent Authority may be obtained at this stage.

### **12.5.2** **Obtaining Acceptance of Necessity (AoN)**

(a) **Preparation of the statement of case and Terms of Reference (ToR)-** The organization should prepare in clear, simple and concise language a statement of case incorporating the requirement, objectives and scope of the consultancy assignment. The SoC should also establish the justification as to why it cannot be done in-house. The Terms of Reference (ToR) should include-

- i. precise statement of objectives,
- ii. outline of tasks to be carried out,
- iii. schedule of completion of tasks,
- iv. the support or inputs to be provided by the organization to facilitate the consultancy; and
- v. the final output that will be required of the consultant.

The eligibility and prequalification criteria to be met by the consultants should also be clearly identified at this stage.

(b) **Estimation of cost-** The organization should estimate reasonable expenditure on consultancy by ascertaining the prevalent market conditions and consulting other organizations engaged in similar activities. The cost estimate should include the expenditure on staff, physical inputs, logistics and other resources for completion of the consultancy assignment and other miscellaneous cost. If the consultancy assignment comprises of multiple clearly distinguishable stages, it would be appropriate to cost each stage separately for realistic estimation.

(c) Based on the justification contained in the Statement of case/ToR and the detailed cost estimation, **Acceptance of Necessity (AoN) and budgetary sanction** for initiation of procurement will be accorded by the Competent Financial Authority. At this stage itself the decision should be taken whether to issue RFP in single bid or two bid and method of bid evaluation as L1 or QCBS, depending on the merits, justification and complexity involved.

**12.5.3 Identification of likely sources-** For consultancy services upto Rupees twenty five lakhs, a list of potential consultants may be prepared on the basis of formal or informal enquiries from organization involved in similar activities, association of consultancy firms etc. In case the consultancy services are expected to exceed above Rupees twenty five lakhs, an enquiry for seeking “Expression of Interest” from consultant should be published at CPP Portal, GeM and on organization’s own website. EOI should include, apart from detailed and comprehensively drafted Terms of Reference (TOR), the broad scope of work, pre-qualification criteria, eligibility criteria etc. Adequate time should be allowed for responding to EOI. If the complexity of the project so justifies, a formal EOI may be issued even for procurements below Rupees twenty five lakhs.

**12.5.4 Shortlisting of consultants-** On the basis of responses received from the interested parties on EOI, consultants should be short listed for further consideration. The number of short listed consultants should not be less than three.

**12.5.5 Pre-bid conference-** In order to enable all prospective bidders to clearly understand and appreciate the scope, nature of work involved and final deliverables of the consultancy, a pre- bid conference may be organized.

**12.5.6 Preparation and issue of RFP-** RFP is the document to be used for obtaining offers from the consultants for the required service and should be issued to the consultants short listed at EOI stage only. The RFP for consultancy services should be ordinarily issued in two bid system with the technical and financial bids sealed separately. The bidder should put these two sealed envelopes in a bigger envelop duly sealed and submit the same to the organization by the specified date and time at a specified place. The procuring entity may also use e-Procurement platforms to issue RFP. On receipt, the technical proposal should be opened first on specified date, time and place. The RFP should contain the following:

- (a) Letter of Invitation
- (b) Information to consultant regarding proposal.
- (c) Terms of Reference (TOR)
- (d) Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.
- (e) List of key position whose CV and experience would be evaluated.
- (f) Bid evaluation criteria and selection procedure.
- (g) Standard formats for technical and financial proposal.
- (h) Proposed contract terms.
- (i) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

**12.5.7 Evaluation of technical bids-** Technical bids should be analyzed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the organization. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analyzed and evaluated by it. CEC shall evaluate each proposal on the basis of its responsiveness to the technical conditions and proposals which fail to comply with important aspects of RFP and considered unsuitable shall be rejected at this stage.

**12.5.8 Evaluation of financial bids-** After evaluation of technical bid/quality has been completed, the CEC shall proceed to evaluate the financial bids. Financial bids of only those bidders will be opened and evaluated who have been declared technically qualified by the CEC. The IFA rep will be associated at this stage. The financial bids shall be evaluated and ranked as per the following criteria:

- (a) **Least Cost System (LCS)-** LCS is appropriate for assignments of a standard or routine nature where well established methodologies, practices and standards exist. Unlike QCBS, there is no weightage for technical score in the final evaluation and the responsive technically qualified proposal with the lowest evaluated cost shall be selected.
- (b) **Quality and Cost Based Selection (QCBS)-** QCBS may be used for procurement of consultancy services, where quality of consultancy is of prime concern:

- (i) In QCBS initially the quality of technical proposals is scored as per criteria announced in the RFP. Only those responsive proposals that have achieved at least minimum specified qualifying score in quality of technical proposal are considered further.
- (ii) After opening and scoring, the Financial proposals of responsive technically qualified bidders, a final combined score is arrived at by giving predefined relative weight ages for the score of quality of the technical proposal and the score of financial proposal.
- (iii) The RFP shall specify the minimum qualifying score for the quality of technical proposal and also the relative weight ages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-à-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc.). The proposal with the highest weighted combined score (quality and cost) shall be selected.
- (iv) The weightage of the technical parameters i.e. non-financial parameters in no case should exceed 80 percent.

**12.5.9 Consultancy by nomination-** The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstances, such as -

- (a) Tasks that represent a natural continuation of previous work carried out by a firm.
- (b) In case of an emergency situation, situations arising after natural disaster, situations where timely completion of the assignments is of utmost importance; and
- (c) Situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.
- (d) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the organization. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.
- (e) While selecting consultant on nomination, the procuring entity shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.

**12.6 Monitoring of the Consultancy service/contract:** The organization should put in place a robust contract monitoring mechanism to ensure that the performance of the consultant/service is in line with the objectives of the contract. Ideally a Contract Monitoring Committee (CMC) shall be formed by the procuring entity to monitor progress of the contract and suitable provisions should be made in the contract to terminate/penalize the contractor or to suspend payment till satisfactory progress has not been achieved.

**12.7 The Law of Agency – Applicable to Procurement of Consultancy Services-** Consultants/Service Provider would be an Agent of the Principal/Client/Procuring Entity to carry out the service/assignment on its behalf. Such a relationship is covered by The Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) and hence, there exists a Principal/Procuring Entity and Agent relationship between Procuring Entity and such consultant/service provider. As per this law, the Procuring Entity is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity’s contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances. Procuring entity should incorporate suitable provisions in RFP to explicitly bind the consultant/service provider for compliance of all such legal requirements.

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## CHAPTER 13

### Outsourcing of Non-Consultancy Services

#### **13.1 General-**

**13.1.1** “Non Consulting Service” means any subject matter of procurement (which as distinguished from Consultancy Services) involves physical, measurable deliverables/outcomes, where performance standards can be clearly identified and consistently applied, other than goods and works, except those incidental or consequential to the service. Non-consultancy services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. Non-consulting services include maintenance, transport services, logistics, clearing and forwarding, building facilities management, horticultural services, security, photocopier service, janitor, catering, management of hostel and guest houses, office errand services, drilling, aerial photography, satellite imagery, mapping etc.

**13.1.2** “Outsourcing of Services” means deployment of outside agencies on a sustained long- term (for one year or more) for performance of Non-consulting services which were traditionally being done in-house by the employees of Ministries/Defence establishments. Besides outsourcing, these services also include procurement of short-term stand-alone services.

**13.1.3** If the Non-consultancy services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging and so on, of Civil assets, then it should be handled as procurement of Works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/commissioning of Machinery and Plant, it may be handled on the lines of Procurement of Goods.

**13.2** Non consulting services may be procured in the interest of economy and efficiency following the basic principles of Public Procurement as mentioned in Chapter-2. In addition, following aspects may also be kept in view: -

- (a) In Non-consultancy services, the Activity Schedule (a document covering well- defined scope of work/description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Procuring Entity;
- (b) Transparency and integrity in the selection process (that is, proposed, awarded, administered and executed according to highest ethical standards) should be ensured.
- (c) While procuring maintenance services like Annual Maintenance Contract (AMC), it may be ensured that major upgradation/modification/repair of the equipment are not clubbed with the AMC Procurement.

**13.3** **Types of Contracts in Non-consultancy Services-** Depending on the nature of services, procurement/outsourcing of Non-consultancy services, can either be lump-sum contracts, time-based contracts, or unit (item/service) rate based contract (say Taxi Service on Km basis), or it can be a mix of these. For occasionally but continually needed services, indefinite delivery contracts based on time or unit (item/service) rates may be appropriate.

**13.4** **Demand Aggregation-** The best prices to a user can be available if same requirement/demands of various organizations are aggregated. This acts as an incentive for the supplier to quote their best price. For the same products, the demand of various organizations/formations can be clubbed together and reverse auction may be done on the basis of aggregated demand which will provide the best prices to the Government.

**13.5** **Selection of service Provider in Non-Consultancy Services-**

- (a) Unlike Procurement of Consultancy services, procurement of Non-consultancy services is done by a simpler process akin to that of procurement of Goods. It is normally done in a Single Stage (RFP) process containing technical and financial bids. However, in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc.) a pre-qualification (PQ) process may be done.
- (b) **Identification of likely contractors-** An organization should prepare a list of likely and potential contractor on the basis of formal or informal enquiries from other

organizations/Departments involved in similar activities, scrutiny of trade journals, website etc.

- (c) **Procurements above Rupees Ten lakhs-** The organization should issue advertisement in such case should be given on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in), [Defence e-Procurement Portal \(https://defproc.gov.in\)](http://Defence e-Procurement Portal (https://defproc.gov.in)) and on GeM. An organization having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- (d) **Procurement upto Rupees ten lakhs or less-** The organization should scrutinize the preliminary list of the likely contractors as identified as above, decide the prima facie eligible and capable contractors and issue limited tender enquiry to them asking for their offers by a specified dated and time etc. The number of contractors so identified for issuing limited tender enquiry should be more than three. The organization should also publish its limited tender enquiries on Central Public Procurement Portal (CPPP) and Department's own website.
- (e) **Small value and Emergency Procurement of Non-Consultancy Services-** For procurement of non-consultancy services upto Rs 25,000/- (Rupees twenty five thousands), the 'Direct Procurement without Quotation' mode of procurement (Rule 154 of GFR 2017) may be utilized. Similarly, for procurement of services upto Rs 2.50 lakhs (Rupees two and half lakhs), 'Direct Procurement by a Purchase Committee' mode (Rule 155 of GFR 2017) may be utilized. This mode of procurement may be adopted only for short-term/urgent requirements.
- (f) **Single Source Bidding-** Should it become necessary, in an exceptional and compelling situation to outsource a job to a specifically chosen contractor, the CFA's approval with IFA's concurrence may be taken. In such cases the detailed justification, the circumstances leading to the outsourcing by choice and the special interest or purpose it shall serve shall form an integral part of the proposal. It would also be ensured that such contracts are concluded for minimal time/value, till the regular contract on competitive bidding is concluded. Threshold Limits for use of Single Bidding method of selection will be followed as per Single Bidding powers given in DFPDS.

**13.6 Procurement through Government e-Marketplace (GeM)-** The Procurement of Outsourcing Services will be mandatory through GeM mechanism, if such Services are available on GeM in terms of Rule 149 of GFR-2017. Products and services are listed on GeM by various Sellers as on other e-commerce portals. The registration of suppliers on GeM is online and automatic based on PAN, Aadhar authentication etc. The Sellers will offer their products on GeM and the Government buyer will be able to view all the products as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilized for the procurement of bulk quantities.

**13.7 Procurement of Non-Consultancy Services: Process-** While procedure mentioned in Chapter-4 will be followed for AoN stage, a detailed Activity Schedule and Cost Estimate is required to be prepared in following manner–

**13.7.1 Activity Schedule and Other Requirements** – The objectives of Activity Schedule are to provide sufficient information on the quantities of services to be performed to enable bids to be prepared efficiently and accurately, and when a contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of services executed. Besides detailing the activities, quantum and time-frame, Activity Schedule should contain the following sections also

- (a) **Description of Services** – A brief description of service would help the bidders understand the service requirement. It should cover background of the Procuring Entity's organization and details of the service required. The Purpose and Service Outcome statement should also be included in the description of services.
- (b) **Itemized Activity Schedule** - In order to attain objectives of the Activity Schedule, services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of services, or between services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule should be as simple and brief as possible. All information relevant for

the bidder to quote a price may be included e.g. the frequency, quantum and time-frame/duration of activities.

- (c) **Labour/Personnel Activity Schedule** - If labour/personnel are used in the activity, these may be quantified specifying type, number, place, shifts and frequency of utilization in the Activity Schedule. In case any key professionals or Project Manager is required, their qualification and experience required may also be mentioned.
- (d) **Material Schedule:** In case any materials/consumables/tools of trade are to be consumed/deployed, a separate materials schedule should be included, indicating the specification and quantity of such materials/consumables/tools to be consumed/deployed per unit activity/day/ location/per manpower deployed. Price of all these materials/tools etc. is to be shown as a separate lump-sum cost in the financial bid by the bidder.
- (e) **Essential Equipment Schedule:** Any essential equipment, machinery (Trucks, Cranes, Washing Machines, Vessels/crafts, plant and machinery etc.) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specification, capacity, age of equipment etc. It should be ensured that operators for such equipment must be mentioned as key personnel.
- (f) **Performance Specifications, Drawings:** The performance specification or drawings if necessary should be specified for each activity, materials, tools and machines to be used in the activity. Any reporting requirement, periodic meetings or other submissions must be part of the Activity Schedule.
- (g) **Statutory and contractual obligations to be complied with by the contractor:** Service provider mostly works within the premises of Procuring Entity, along with staff of Procuring Entity. Many services are subject to various statutory provisions relating to Labour, Taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations etc. The bidder must have valid registration with Service Tax Number, ESI, EPF Registration Certificate, Registration Declaration of ownership under Indian Registration Act 1908 and Labour License and PAN (Income Tax). Moreover, the Procuring Entity may have its own regulations about safety, security, confidentiality etc. All such statutory and contractual obligations must be listed, so that price implications and compliance is taken care of by the bidder. In case of security services contracts, the bidder must have the valid license to run the business of Private Security Agency in the state issued by the appropriate authority for operating Security Services. In case Ex-Servicemen are being hired for security services, registration with DGR would be mandatory.
- (h) **Facilities and Utilities to be provided by the Procuring Entity to service provider at Site:** If any facility/utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc. would be made available to the successful bidder to carry out the service, the same should be mentioned. In case it is proposed to charge the Electricity/Water supplied to the service provider, the same may be mentioned, including the rate of charges. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So great care is necessary, while preparing this statement.
- (i) **Institutional Arrangements and Procedure for Review of Work of consultant after the Award of Contract:** Institutional arrangements like the placement in a Department, name of Project Manager and chain of command for reporting may be specified. Process of review of service outcomes and deployment of personnel and resources should be clearly brought out.

**13.7.2 Estimation of Cost** – The cost estimate shall be based on the Procuring Entity’s assessment of the resources needed to carry out the assignment, managerial and staff time and physical inputs (for example, materials, consumables, tools and machines). This will also include statutory payable wages as per applicable rates. Costs shall be divided into three broad categories –

- (a) Remunerations for Personnel deployed;



- (b) Reimbursable (Travel, logistics, Consumable, Material, Tools, Hiring of third party services etc.);
- (c) Administrative and Miscellaneous (mobilization, demobilization, temporary structures, administrative expenses, office and IT equipment, contingencies, Financing costs, costs for hiring/depreciation/financing of machinery and equipment etc.).

Profit element, taxes and duties should be added to the estimated cost.

**13.8 Obtaining Acceptance of Necessity (AON):** Based on the detailed activity schedule and cost estimate, a comprehensive Statement of Case (SoC) would be prepared for according Acceptance of Necessity by the Competent Financial Authority. At this stage itself the decision should be taken regarding mode of bidding and terms & conditions to be incorporated in RFP.

**13.9 Preparation of the Request for Proposals (RFP)-** In procurement of Non-consultancy services, the RFP should be issued with following details, inter alia:

- i. The details of the work or service to be performed by the contractor along with the detailed activity schedule;
- ii. The facilities and the inputs which will be provided to the contractor by the organization;
- iii. Eligibility and qualification criteria to be met by the contractor for performing the required work/service; and
- iv. The statutory and contractual obligations to be complied with by the contractor.

**13.10 Receipt of Bids, Evaluation and Award of Contract**

- (a) The Procuring Entity should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract, in a manner similar to Procurement of Goods/ Works. Procuring Entity will award the contract to the bidder whose bid has been determined as the lowest evaluated bid price (L-1), provided the offer is determined in accordance with the bid documents to be eligible, substantially responsive and meets the minimum Technical/qualification standards.
- (b) In highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc.) QCBS system of evaluation may be adopted.

**13.11 Service Level Agreement (SLA)-** A Service Level Agreement (SLA) is an agreement between service provider and user entity, designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations, clarify responsibilities. It must be specified in the bidding document and finalized before the services are started. The objectives of SLA are –

- (a) Identify and define the Procuring Entity's needs;
- (b) Eliminate unrealistic expectations on either side;
- (c) Provide a framework for understanding between the service provider and the Procuring Entity;
- (d) Reduce areas of conflict and encourage dialog in the event of disputes.

**13.12 Monitoring the Contract-** Before commencement of the services, the Service Provider shall submit to the Procuring Entity for approval a program showing the general methods, arrangements, order and timing for all activities. The services shall be carried out in accordance with the approved program as updated. CFA should nominate an officer/committee to be involved throughout in the conduct of the contract and to continuously monitor the performance of the contractor.

**13.13 Terminating Services Prior to End of Contract:** At times, a decision is taken to terminate a contract prior to its conclusion and the completion of the services assignment. This may be for various reasons, for example:

- i) **Termination due to External factors:** External factors (like natural disasters) which are beyond the control of the service provider or the Procuring Entity;
- ii) **Termination for convenience:** The Procuring Entity may also terminate a contract for convenience for reasons like shortage of budget;

iii) **Termination due to breach of contract:** Failure/inability of one party or the other.

In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the assignment. Termination may be initiated by any party. Termination must be undertaken within the terms of the contract document. These provide for a notice period of 30 (Thirty) days, the payment by the Procuring Entity of any legitimate outstanding fees and costs to the consultant/service provider and the payment of legitimate costs to wind-up the service team (unless the termination was occasioned by the default of the service provider).

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## CHAPTER 14

### BANKING INSTRUMENTS

#### 14.1 General

- 14.1.1 Import Regulation:** Import is regulated by the Directorate General of Foreign Trade (DGFT) under Ministry of Commerce and Industry, Department of Commerce, Government of India. Authorized dealers, while undertaking import transactions, should ensure that the imports into India are in conformity with the Foreign Trade Policy in force (as decided and framed by DGFT) and Foreign Exchange Management (Current Account Transactions) Rules, 2000 framed by Government of India vide Notification No G.S.R. 381(E) dated 03 May 2000 and the directions issued by Reserve Bank of India under Foreign Exchange Management Act from time to time.
- 14.1.2 Banking Instruments in International Trade:** The Uniform Customs and Practices for Documentary Credit (UCPDC) are a set of internationally recognized definitions & rules for interpretation of documentary credits, issued by the International Chamber of Commerce, Paris. ICC Publication No 600, has been in operation from Jan 2007. The publication covers all aspects of international trade payments against documentary proofs e.g. Letters of Credit, advance/performance bank guarantee etc. <sup>[Supplement 2010/PCDA ND suggestion]</sup> The importer should follow normal banking procedures and adhere to the provisions of UCPDC while opening letters of credit for import into India.
- 14.1.3 Banking Instruments for Foreign Payments:** The following two types of banking instruments are used for effecting payment in case of procurements ex-import, as per the payment terms incorporated in the contract:-
- (a) Letter of Credit
  - (b) Direct Bank Transfer
- 14.1.4 Payment Details:** The financial sanction for the foreign procurement should invariably incorporate the following details relating to payment:-
- (a) Total amount with breakup of payments (if part/ stage payments against staggered delivery have been provided in the Contract)
  - (b) Mode of payment (through LC or DBT)
  - (c) Foreign Currency involved <sup>[MoD Draft 12.1.3 & 12.1.4]</sup>

#### 14.2 Letter Of Credit (LC) and the reasons for using them

- 14.2.1** A letter of credit is a written understanding given by the buyer's bank (the issuing bank) on behalf of and at the request of its customer (the applicant) routed through the agency of a bank in the seller's country (advising bank) to the seller that it (issuing bank) guarantees to pay the seller for the goods within a specified time provided that the conditions laid down in documentary credit are fully satisfied. While an LC can be established in any of the **Public/ Private Sector Indian Bank authorized for Government transactions by the RBI.** <sup>[amendment to DPP 2016]</sup>
- 14.2.2 Reasons for using LC:** In international trade, buyer and seller being located in different countries may not know each other well. The two countries would have different legal systems, currencies and trade and exchange regulations. Due to this fact, both the Buyer and the Seller, need certain conditions to be fulfilled, to suit their requirements, before releasing the payments and goods respectively.
- (a) **A Seller would want:**
    - (i) To be paid as soon as he ships the goods.
    - (ii) An assurance that he will be paid by the buyer or his bank as per contractual obligations.
    - (iii) Convenience of receiving payments in his own country.
  - (b) **A Buyer would want:**
    - (i) To pay for the contracted goods only after they are shipped by the seller.
    - (ii) An assurance that the seller will ship the goods ordered for and deliver them in time.

#### 14.3 Forms of Letter of Credit

14.3.1 **Basic forms of Letters of Credit (LsC)** - Basic forms of LCs as applicable to Defence Departments are as follows:

- (a) Irrevocable letter of credit.
- (b) Confirmed letter of credit.
- (c) Revolving letter of credit

14.3.2 **Irrevocable Letter Of Credit:** When the Issuing Bank gives a definite, absolute and irrevocable undertaking to honour its obligations, provided the beneficiary complies with all the terms and conditions, such a credit is known as an irrevocable letter of credit. It means that the letter of credit cannot be amended, cancelled or revoked without the consent of the parties to the letter of credit. This gives the beneficiary a definite protection. **Whether an LC specifically mentions it or is silent about it, all LCs are deemed to be irrevocable.** [MoD Draft 12.3.2]

14.3.3 **Confirmed Letter Of Credit:** A confirmed letter of credit is one in respect of which another Bank in the beneficiary's country adds its confirmation at the request of the issuing Bank. This undertaking of the confirming Bank to pay/ negotiate/accept is in addition to the undertaking of the issuing bank. This is an added protection to the beneficiary. This is not to be agreed to as it undermines the credibility of our Nationalized Banks.

14.3.4 **Revolving Letter Of Credit:** In such Letters of Credits, the amount is restored, after it has been utilized, to the original amount. Such credits are used when the buyer is to receive partial shipment of goods at specific intervals over a long duration. It can be cumulative or non-cumulative in nature. It avoids opening a **fresh** letter of credit for each and every consignment. **It also results in savings in respect of LC charges levied by the Banks.**

**While opening irrevocable revolving letter of credits, the following information must be provided to the issuing bank for opening of such letter of credit :**

- (a) **Initial value for which the letter of credit will be established (generally it is equal to the first stage/lot payment).**
- (b) **Stages and values of replenishments under the letter of credit.**
- (c) **Maximum utilization under the letter of credit.** [PCDA New Delhi Suggestion]

#### 14.4 **Essential Elements of LC**

14.4.1 Following essential elements are to be clearly stipulated while opening a Letter of Credit:

- (a) Type of LC
- (b) Name and address of applicant (**Directorate**) [PCDA ND Suggestion] and beneficiary
- (c) Amount of credit and currency
- (d) Validity of LC
- (e) Latest shipment date (**last** delivery date as per contract. **In case of staggered delivery, last delivery date of each lot must be mentioned**) [PCDA ND Suggestion]
- (f) Basis of delivery (FOB/FCA/CIP/CIF/**FAS/CFR** [MoF Goods Manual]/**DAP/DAT** etc. [PCDA ND Suggestion])
- (g) Contract No. and date
- (h) **100% value of the stores/service to be supplied under the LC.** [PCDA ND Suggestion]
- (i) Shipment from ..... To .....
- (j) Consignee and ultimate Consignee
- (k) Part shipment allowed/not allowed
- (l) **Trans-shipment allowed/not allowed** [MoD Draft 12.4 & PCDA ND Suggestion]
- (m) Documents required to be produced by the beneficiary for release of payment against LC
- (n) LD Clause
- (o) **Beneficiary Bank Details** [MoD Draft 12.4 & PCDA ND Suggestion]
- (p) Any other special instructions.

## 14.5 Procedure for Opening Letters of Credit and Working of the LC Mechanism

14.5.1 Documents required for Opening of Letters of Credit: The following documents shall be required for opening of Letters of Credit:- [MoD Draft 12.5 & PCDA ND Suggestion]

<u>Documents</u>	<u>Copies</u>
Forwarding letter	03 copies
Sanction letter/Amendments	03 copies
Extract of terms and conditions of contract	03 copies
Form A-1/A-2 as the case may be (Stores/Services)	03 copies
Form No. 2 Application- cum -guarantee(SWIFT 700)	03 copies
Copy of Contract/ Formal Amendments thereof	01 copy
Schedule of requirement	04 copies
FEMA* Certificate (Foreign Exchange Management Act)	03 copies
Bank Guarantees	03 copies
Certificate of Budgetary support	03 copies
Specimen of all the certificates/formats as referred in the contract, such as certificate of origin/quality, Certificate of conformity & acceptance test at PDI, FAT/ HAT/SAT completion certificate, Milestone completion certificate, LD deduction format etc.	03 copies each of every certificate

14.5.2 **Opening of Letters of Credit:** The procedure for opening of an LC would generally include steps as given below: -

- (a) **Step-1:** Receipt of PBG in respect of the supplier and confirmation thereof by the contract concluding authority from SBI/ any of the public sector banks, checking of contents of the guarantee by the purchaser for conformity with model PBG format (latest RBI 1 Jul 2013 format), validity date etc [MoD Draft 12.5.1] and intimation received from the supplier regarding readiness of goods for dispatch as per contractual terms.
- (b) **Step-2:** The contract concluding authority to seek confirmation of budgetary support for the payment from the appropriate budget authority/Financial Planning Directorate in Services HQrs. [MoD Draft 12.5.1 & PCDA ND Suggestion]
- (c) **Step 3-** Thereafter, the contract concluding authority (Sponsor directorate) takes the following actions:- [MoD Draft 12.5.1 & PCDA ND Suggestion]
  - (i) Application cum guarantee and applicable form FD-SWIFT-700 should be filled up as follows:-
    - Form A1 in case of import of goods.
    - Form A2 in case of other than equipment/ goods (viz. service LCs, periodicals, training pamphlets etc.)
  - (ii) Details as per Annexure “D” of LC Format to be filled up.
  - (iii) FEMA Undertaking as per RBI, requirements to be prepared by Sponsor Directorate.

After checking all the documents, including PBG, the purchaser forwards the case for opening of LC, with the appropriate Form SWIFT 700 duly filled and the accompanying documents indicated above, to the Principal Controller / Controller of Defence Accounts concerned, who after proper scrutiny of the details for correctness, authorizes the concerned public sector bank as mentioned in Para 14.2.1 above (Issuing Bank) to open the LC.

- (d) **Step-4:** The Issuing Bank establishes the LC with a unique LC number allotted to each case and intimates the Principal Controller/ Controller of Defence Accounts concerned and the

**14.5.3 Payment Through Letter of Credit:** The letter of credit mechanism operates as follows:

- (a) The Buyer requests the issuing bank to open an LC.
- (b) The Issuing Bank conveys LC through the Advising bank/**Nominated Negotiating Bank**. [MoD Draft 12.5.3]
- (c) The Advising bank advises the credit to the beneficiary **either directly or through the Nominated Negotiating Bank, if any**. [MoD Draft 12.5.3]
- (d) The Beneficiary, after complying with terms and conditions against stipulated documents, gets the value/ payment either from the Advising bank or the Nominated Negotiating bank as per the terms of the LC.
- (e) After passing on the value/ payment, the negotiating/advising Bank claims reimbursement from the issuing Bank or nominated bank as per the terms of LC.
- (f) Ultimately, the issuing Bank recovers the amount from the applicant. It is the definite commitment of the issuing Bank to reimburse to the negotiating/ advising bank whether applicant provides the value of negotiation or not.

**14.6 Documents to be provided by the Seller**

**14.6.1 Documents to be provided by the Seller:** Paid shipping documents are required to be provided to the Advising Bank/Nominated Negotiated Bank by the Supplier as proof of dispatch of goods as per contractual terms to get his payment against the Letter of credit. The Advising Bank/Nominated Negotiated Bank forwards one set each of these documents to the Issuing Bank and the Landing Officer, as specified in the Contract, for getting the goods/stores released from the Port/Airport. These documents, the details of which should be specified in the contract, include:

- (a) Clean on Board Airway Bill/Bill of Lading
- (b) Original Invoice
- (c) Packing List
- (d) Certificate of **country of** [MoD Draft 12.5.6] **Origin of goods**
- (e) Certificate of Quality and current manufacture from OEM
- (f) Dangerous Cargo Certificate, if any.
- (g) Insurance Policy of 110% if CIF/CIP contract, wherever applicable.
- (h) Certificate of Conformity & Acceptance test at PDI, signed by Buyer's and Seller's QA Deptt, if provided in contract.
- (i) Phyto-sanitary/Fumigation Certificate, if applicable
- (j) Performance Bond
- (k) Warranty Certificate

**14.7 Extension of LC**

**14.7.1 Points to be Checked:** The following points should be checked by the Contract concluding authority before initiating the case for extension of LC:

- a) **Request from seller for extension of delivery date in absolute terms and for corresponding amendment of LC for latest date of shipment has been received.**
- b) **Extension of delivery date given in the contract and corresponding amendment in LC for latest date of shipment has been accepted by the competent financial authority in consultation with IFA, where required as per delegated financial powers and a re-confirmation regarding continuing availability of funds for releasing payment.**
- c) **In case of extension of Delivery Period, the validity period of Bank Guarantees should also be simultaneously extended.**
- d) **The onus of bearing charges for LC extension would be on the seller or buyer depending upon the one who seeks/ is responsible for the extension.** [MoD Draft 12.7.1 & PCDA ND Suggestion]

## 14.8 Direct Bank Transfer

- 14.8.1 Direct Bank Transfer (DBT):** A transferable credit is a credit under which the Beneficiary may request the bank authorized to pay, incur a deferred payment undertaking, accept or negotiate or in the case of a freely negotiable credit, the bank specifically authorized in the credit as a transferring bank to make the credit available in whole or in part to one or more than one beneficiaries. Direct Bank Transfer shows high degree of trust between parties. Buyer ensures that the payment is released only after receipt of the documents listed in paragraph 14.6.1 and confirmation from the Supplier that one set of the documents has been sent to the port consignee immediately after dispatch of the stores.
- 14.8.2 Advice to the Principal Controller/Controller:** After obtaining the above mentioned documents, the details of which should form part of the contract, the contract concluding authority advises the Principal Controller/ Controller of Defence Accounts concerned to effect Direct Bank Transfer. The Principal Controller/Controller concerned, in turn, authorizes the Buyer's bank to make direct transfer of funds to the Seller's bank account.
- 14.8.3 Advantages of DBT:** In comparison with payments through Letters of Credit, payment through DBT has the following advantages:
- (a) Payment is released only after receipt of goods.
  - (b) Payment is made only after full satisfaction to the quality, quantity etc.
  - (c) It is cost-effective as compared with LCs.
- 14.8.4 DBT for Contracts below USD 1,00,000:** For contracts below USD 100,000 DBT payment terms should be insisted upon as preferred mode of payment at the time of concluding the contract.

## 14.9 Performance Bank Guarantee (PBG)

- 14.9.1 Definition:** PBG is a written undertaking obtained from the Supplier through his bank as a guarantee that he would perform the promise/terms and conditions of the contract and to ensure the discharge of liability of the Supplier in case of his default.
- 14.9.2 Essential Elements of PBG:** The essential elements of PBG are as follows:
- (a) Amount
  - (b) **The PBG should be in the same currency as the contract and must conform to the Uniform Rules for Demand Guarantees (URDG 758)** [MoF Goods Manual 6.1.2]
  - (c) Address of the Beneficiary, Applicant and the Bank
  - (d) Validity date
  - (e) Contract Number and Date
- 14.9.3** Immediate steps should be taken to verify the genuineness/authenticity of the Bank Guarantees which are submitted by the contractors/suppliers, by approaching the issuing bank and receiving a direct confirmation from the bank in this regard.

The following steps should be taken by each organization to ensure that BGs are genuine and encashable-

- (a) **The prescribed format in which BGs are to be accepted should be enclosed with the tender document and the language should be verified verbatim by the Purchaser on receipt with the original BG format.**
- (b) **While accepting BG's it should also be checked that the Applicable Law indicated in the Agreement is Indian and the date of validity has been specified.**
- (c) **It must be clearly mentioned in the RFP that BGs issued by foreign banks must be submitted by the SBI Parliament Street, New Delhi/any other nationalized bank of India through SWIFT message with a copy to the Buyer through e-mail/Post etc. SBI Parliament Street New Delhi/any other nationalized Bank of India, will then ensure the authenticity of the SWIFT message and forward the same to the Buyer Directorate with a certificate that the message is authentic and the Bank guarantee has actually been established.**
- (d) **The validity period of BG should be 60 days beyond completion of all contractual obligations**

including warranty period). In case the contract incorporates the provision for JRI, the JRI period should also be added separately after the delivery period.

- (e) In exceptional cases, when BGs are received through the vendors/suppliers etc., the issuing bank should be requested to immediately send an unstamped duplicate copy of the Guarantee by Regd. Post (A.D.) directly to the purchaser with a covering letter to compare with the original BGs and confirm that it is in order.
- (f) As a measure of abundant caution, all BGs should be independently verified by the procuring entity when they are received from the Guarantor Bank.
- (g) In each office, an officer should be specifically designated with the responsibility for verification, timely renewal and timely encashment of BGs, whenever required. [MoD Draft 12.10.4 & PCDA ND Suggestion]

## 14.10 Guarantees

14.10.1 The salient features of Guarantees are as follows:

- (a) Guarantees are absolute in character and independent of the underlying contract.
- (b) Guarantees imply obligation to pay and not to perform.
- (c) Guarantees also imply unconditional and without demur payment against a valid claim.
- (d) Guarantees are for specified amount and period
- (e) Guarantees are issued against matching counter-guarantee from the applicant.

14.10.2 **Invocation of Guarantees:** Guarantees can only be invoked after fulfilling the following conditions:

- (a) The claim/intimation should reach the issuing Bank on or before the expiry date
- (b) The claim/intimation should be in strict conformity with the terms of the Guarantee.
- (c) Issuing Bank cannot enquire into merits of the claimant or take views on any dispute between the applicant and the beneficiary.
- (d) On compliance of terms of the guarantee, payments are to be effected immediately and unconditionally.

## 14.11 Confirmation of various types of Guarantees:

14.11.1 **Confirmation of Guarantees:** Confirmation of Performance Bank Guarantee/ Advance Bank Guarantee/ Warranty Bond for indigenous and foreign vendors should be undertaken as follows:

- (a) **Indigenous Vendors:** Bank guarantee issued by any **Commercial bank in India** [GFR 2017 Rule 171] would be accepted.
- (b) **Foreign Vendors:** The seller will be required to furnish a performance bank guarantee / advance payment bank guarantee/ warranty bond from an international bank of repute duly confirmed by SBI/ Indian Public Sector Bank in favour of the Govt. of India/ Ministry of Defence. For this purpose, the foreign supplier will be advised to ask its foreign banker to mutually settle the issue regarding confirmation of its bank guarantee with the Indian Public Sector bank/ SBI. All Bank guarantees will be issued with mutual agreement between SBI / Indian Public Sector bank and the seller's Banker as co-guarantor and the Govt will not be a party to such agreement/ arrangement between the two bankers. The buyer will accept the BG against advance payment/ performance/ warranty guarantee directly from the SBI/ Indian Public Sector Bank. Further, if a foreign vendor submits a BG through its subsidiary in India from an Indian Public Sector bank, same may be accepted. [MoD Draft 12.11.1(b) & PCDA New Delhi suggestion]

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**APPENDIX 'A'**

(Para 2.6)

**TIME FRAME FOR PROCUREMENT**

**[UNDER SINGLE & TWO BID SYSTEMS AND TWO STAGE BIDDING]**

**RECEIPT OF INDENT**

Sr. No.	Activity	Average Time Period (In Weeks)		
		Single Bid	Two Bid	Two Stage Bidding
1.	Vetting and Registration of Indent	1	1	1
2.	Vendor Selection and preparation of RFP	1	1	1
3.	IFA's concurrence, CFA's approval and floating of RFP	2	2	2

**PROCUREMENT ACTION**

Sr. No.	Activity	Average Time Period (In Weeks)		
		Single Bid	Two Bid	Two Stage Bidding
5.	Time allowed for submission of offers	2 to 3*	3*	3 weeks for technical bids & 2 weeks for commercial bids
6.	Opening of technical bid and technical evaluation by TEC	NA	3	3 weeks for initial round (2 weeks for each subsequent round)
7.	Opening of commercial bids, preparation of CST and vetting etc.	2	2	2
8.	Submission of proposal for procurement or making counter offer or for holding negotiations with the concurrence of the IFA and approval of the proposal by the CFA	2	2	2
9.	Preparation of brief for the CNC, issuing notice for the CNC and actual conduct of CNC meeting	4	4	4
10.	Preparation of the minutes of the CNC meeting and obtaining of signatures of the members/chairman of the CNC	1	1	1
11.	IFA's concurrence and CFA's approval of the purchase proposal	2	2	2
12.	Preparation and dispatch of the Supply Order/signing of the contract	1	1	1
	<b>Total</b>	18 to 19	22	24

\* This may vary as per the requirement. See Chapter 5 of the Manual.

## **APPENDIX 'B'**

(Para 4.3.1)

### **Format for the Statement of Case (SoC)**

#### **Case Title**

#### **1. Unit/ Directorate/ Office initiating the SOC**

#### **2. Name of the item(s)/services being procured**

Category [Ex-ordnance, Medical, IT, Engineering, MT, Electrical, Electronic, Clothing, Aviation, General, FOL, Machinery, Spares, Communications, Navigational, Provisions, Weapons, Armament, Ammunition, Repairs, Services and other categories (to be specified)]

(Nomenclature of items with details like part numbers, etc. to be shown in Annexure 'A' to the Statement of Case)

#### **3. Justification for procurement**

a. Authority, if any, under which the proposal is being initiated- Govt Rules/Orders, Service specific instructions, Subsidiary instructions, etc. to be quoted.

b. If it is a scaled item –

Reference number and date of the Government letter/Service HQ letter authorizing the scale to be quoted.

c. If it is a non-scaled item, the following information to be provided:

i. Which item was serving the purpose till the date?

ii. How the present proposal will serve the purpose?

iii. Whether scaling action has been initiated? If yes, reference number to be given. If not, reasons for not doing so to be given.

d. Broad purpose of items being procured

e. Detailed Justification from user

i. Category of proposal –

- Fresh purchase
- Up gradation
- Replacement
- Maintenance
- Repair
- Any other (to be specified)

ii. If it is a fresh purchase, the following information to be provided:

- How was the purpose being served till date?
- Why it can't be served with up-gradation of the existing items?

iii. If it is a case of up-gradation, the following information to be provided:

- Details of original purchase viz., year, cost, quantity, residual life left, residual life after upgradation, etc.
- Confirmation that issues of standardization and compatibility have been taken care of

iv. If it is a case of replacement, the following information to be provided:

- What will be done with the items being replaced?
- Details of proposal for disposal of existing items (BER certificate, etc. to be enclosed)
- Possibility of buy-back or otherwise, along with reasons

#### **4. Schedule of Requirements – to be given as per Annexure 'C' [PCDA AF DPMF 11]**

#### **5. Quantity**

(a) Basis for working out the quantity against each item – (formula, methodology, etc.)

(b) Details like authorized holdings, existing holdings, Dues-in, Dues-out, etc.

(c) Calculation sheets / PR documents to be enclosed with the SOC (Net Quantity to be shown in Annexure A)

(d) Proposed distribution of items being bought with justification

#### **6. Estimated cost of proposal** – various elements of cost, such as the basic cost, taxes, transportation cost, training cost, AMC, etc., should be shown separately and the grand total should also be indicated)

Basis for working out the estimated cost of proposal to be indicated as follows:

- (a) Last Purchase Price – Year, Escalation factor **and its basis**, source, quantity to be mentioned.
- (b) Budgetary quotes – Source, period, etc. to be mentioned along with copy of budgetary quotes. **Reasons for obtaining Budgetary quotes from particular prospective bidder(s) should be indicated.**
- (c) Market Intelligence – Source, period, etc to be mentioned along with relevant enclosures.
- (d) Rates obtained from other Organizations – Source, period, quantity, etc to be mentioned along with relevant enclosures.
- (e) Professional Officers' Evaluation – Detailed reasoning and inputs used to be enclosed.
- (f) Any other method adopted (to be specified and explained, along with the reasons)

**7. Details of the last purchase**

- (a) The Quantity and dates on which similar items were procured in last one year
- (b) If it is a recurring item, the total period for which the items are being procured
- (c) The mode of tendering in respect of last purchase
- (d) The source of last purchase
- (e) Any other relevant information

**8. Availability of funds**

- (a) Is it included in the PPP (if applicable)?
- (b) If yes, relevant serial number of PPP to be quoted
- (c) Major Head, Minor Head, Sub Head and Detailed Head under which expenditure in respect of the instant proposal is to be booked
- (d) Code Head, as mentioned in Classification Hand Book
- (e) Fund Availability certificate as per format given in Annexure B
- (f) Name of the paying agency

**9. Competent Financial Authority**

- (a) Particulars of the Schedule / Sub-Schedule and the serial number thereof under which powers are being exercised
- (b) Name/level of the CFA as mentioned in the Schedule, under whom the proposal falls

**10. Mode of Tendering**

- (a) **Is the proposal covered by GeM mechanism? If yes, give details of options available under it-**
- (b) Open tendering – Mention the ~~websites~~ **Procurement Portals** and newspapers in which the advertisement is proposed to be published. (Draft advertisement to be enclosed)
- (c) Limited Tendering – Mention the reasons for LTE if value of the proposal is more than Rs 25 lakhs. (The list of vendors for LTE and reasons for including them to be enclosed)
- (d) PAC tendering – Enclose ~~draft~~ PAC certificate along with detailed justification for PAC tendering.
- (e) Single tendering – Mention the grounds of urgency / Operation reasons / technical requirements, etc. on which STE is being proposed.
- (f) Rate Contract – Enclose copy of relevant RC under which the items are being proposed to be bought.

**11. Draft RFP**

- (a) Draft RFP to be enclosed
- (b) Special conditions applicable to the proposal, which have been proposed in draft RFP, to be highlighted in the SOC. Important Technical and Commercial clauses proposed to be included may be mentioned with brief justification. Also, Evaluation Criteria proposed to be adopted may also be mentioned.

(\_\_\_\_\_)

Officer initiating the proposal

(Note: This is only an indicative format. Information may be provided as per this format, to the extent feasible. If required, additional information may also be provided.)

Format for Quantity and Cost of proposal

SI No.	Name of Items	Qty	LPP	POV	Market Survey	Rates of other Org	Budgetary Quotes	Estimated Cost	Total Cost (3 X 9)
1	2	3	4	5	6	7	8	9	10

Basic cost =

Taxes, etc. =

Transportation =

Note

1. Values in columns 4 to 9 are to be mentioned in terms of rate per unit
2. Value to be indicated in column 9 is to be derived by suitable analysis of rates mentioned in columns 4 to 8

**Format for Certificate regarding availability of funds**

- a. Code head under which the expenditure is proposed
- b. Total allocation under the code head
- c. Cash outgo during the current financial year on account of committed liability carried forwarded from the previous year
- d. Balance available for fresh commitments in current financial year (b-c)
- e. Cash outgo on account of the commitments already made during the current financial year based on schedule of delivery and payment terms in the supply orders / contracts
- f. Net balance available for further concurrence (d-e)

**Format for preparing Schedule of Requirements (SoR)**

The essential Technical particulars to be specified in the SoR shall include the following to the extent applicable for a particular procurement -

- i) Scope of supply and, also, end use of the required goods;
- ii) All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
- iii) Drawings;
- iv) Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options;
- v) Requirement of an advance sample, if any, at the post contract stage before bulk production;
- vi) Special requirements of preservation, packing and marking, if any;
- vii) Inspection procedure for goods ordered and criteria of conformity;
- viii) Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any;
- ix) Other additional work and/or related services required to achieve full delivery/ completion, installation, commissioning, training, technical support, after-sales service and Annual Maintenance Contract (AMC) requirements, if any;
- x) Warranty requirements;
- xi) Qualification criteria of the bidders, if any; and
- xii) Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

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## APPENDIX 'C'

(Para 5.12.6)

### **Subsidiary Instructions to Buyer for framing Request For Proposal (RFP)**

1. The draft RFP is divided into five Parts, each Part dealing with a different aspects.
2. Part I contains General Instructions to the bidders. Generally, all these instructions should be mentioned as it is, though minor changes can be done to suit a particular case. The para on EMD is applicable only for cases covered under **Para 5.11 of Chapter 5**.
3. In Part II, the Technical Details would be different for various types of equipment. As such only the broad guidelines for formulating this aspect have been stated here. The information may contain the following –
  - a. The purpose for which the items are needed or broadly outlines the capabilities that are required. It should be ensured that user requirements are laid down in a comprehensive, structured and concrete manner in terms of functional characteristics and are broad-based.
  - b. Relevant technical parameters like size, weight, performance, operating environment, power, torque, preservation, utility life, storage, shelf life etc, can be specified as applicable. Examples are as under –
    - i. User requirements in terms of functional characteristics
    - ii. Specifications / Drawings, if applicable
    - iii. Technical details along with Essential Technical parameters
    - iv. Compliance chart for Technical evaluation
    - v. Requirement of training / on-job training
    - vi. Requirement of installation, Commissioning
    - vii. Requirement of FATs, HATs and SATs.
    - viii. Requirement of technical documentation.
    - ix. Type of future assistance on completion of warranty.
    - x. Earliest Acceptable Year of manufacture
  - c. In case of Two-Bid system, the essential performance parameters should be mentioned, fulfilment of which would be the basis for Technical Evaluation.
  - d. In Para 5 pertaining to INCOTERMS, only the applicable Term of Delivery may be mentioned as decided for that particular case.
4. Part III contains Standard clauses which might have a legal implication. Therefore, no deviation from the text given in the clauses nor deletion of any of these clauses has to be allowed. In case a deviation from these clauses has to be considered/allowed due to insistence of the Seller, then approval of Raksha Mantri will be required. Para 15 on Pre-Integrity clause may be included only in cases above Rs. 100 crores.
5. Part IV contains several Commercial clauses, which may or may not be relevant for a particular type of RFP. Hence the title is given as Special Conditions of Contract. A conscious decision may be taken to incorporate the relevant clauses from this list based on the guidelines given in the concerned Chapters of DPM-2018. The wordings of these clauses can also be appropriately modified to suit a particular case.
6. In Part V, the Evaluation Criteria can be suitably amplified/modified to suit the specific requirements of a particular case. Similarly, the Format of the Price Bid can be amended to include / exclude items as per requirements.
7. The draft RFP applies both to indigenous and foreign procurement cases. The main difference will be in the selection of relevant 'Special Condition Clauses' from those given in Part-IV of the draft RFP. This in turn will depend upon the guidelines contained in corresponding paras of various chapters. In particular, the provisions of Chapters 5 & 7 would be relevant for indigenous procurements and Chapters 9 & 10 for foreign procurements must be examined by the Buyer for appropriate selection of commercial clauses.

**REQUEST FOR PROPOSAL FORMAT**

**(Particulars of the Buyer issuing the RFP)**

**Invitation of Bids for Supply of ..... (Title of Request for Proposal)**

**Request for Proposal (RFP) No \_\_\_\_\_ Dated \_\_\_\_\_**

1. **Online** bids/bids in sealed cover (**cases which are exempted from e-procurement**) are invited for supply of items listed in Part II of this RFP. Please superscribe the above mentioned Title, RFP number and date of opening of the Bids on the sealed cover to avoid the Bid being declared invalid.
2. **In case of e-Procurement clarification are sought and provided online. In case of manual bidding** the address and contact numbers for seeking clarifications regarding this RFP or sending Bids are given below –
  - a. Bids/queries to be addressed to:
  - b. Postal address for sending the Bids :
  - c. Name/designation of the contact personnel:
  - d. Telephone numbers of the contact personnel:
  - e. e-mail ids of contact personnel:
  - f. Fax number:
3. This RFP is divided into five Parts as follows:
  - a. Part I – Contains General Information and Instructions for the Bidders about the RFP such as the time, place of submission and opening of tenders, Validity period of tenders, etc.
  - b. Part II – Contains essential details of the items/services required, such as the Schedule of Requirements (SOR), Technical Specifications, Delivery Period, Mode of Delivery and Consignee details.
  - c. Part III – Contains Standard Conditions of RFP, which will form part of the Contract with the successful Bidder.
  - d. Part IV – Contains Special Conditions applicable to this RFP and which will also form part of the contract with the successful Bidder.
  - e. Part V – Contains Evaluation Criteria and Format for Price Bids.
4. This RFP is being issued with no financial commitment and the Buyer reserves the right to change or vary any part thereof at any stage. Buyer also reserves the right to withdraw the RFP, should it become necessary at any stage.



## Part I – General information

### 1. Last date and time for **submitting** the Bids:

\_\_\_\_\_

(Date to be mentioned in terms of DD MM YEAR)

The **online bids**/ sealed bids (both technical and Commercial, in case two bids are called for) should be **submitted**/reach by the due date and time. The responsibility to ensure this lies with the Bidder.

### 2. Manner of **submitting** the Bids: **Online bids should be submitted in the manner prescribed in the relevant e-Procurement Portal. In case of manual bidding**, sealed bids should be either dropped in the Tender Box marked as \_\_\_\_\_ or sent by registered post at the address given above so as to reach by the due date and time. Late tenders will not be considered. No responsibility will be taken for postal delay or non-delivery/non-receipt of Bid documents. Bids sent by FAX or e-mail will not be considered (unless they have been specifically called for by these modes due to urgency).

### 3. Time and date for opening of Bids:

\_\_\_\_\_

(If due to any exigency, the due date for opening of the Bids is declared a closed holiday, the Bids will be opened on the next working day at the same time or on any other day/time, as intimated by the Buyer).

### 4. Location of the Tender Box (**in case of manual bidding**):

\_\_\_\_\_

Only those Bids that are found in the tender box will be opened. Bids dropped in the wrong Tender Box will be rendered invalid.

### 5. Place of opening of the Bids:

\_\_\_\_\_. The Bidders may depute their representatives, duly authorized in writing, to attend the opening of Bids on the due date and time. Rates and important commercial/technical clauses quoted by all Bidders will be read out in the presence of the representatives of all the Bidders. This event will not be postponed due to non-presence of your representative.

### 6. **Two-Bid system**: In case of the Two-bid system, only the Technical Bid would be opened on the time and date mentioned above. Date of opening of the Commercial Bid will be intimated after acceptance of the Technical Bids. Commercial Bids of only those firms will be opened, whose Technical Bids are found compliant/suitable after Technical evaluation is done by the Buyer.

### 7. **Submission of Bids**– **Bids should be submitted online by Bidders under their Digital Signature** or in case of manual bidding under their original memo / letter pad inter alia furnishing details like TIN number, **GST** number, Bank address with EFT Account if applicable, etc. and complete postal & e-mail address of their office.

### 8. **Clarification regarding contents of the RFP**: **The e-Procurement application provides an interface for vendors to seek clarifications online and the procurement authority to reply to the same. The start date and end date for seeking clarifications will be included in the critical dated indicated in the tender. In case of manual bidding** a prospective bidder who requires clarification regarding the contents of the bidding documents shall notify to the Buyer in writing about the clarifications sought not later than 14 (fourteen) days prior to the date of opening of the Bids. Copies of the query and clarification by the purchaser will be sent to all prospective bidders who have received the bidding documents.

### 9. **Modification and Withdrawal of Bids**: A bidder may modify or withdraw his bid after submission **as per the modalities given in relevant e-Procurement Portal** . In manual bidding A written notice of modification or withdrawal is received by the Buyer prior to deadline prescribed for submission of bids. A withdrawal notice may be sent by fax but it should be followed by a signed confirmation copy to be sent by post and such signed confirmation should reach the purchaser not later than the deadline for submission of bids. No bid shall be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity specified. Withdrawal of a bid during this period will result in Bidder's forfeiture of bid security.

### 10. **Clarification regarding contents of the Bids**: During evaluation and comparison of bids, the Buyer may, at its discretion, ask the bidder for clarification of his bid. The request for clarification will be given in writing and no change in prices or substance of the bid will be sought, offered or permitted. No post-bid clarification on the initiative of the bidder will be entertained.

11. **Rejection of Bids:** Canvassing by the Bidder in any form, unsolicited letter and post-tender correction may invoke summary rejection with forfeiture of EMD. Conditional tenders will be rejected.
12. **Unwillingness to quote:** Bidders unwilling to quote should ensure that intimation to this effect reaches before the due date and time of opening of the Bid, failing which the defaulting Bidder may be delisted for the given range of items as mentioned in this RFP.
13. **Validity of Bids:** The Bids should remain valid till \_\_\_\_\_(Date)\_\_\_\_\_ from the last date of submission of the Bids.
14. **Earnest Money Deposit:**– Bidders are required to submit Earnest Money Deposit (EMD) for amount of \_\_\_\_ along with their bids. The EMD may be submitted in the form of an Fixed Deposit Receipt, or Bank Guarantee from any of the **Commercial Bank or online payment in acceptable form**. EMD is to remain valid for a period of forty-five days beyond the final bid validity period. EMD of the unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract. The Bid Security of the successful bidder would be returned, without any interest whatsoever, after the receipt of Performance Security from them as called for in the contract. EMD is not required to be submitted by **Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME)/MSEs registered with NSIC and under Udyog Adhar Memorandum (UAM)** and those Bidders who are registered with the Central Purchase Organization or concerned Department or Ministries of the Government of India for the same item/range of products, goods or services for which tender has been issued. The EMD will be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect within the validity period of their tender.

**OR**

- Bid Securing Declaration-** In place of a Bid security, the bidders are required to sign a bid securing declaration accepting that if they withdraw or modify their bids during the period of validity, or if they are awarded the contract and they felt to sign the contract, or to submit a performance security before the deadline defined in the request for bids document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit bids for contracts with the entity that invited the bids.
15. Special Instructions to contractors/Bidders for e-submission of bids online through e-procurement Portals may be adhered to. The details of the Earnest Money Deposit (EMD), documents submitted physically to the Organization/Unit and the scanned copies furnished at the time of bid submission online should be same otherwise the Tender will be summarily rejected.
  16. In case of e-bidding EMD instruments and certificates/documents etc. should be dropped in either Tender Box marked as \_\_\_\_\_ or sent by registered post at the address given above so as to reach by the due date and time.

**Part II – Essential Details of Items/Services required**

**1. Schedule of Requirements** – List of items / services required is as follows:

**Name/Type of item/services/description of stores Qty required**

.....  
 .....

**2. Technical Details:**

- (a) Specifications/drawings, as applicable
- (b) Technical details with technical parameters
- (c) Requirement of training/on-job training
- (d) Requirement of installation/commissioning
- (e) Requirement of Factory Acceptance Trials (FAT), Harbor Acceptance Trails (HAT) and Sea Acceptance Trials (SAT)
- (f) Requirement of Technical documentation
- (g) Nature of assistance required after completion of warranty
- (h) Requirement of pre-site/equipment inspection
- (i) Any other details, as considered necessary

**(3) Two-Bid System** - In respect of Two-bid system, Bidders are required to furnish clause by clause compliance of specifications bringing out clearly the deviations from specification, if any. The Bidders are advised to submit the compliance statement in the following format along with Technical Bid –

Para of RFP specifications item-wise	Specification of item offered	Compliance to RFP specification – whether Yes /No	In case of noncompliance, deviation from RFP to be specified in unambiguous terms

**(4) Delivery Period** - Delivery period for supply of items would be \_\_\_\_\_ from the effective date of contract. Please note that Contract can be cancelled unilaterally by the Buyer in case items are not received within the contracted delivery period. Extension of contracted delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

**5. INCOTERMS for Delivery and Transportation** – (“E” / “F” / “C” / “D” Terms).

Unless otherwise specifically agreed to by the Buyer and the Seller and incorporated in the contract, the applicable rules & regulations for transportation of goods from foreign countries will be as per the contemporary version of International Commercial Terms (INCOTERMS) evolved by International Chamber of Commerce, Paris. Definition of Delivery Period is given below –

TERMS OF DELIVERY	DATE OF DELIVERY
(a) Local Delivery at Site	The date on which the delivery is made at the consignee’s site mentioned in the contract.
(b) Ex-works	The date the Seller delivers the goods to the Buyer at Seller’s factory / premises.
(c) F.O.R Station of Dispatch	The date on which the goods are placed by the Seller on rail with clear Rail Receipt.
(d) By Post Parcel	The date of postal receipt.
(e) Dispatch by Air	The date of Air-way Bill.
(f) F.O.R. Destination	The date on which the goods reach the destination railway station specified in the contract, unless otherwise stated.

(g) C.I.P. Destination	The date on which the delivery is effected at the destination mentioned in the contract.
(h) F.A.S. Port of Shipment	The date on which the Seller deliver the goods alongside the vessel at the specified port of shipment. This date is reflected in Bill of Lading.
(i) F.O.B. Port of Shipment	The date on which the Seller delivers the goods on vessel's board at the specified port of shipment. This date is reflected in Bill of Lading.
(j) C.I.F. Port of Destination	The date on which the goods actually arrived at the Destination Port.

Note - The FAS, FOB & CIF terms of delivery are applicable for goods which are directly imported from foreign countries against the subject contract and not imported already by the Seller under its own arrangement.

The CIP terms of delivery may be applied both for domestic as well as imported supplies.

6. **Consignee details** - \_\_\_\_\_

### **Part III – Standard Conditions of RFP**

The Bidder is required to give confirmation of their acceptance of the Standard Conditions of the Request for Proposal mentioned below which will automatically be considered as part of the Contract concluded with the successful Bidder (i.e. Seller in the Contract) as selected by the Buyer. Failure to do so may result in rejection of the Bid submitted by the Bidder.

1. **Law:** The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.
2. **Effective Date of the Contract:** The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.
3. **Arbitration:** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms **DPMF 15, DPMF 16, DPMF 17** (Available in MoD website and can be provided on request).
4. **Penalty for use of Undue influence:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offers by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.
5. **Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.
6. **Access to Books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a

specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.

7. **Non-disclosure of Contract documents:** Except with the written consent of the Buyer/ Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.
8. **Liquidated Damages:** In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the contract price (**excluding taxes and duties**) of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.
9. **Termination of Contract:** The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-
  - (a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (\_\_\_ months) after the scheduled date of delivery.
  - (b) The Seller is declared bankrupt or becomes insolvent.
  - (c) The delivery of material is delayed due to causes of Force Majeure by more than (\_\_\_ months) provided Force Majeure clause is included in contract.
  - (d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.
  - (e) As per decision of the Arbitration Tribunal.
10. **Notices:** Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.
11. **Transfer and Sub-letting:** 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 to let a third party take benefit or advantage of the present Contract or any part thereof.
12. **Patents and other Industrial Property Rights:** The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.
13. **Amendments:** No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract.
14. **Taxes and Duties :**
  - a) **In respect of Foreign Bidders:** All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present contract in their respective countries.
  - b) **In respect of Indigenous bidders:**
    - i) **General**
      1. Bidders must indicate separately the relevant Taxes/Duties likely to be paid in connection with delivery of completed goods specified in RFP. In absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
      2. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by them up to the limit of exemption which they may have. If any concession is available in

regard to rate/quantum of any Duty/tax, it should be brought out clearly. In such cases, relevant certificate will be issued by the Buyer later to enable the Seller to obtain exemptions from taxation authorities.

3. Bidders should note that in case any refund of any tax/duty is granted to them by Central/State authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Tax/ Duty, originally paid for the stores supplied under the contract.
4. Any changes in levies, taxes and duties levied by Central/State Local governments on final product upward as a result of any statutory variation taking place within contract period shall be allowed reimbursement by the Buyer to the extent of actual quantum of such duty/tax paid by the Seller. Similarly, in case of downward revision in any such duty tax, the actual quantum of reduction of such duty/tax shall be reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs exemptions, rebate, concessions etc, if any obtained by the Seller. Section 64-A of Sales of Goods Act will be relevant in this situation.
5. Levies, taxes and duties levied by Central/State/Local governments on final product will be paid by the Buyer on actuals, based on relevant documentary evidence. Taxes and duties on input items will not be paid by Buyer and they may not be indicted separately in the bids. Bidders are required to include the same in the pricing of their product.

**ii) Customs Duty –**

1. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F./CIP prices and total amount of customs duty payable. **In case where CIF/CIP is not indicated by a foreign bidder, their FOB/FCA cost would be loaded by 10% to arrive at CIF/CIP cost for the purposes of evaluation.** <sup>[DRDO PM 8.4.1]</sup> They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer contract number..... dated.....
  2. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
  3. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.
15. **Pre-Integrity Pact Clause:** An “Integrity Pact” would be signed between the Ministry of Defence/Buyer and the Bidder for purchases exceeding Rs.100 crores. This is a binding agreement between the Buyer and Bidders for specific contracts in which the Buyer promises that it will not accept bribes during the procurement process and Bidders promise that they will not offer bribes. Under this Pact, the Bidders for specific services or contracts agree with the Buyer to carry out the procurement in a specified manner. The Format of Pre-Integrity Clause will be as per Form DPMF-23 (Available in MoD website, and can be provided on request). The essential elements of the Pact are as follows:
- a. A pact (contract) between the Government of India (Ministry of Defence) (the authority or the “principal”) and those companies submitting a tender for this specific activity (the “Bidder”);

- b. An undertaking by the Principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
- c. A statement by each Bidder that it has not paid, and will not pay, any bribes;
- d. An undertaking by each Bidder to disclose all payments made in connection with the Contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of submission of Bids or upon demand of the Principal, especially when a suspicion of a violation by that Bidder emerges;
- e. The explicit acceptance by each Bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning Bidder until the contract has been fully executed.
- f. Undertaking on behalf of a Bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”.
- g. The following set of sanctions shall be enforced for any violation by a Bidder of its commitments or undertakings:
  - i) Denial or loss of contracts;
  - ii) Forfeiture of the Bid security and performance bond;
  - iii) Liability for damages to the principal and the competing Bidders; and
  - iv) Debarment of the violator by the Principal for an appropriate period of time.
- h. Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behaviour and compliance program for the implementation of the code of conduct throughout the company).



## **Part IV – Special Conditions of RFP**

The Bidder is required to give confirmation of their acceptance of Special Conditions of the RFP mentioned below which will automatically be considered as part of the Contract concluded with the successful Bidder (i.e. Seller in the Contract) as selected by the Buyer. Failure to do so may result in rejection of Bid submitted by the Bidder.

### **1. Performance Guarantee:**

- a. **Indigenous cases:** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a **Commercial Bank in India** for a sum equal to \_\_\_% of the contract value within 30 days of receipt of the confirmed order. Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form ~~DPM-15~~ **DPMF 9**(Available in MoD website and can be provided on request).
- b. **Foreign cases:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from a **Commercial Bank in India** or an International Bank of repute in favour of the Government of India, Ministry of Defence to be confirmed by SBI/public sector bank equal to \_\_\_% of the total value of this contract i.e. for US \$ ..... (US Dollars (in words) ..... only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the Seller. The specimen of PBG is given in Form **DPMF 9**(Available in MoD website and can be provided on request).

**2 Option Clause:** The contract will have an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original contracted quantity in accordance with the same terms & conditions of the present contract. This will be applicable within the currency of contract. The Bidder is to confirm the acceptance of the same for inclusion in the contract. It will be entirely the discretion of the Buyer to exercise this option or not.

**3 Repeat Order Clause** – The contract will have a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present contract within six months from the date of supply/successful completion of this contract, the cost, terms & conditions remaining the same. The Bidder is to confirm acceptance of this clause. It will be entirely the discretion of the Buyer to place the Repeat order or not.

**4 Tolerance Clause** – To take care of any change in the requirement during the period starting from issue of RFP till placement of the contract, Buyer reserves the right to \_\_\_% plus/minus increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the Seller. While awarding the contract, the quantity ordered can be increased or decreased by the Buyer within this tolerance limit.

**1. Payment Terms for Indigenous Sellers** - It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/EFT mechanism instead of payment through cheques, wherever feasible. A copy of the model mandate form prescribed by RBI to be submitted by Bidders for receiving payments through ECS is at Form **DPMF 10** (Available in MoD website and can be given on request). The payment will be made as per the following terms, on production of the requisite documents:

- a. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

OR

- b. 100% payment on delivery and acceptance by the user.

OR

- c. Stage-wise payments (To be defined as per complexity of case)

OR

- d. Quarterly payments on submission of User clearance certificate in respect of AMC contracts.

2. **Payment terms for Foreign Sellers –**

- a. The payment will be arranged through Letter of Credit from Reserve Bank of India/State bank of India/any other Public Sector Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller will give a notification within a specified period about the readiness of goods. Letter of Credit is to be opened by the Buyer within \_\_\_\_\_ days on receipt of notification of readiness from the firm. The Letter of Credit will be valid for \_\_\_\_\_ days from the date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

- b. If the value of the contract is up to US \$ 100,000, payments will be made by Direct Bank Transfer. DBT payment will be made within 30 days of receipt of clean Bill of Lading / AWB/Proof of shipment and such other documents as are provided for in the contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the Contract.

OR

- c. Stage-wise payments (To be defined as per complexity of case)

OR

- d. Quarterly payments on submission of User clearance certificate in respect of AMC contracts.

3. **Advance Payments:** No advance payment(s) will be made.

OR

- a. Advance payments may be made upto **30%** against appropriate Bank guarantee or any authorised guarantee, as acceptable to the Buyer.

4. **Paying Authority:**

- a. Indigenous Sellers: (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:
- i. Ink-signed copy of contingent bill / Seller's bill.
  - ii. Ink-signed copy of Commercial invoice / Seller's bill.
  - iii. Copy of Supply Order/Contract with U.O. number and date of IFA's concurrence, where required under delegation of powers.
  - iv. CRVs in duplicate.
  - v. Inspection note.
  - vi. Claim for statutory and other levies to be supported with requisite documents / proof of payment such as **GST** challan, Customs duty clearance certificate, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as applicable.
  - vii. Exemption certificate for **taxes/duties**, if applicable.
  - viii. Bank guarantee for advance, if any.
  - ix. Guarantee / Warranty certificate.
  - x. Performance Bank guarantee / Indemnity bond where applicable.
  - xi. DP extension letter with CFA's sanction, U.O. number and date of IFA's concurrence, where required under delegation of powers, indicating whether extension is with or without LD.
  - xii. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/contract).
  - xiii. Any other document / certificate that may be provided for in the Supply Order / Contract.
  - xiv. User Acceptance.
  - xv. Xerox copy of PBG.

(Note – From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in RFP)

- b. **Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:
- i. Clean on Board Airway Bill/Bill of Lading
  - ii. Original Invoice
  - iii. Packing List
  - iv. Certificate of **country of origin of goods**
  - v. Certificate of Quality and current manufacture from OEM.
  - vi. Dangerous Cargo certificate, if any.
  - vii. Insurance policy of 110% if CIF / CIP contract, **wherever applicable**
  - viii. Certificate of Conformity & Acceptance Test at PDI, **signed by Buyer's and Seller's QA Deptt, if provided in contract.**
  - ix. Phyto-sanitary / Fumigation Certificate, if applicable.
  - x. Performance Bond
  - xi. Warranty Certificate
5. **Fall clause** - The following Fall clause will form part of the contract placed on successful Bidder –
- a. The price charged for the stores supplied under the contract by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate contract is completed.
  - b. If at any time, during the said period the Seller reduces the sale price, sells or offer to sell such stores to any person/organisation including the Buyer or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to: -
    - i. Exports by the Seller.
    - ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
    - iii. Sale of goods such as drugs which have expiry dates.
    - iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.
  - c. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate contract – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Contract at price lower than the price charged to the government under the contract except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below - .....”.

**6. Exchange Rate Variation Clause:**

- (a) Detailed time schedule for procurement of imported material and their value at the FE rates adopted for the contract is to be furnished by the foreign Bidder as per the format given below

Year wise and major currency wise import content break up

Year	Total cost of material	FE content outflow (Equivalent in Rupees – crores)		
		Dollar denominated	Euro denominated	Other currencies denominated

- (b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the contract. Base exchange rate of each major currency used for calculating FE content of the contract will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
- (c) The base date for ERV would be contract date and variation on the base date will be given upto the midpoint manufacture unless Bidder indicates the time schedule within which material will be exported by them. Based on information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.
- (d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be re-fixed /extended.
- (e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the vendor in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

**7. Risk & Expense clause –**

1. Should the stores or any installment thereof not be delivered within the time or times specified in the contract documents, or if defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of contract, to declare the contract as cancelled either wholly or to the extent of such default.
2. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be done in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.
3. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he thinks fit, other stores of the same or similar description to make good:-
  - a. Such default.
  - b. In the event of the contract being wholly determined the balance of the stores remaining to be delivered thereunder.
4. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed \_\_\_\_% of the value of the contract.”

**8. Force Majeure clause**

- a. Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the present contract), if the non-performance results from such

Force Majeure circumstances as Flood, Fire, Earth Quake and other acts of God as well as War, Military operation, blockade, Acts or Actions of State Authorities or any other circumstances beyond the parties control that have arisen after the conclusion of the present contract.

- b. In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
  - c. The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than 10 (Ten) days from the moment of their beginning.
  - d. Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances.
  - e. If the impossibility of complete or partial performance of an obligation lasts for more than 6 (six) months, either party hereto reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.
9. **Buy-Back offer** - Buyer is interested to trade the existing old goods while purchasing the new ones. Bidders may formulate and submit their tenders accordingly. Interested Bidders can inspect the old goods to be traded through this transaction. Buyer reserves its right to trade or not to trade the old goods while purchasing the new ones and the Bidders are to frame their bids accordingly covering both the options. Details for buy-back offer are as under–
- a. Details of Items for buy-back scheme – Make/Model, Specs, Year of Production/Purchase, Period of Warranty/AMC, etc.
  - b. Place for inspection of old items – Address, Telephone, Fax, e-mail, Contact personnel, etc.
  - c. Timings for Inspection – All weekdays between \_\_\_ to \_\_\_\_\_.
  - d. Last date for inspection – 1 day before the last date of submission of bids.
  - e. Period of handing over old items to successful bidder – Within 15 days of placement of order.
  - f. Handling charges and transportation expenses to take out the old items will be on account of the successful bidder.
10. **Specification:** The following Specification clause will form part of the contract placed on successful Bidder - The Seller guarantees to meet the specifications as per Part-II of RFP and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques alongwith necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (\_\_\_) days of affecting such upgradation/alterations.
11. **OEM Certificate:** In case the Bidder is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification. **Such quality certification arrangements are to be as per the satisfaction of purchaser and his Quality Assurance Organisation/AHSP.**
12. **Export License:** The Bidders are to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.
13. **Earliest Acceptable Year of Manufacture:** \_\_\_\_\_ Quality / Life certificate will need to be enclosed with the Bill.
14. **Buyer Furnished Equipment:** The following equipment will be provided by the Buyer at his expense to the Seller:

.....  
.....  
15. **Transportation:** The following Transportation clause will form part of the contract placed on successful Bidder –

- a. **CIF/CIP** – The stores shall be delivered CIF/CIP \_\_\_\_\_(Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer’s risk of loss of or damage to goods during the carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by\_\_\_\_\_. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or trans-shipment without the express/prior written consent of the Buyer. The goods should be shipped by\_\_\_\_\_. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:
- i. Name of the Ship
  - ii. Port of Loading and name of Country
  - iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
  - iv. Number of Packages and weight.
  - v. Nomenclature and details of major equipment.
  - vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

- b. **FOB/FAS** -- The stores shall be delivered FOB /FAS basis (as per INCOTERMS 2010, or latest version) **in accordance with the terms and conditions agreed in the relevant contract.** The stores shall be delivered to the Buyer by\_\_\_\_\_. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or trans-shipment without the express/prior written consent of the Buyer. **[Linked with Para 9.6.10 of this Manual]**

OR

- c. **FCA** - The delivery of the goods shall be FCA \_\_\_\_\_ Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer’s expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.

16. **Air lift:** The following Airlift clause will form part of the contract placed on successful Bidder - Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of an intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed. **Airlifting will be done only through the national carrier i.e. Air India.**

17. **Packing and Marking:** The following Packing and Marking clause will form part of the contract placed on successful Bidder –

- a. The Seller shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.

- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
  - c. Each spare, tool and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.
    - i. Part Number :
    - ii. Nomenclature :
    - iii. Contract annex number :
    - iv. Annex serial number :
    - v. Quantity contracted :
  - d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
  - e. The Seller shall mark each package with indelible paint in the English language as follows:-
    - i. EXPORT
    - ii. Contract No. -----
    - iii. Consignee -----
    - iv. Port / airport of destination -----
    - v. Ultimate consignee -----
    - vi. SELLER -----
    - vii. Package No. -----
    - viii. Gross/net weight : -----
    - ix. Overall dimensions/volume : -----
    - x. The Seller's marking.
  - f. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.
  - g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.
18. **Quality:** The quality of the stores delivered according to the present Contract shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Contract shall be new i.e. not manufactured before (Year of Contract), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.
  19. **Quality Assurance:** Seller would provide the Standard Acceptance Test Procedure (ATP) within \_\_\_ month of this date of contract. Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The details in this regard will be coordinated during the negotiation of the contract. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.
  20. **Inspection Authority:** The Inspection will be carried out by \_\_\_\_\_. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.
  21. **Pre-Dispatch Inspection -** The following Pre-dispatch Inspection clause will form part of the contract placed on successful Bidder –

- a. The Buyer's representatives will carry out Pre-Despatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPMF-33(Available in MoD website and can be given on request.
  - b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
  - c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least \_\_\_\_\_(No of days) in advance to apply for the necessary authorisations and clearances to be granted.
  - d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.
  - e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
  - f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
  - g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Contract.
22. **Joint Receipt Inspection:** The following Joint Receipt Inspection clause will form part of the contract placed on successful Bidder –
- a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of
    - i. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
    - ii. Complete functional checking of the stores/equipment as per specifications in the contract and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
    - iii. Check proof and firing, if required.
  - b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.
  - c. Upon completion of each JRI, JRI proceedings and Acceptance Certificate will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued



and claims raised as per the Article on Claims in the contract. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

23. **Franking clause** – The following Franking clause will form part of the contract placed on successful Bidder –
- a. **Franking Clause in the case of Acceptance of Goods** “The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the contract”.
  - b. **Franking Clause in the case of Rejection of Goods** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the contract.”
24. **Claims:** The following Claims clause will form part of the contract placed on successful Bidder –
- a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the contract.
  - b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPMF-20 (Available in MoD website and can be given on request).
  - c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPMF-21 (Available in MoD website and can be given on request) .
  - d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller's office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
  - e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller's arrangement.
  - f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.
  - g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.
25. **Warranty** –
- a. The following Warranty will form part of the contract placed on the successful Bidder –
    - i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such

portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.

- ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
- iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.
- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**OR**

- b. The following Warranty will form part of the contract placed on successful Bidder –
  - i. The Seller warrants that the goods supplied under the contract conform to technical specifications prescribed and shall perform according to the said technical specifications.
  - ii. The Seller warrants for a period of \_\_\_\_\_ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the contract and each component used in the manufacture thereof shall be free from all types of defects/failures.
  - iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.
  - iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within \_\_ % of the warranty period.
  - v. The Seller shall associate technical personnel of the Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.
  - vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds \_\_\_% of the warranty period, the complete equipment shall be replaced free of cost by the Seller within a stipulated period of \_\_ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.
  - vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this contract, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
  - viii. The Seller will guarantee the shelf life of ( \_\_\_\_\_) years under the Indian tropical condition as given below:
    1. Minimum temperature - -
    2. Maximum temperature ---
    3. Average Humidity ---
  - ix. For procurement of oils and lubricants, the following will be applicable –

1. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
  2. The penalty amounting to (\_\_\_\_ %) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
  3. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.
26. **Product Support:** The following Product Support clause will form part of the contract placed on successful Bidder –
- a. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipments (STE) subcontracted from other agencies/ manufacturer by the Seller for a maximum period of \_\_\_\_years including \_\_\_\_ years of warranty period after the delivery of \_\_\_\_\_ (name of equipment).
  - b. The Seller agrees to undertake Maintenance Contract for a maximum period of \_\_\_\_months, extendable till the complete Engineering Support Package is provided by the Seller.
  - c. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.
  - d. Any improvement/modification/ up gradation being undertaken by the Seller or their sub suppliers on the stores/equipment being purchased under the Contract will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.
  - e. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this contract for a period of \_\_\_\_ years as maintenance contract as specified or provision of complete Engineering Support Package to the Buyer whichever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.
27. **Annual Maintenance Contract (AMC) Clause** - The following AMC clause will form part of the contract placed on successful Bidder–
- a. The Seller would provide comprehensive AMC for a period of \_\_\_ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Contract. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:
    - (i) **Preventive Maintenance Service:** The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating base to carry out functional check ups and minor adjustments/ tuning as may be required.
    - (ii) **Breakdown maintenance Service:** In case of any breakdown of the equipment/system, on receiving a call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.
  - b. Response time: The response time of the Seller should not exceed \_\_\_\_\_hours from the time the breakdown intimation is provided by the Buyer.
  - c. Serviceability of \_\_\_% per year is to be ensured. This amounts to total maximum downtime of \_\_\_days per year. Also unserviceability should not exceed \_\_\_days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.
  - d. Maximum repair turnaround time for equipment/system would be \_\_\_\_ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.

- e. Technical Documentation: All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.
  - f. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.
  - g. The Buyer reserves its right to terminate the maintenance contract at any time without assigning any reason after giving a notice of \_\_\_ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the Seller for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms.
28. **Engineering Support Package (ESP) clause** - The following ESP clause will form part of the contract placed on successful Bidder –
- a. **Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:
    - (i) **Unit level repairs** - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-
      - 1. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
      - 2. Scaling of special tools and spares as mentioned above including Maintenance manual.
    - (ii) **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-
      - 1. Quantity and specification of spares that need to be stocked for a population of \_\_\_\_\_ equipment.
      - 2. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).
    - (iii) **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-
      - 1. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
      - 2. Quantity and specification of spares, sub assemblies as per population expected to be maintained.
      - 3. Oils and lubricants necessary for overhaul.
      - 4. All necessary technical literature.
      - 5. Calibration facilities for test equipment. This level of repair defines stripping and rebuilding of equipment in a Base workshop.
  - b. **Manufacturers Recommended List of Spares (MRLS).** - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years

for various levels of repair as per format given at Form DPMF-34 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-

- (i) Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
- (ii) Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
- (iii) High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for e.g. it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

- c. **Special Maintenance Tools and Test Equipment** - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPMF-35 (Available in MoD website and can be given on request) and is to be included in both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- d. **Technical Literature** - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPMF-36 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- e. **Miscellaneous Aspects** (Applicable only when trials are required) – In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.
- f. **Maintainability Evaluation Trials (MET)**. This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. MET details will be given as per format given at Form DPMF-37 (Available in MoD website and can be given on request). To facilitate this process the Bidder is required to provide the following :-
  - (i) Technical Literature.
    - 1. User Handbook/Operators Manual in English and Hindi.
    - 2. Design Specifications.
    - 3. Technical Manuals.
      - a. Part I Tech description, specifications, functioning of various systems.
      - b. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
      - c. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
      - d. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
    - 4. Manufacturers Recommended List of Spares (MRLS).
    - 5. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
    - 6. Technical Manual on STE with drawing reference.
    - 7. Complete Equipment Schedule.
    - 8. Table of Tools & Equipment (TOTE) & carried spares.
    - 9. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.

- (ii) One set of Gauges
  - (iii) One set of Special Maintenance Tools (SMTs).
  - (iv) One set of Special Test Equipment (STEs).
  - (v) Servicing Schedule.
  - (vi) Condemnation limits.
  - (vii) Permissive repair schedule.
  - (viii) Packing specifications /instructions.
  - (ix) Design Specifications.
  - (x) Any additional information suggested by the OEM.
- g. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.
29. **Price Variation (PV) Clause** – The following PV clause will form part of the contract placed on successful Bidder
- a. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-
- $$P1 = \{F + a\left(\frac{M1}{M0}\right) + b\left(\frac{L1}{L0}\right) - P0\}$$
- Where P1 is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)
- Po is the Contract Price at the base level.
- F is the Fixed element not subject to Price Variation
- a is the assigned percentage to the material element in the Contract Price.
- b is the assigned percentage to the labour element in the Contract Price.
- Lo and L1 are the wage indices at the base month and year and at the month and year of calculation respectively.
- Mo and M1 are the material indices at the base month and year and at the month and year of calculation respectively.
- If more than one major item of material is involved, the material element can be broken up into two or three components such as Mx, My, Mz . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate vis-a-vis the wage rates.
- b. Following conditions would be applicable to Price Adjustment –
- (i) Base dates shall be due dates of opening of price bids.
  - (ii) Date of adjustment shall be mid point of manufacture.
  - (iii) No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
  - (iv) Total adjustment will be subject to maximum ceiling of \_\_\_\_%.
  - (v) No price adjustment shall be payable on the portion of contract price paid to the Seller as an advance payment.

## Part V – Evaluation Criteria & Price Bid issues

1. **Evaluation Criteria** - The broad guidelines for evaluation of Bids will be as follows:
  - a. Only those Bids will be evaluated which are found to be fulfilling all the eligibility and qualifying requirements of the RFP, both technically and commercially.
  - b. In respect of Two-Bid system, the technical Bids forwarded by the Bidders will be evaluated by the Buyer with reference to the technical characteristics of the equipment as mentioned in the RFP. The compliance of Technical Bids would be determined on the basis of the parameters specified in the RFP. The Price Bids of only those Bidders will be opened whose Technical Bids would clear the technical evaluation.
  - c. The Lowest Bid will be decided upon the lowest price quoted by the particular Bidder as per the Price Format given at Para 2 below. The consideration of taxes and duties in evaluation process will be as follows:
    - (i) In cases where only Indian Bidders are competing, L-1 bidder will be determined on **all elements of costs including taxes and duties, etc. quoted by the Bidders.**
    - (ii) In cases where both foreign and indigenous Bidders are competing, following criteria would be followed –
      1. **In case of foreign Bidders, the total costs including customs duty and other similar import duties/ taxes, which will be contractually payable (to the tenderer) on the goods, are to be added.**
      2. **In case of indigenous Bidders, the total costs including all taxes/duties on fully formed equipment would be added.**
  - d. In import cases, all the foreign quotes will be brought to a common denomination in Indian Rupees by adopting the exchange rate as BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
  - e. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price will be corrected. If there is a discrepancy between words and figures, the amount in words will prevail for calculation of price.
  - f. The Buyer reserves the right to evaluate the offers received by using Discounted Cash Flow method at a discounting rate of \_\_\_\_%. In case cash flow involves more than one currency, the same will be brought to a common denomination in Indian Rupees by adopting exchange rate as BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
  - g. The Lowest Acceptable Bid will be considered further for placement of contract / Supply Order after complete clarification and price negotiations as decided by the Buyer. The Buyer will have the right to award contracts to different Bidders for being lowest in particular items. The Buyer also reserves the right to do Apportionment of Quantity, if it is convinced that Lowest Bidder is not in a position to supply full quantity in stipulated time.
  - h. Any other criteria as applicable to suit a particular case.
2. **Price Bid Format: Price Bid Format:** The Price Bid Format in general is given below and Bidders are required to fill this up correctly with full details :
  - a. Basic cost of the item/items:

Item	Unit price	Qty	Total
(i) A			
(ii) B			
(iii) C			
(iv) Total of Basic Price			
  - b. Accessories
  - c. Installation / Commissioning charges
  - d. Training

- e. Technical literature
- f. Tools
- g. AMC
- h. Any other item
- i. Is GST/Customs Duty extra?
  - If yes, mention the following –
  - (i) Total value of items on which GST/Customs Duty is leviable:
  - (ii) Rate of GST/Customs Duty (item-wise if different rates are applicable):
  - (iii) Total value of GST/Customs Duty payable:
- j. Any other Taxes / Duties / Overheads / Other costs:

**k. Grand Total:**

**Note-** Determination of L1 will be done based on total Cost to the Buyer.

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## APPENDIX 'D'

(Para 5.21)

### Subsidiary Instructions to the Buyer for framing the Supply Order

1. Part I contains the Preamble and it should be mentioned as it is.
2. Part II contains details of items being Supplied/Ordered and their finalized prices. Format of Price bid in Part-V of RFP should be the base for listing out the details. The information may also contain the following as mentioned in Part-II of the RFP and finalized by the Buyer–
  - a. Relevant technical parameters
  - b. User requirements in terms of functional characteristics
  - c. Specifications / Drawings, if applicable
  - d. Requirement of training / on-job training
  - e. Requirement of installation, Commissioning
  - f. Requirement of FATs, HATs and SATs.
  - g. Requirement of technical documentation.
  - h. Type of future assistance on completion of warranty.
  - i. Earliest Acceptable Year of manufacture
  - j. Delivery Period
  - k. Relevant INCOTERM for Delivery and Transportation
  - l. Consignee details
3. Part III contains Standard clauses which might have a legal bearing. Therefore, neither any deviation from the text given in these clauses nor deletion of any of these clauses should be allowed. In case a deviation from these clauses is required to be allowed due to insistence of the Seller during negotiations, then approval of Raksha Mantri will be required. Para 15 pertaining to Pre Integrity is to be included only for cases above Rs. 100 crores.
4. Part IV contains Special Conditions of the Supply Order as mentioned in Part-IV of RFP. Though major deviations from RFP should not be done as it will amount to denial of equal opportunity to unsuccessful bidders, minor changes in wordings of these clauses may be done if the Seller insists upon the same or to suit a particular case.
5. Part V contains the list of addresses and Signing formalities.

## SUPPLY ORDER FORMAT

Name and Address of Buyer

Contact details like Telephone, Fax, e-mail

File number

Date

To

Name of Seller

Address

**Placement of Supply Order Number \_\_\_\_\_ dated**  
**Against RFP Number \_\_\_\_\_ dated**

### Part I

Dear Sir/Madam,

1. This is to inform you that a formal Supply Order is being placed on you for supply of items/services at prices mentioned in Part-II. The Commercial terms and conditions are contained in Part-III and Part-IV of this Supply Order (S.O. in short). The word "Seller" in this S.O. is meant for your organization while the word "Buyer" is meant for this organization acting on behalf of President of India.
2. Following documents shall be the sole repository of this transaction –
  - a. Our RFP number \_\_\_\_\_ dated.
  - b. Your Bid number \_\_\_\_\_ dated.
  - c. Our letters \_\_\_\_\_ dated
  - d. Your letters \_\_\_\_\_ dated
  - e. Five Parts of this Supply Order as under - .
    - i. Part I – Communication of acceptance of Seller's Bid as finalized by Buyer.
    - ii. Part II – Buyer agrees to buy and Seller agrees to sell items/services mentioned in Part II at the prices mentioned therein. This Part also contains essential details of the items/services required, such as the Technical Specifications, Delivery Period, Place of Delivery and Consignee details agreed by the Seller.
  - f. Part III – Buyer and Seller agree to abide by the Standard Conditions of Supply Order mentioned in Part III.
  - g. Part IV - Buyer and Seller agree to abide by the Special Conditions of Supply Order mentioned in Part IV.
  - h. Part V – It contains list of other addresses and other relevant details pertaining to this S.O.
3. Two copies of ink-signed Supply Order are being sent to you. Please acknowledge receipt within seven days of receipt of this Supply order, on your office letterhead duly signed by the authorized signatory. One copy of Supply Order duly signed and stamped on all pages should be returned to this office along with your acknowledgment letter. If such an acceptance or communication conveying any objection to certain part of this Supply Order is not received within seven days, then it would be deemed that this Supply Order is fully accepted by you and all obligations of Seller will be applicable to you under this S.O.

Thanking you,

Yours sincerely

Name and designation of Buyer

On and behalf of President of India

**Part II – Essential Details of Items/Services Supply Ordered**

1. **Schedule of Prices** – List of items / services Supply Ordered is as follows:

Sl No	Denomination of items/services	Quantity	Unit price	Total price	Remarks
Grand Total					

2. **Technical Details:**

- a. Functional characteristics of items Supply Ordered
- b. Specifications/drawings, as applicable
- c. Technical details with technical parameters
- d. Details of training/on-job training
- e. Details of installation/commissioning
- f. Details of Factory Acceptance Trials (FAT), Harbor Acceptance Trails (HAT) and Sea Acceptance Trials (SAT)
- g. Details of technical documentation
- h. Nature of assistance required after completion of warranty
- i. Details of pre-site/equipment inspection
- j. Any other details, as considered necessary

3. **Delivery Period** - Delivery period for supply of items would be \_\_\_\_\_ from the effective date of Supply Order. Please note that Supply Order can be cancelled unilaterally by the Buyer in case items are not received within the Supply Ordered delivery period. Extension of Supply Ordered delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

4. **INCOTERMS for Delivery and Transportation** – (“E” / “F” / “C” / “D” Terms). The definition of Delivery Period for this Supply Order will be \_\_\_\_\_

5. **Consignee details** - \_\_\_\_\_

### **Part III – Standard Conditions of Supply Order**

16. **Law:** The Supply Order shall be considered and made in accordance with the laws of the Republic of India. The Supply Order shall be governed by and interpreted in accordance with the laws of the Republic of India.
17. **Effective Date of the Supply Order:** The Supply Order shall come into effect on the date of its acknowledgement by the Seller and shall remain valid until the completion of the obligations of the parties under the Supply Order. The deliveries and supplies and performance of the services shall commence from the effective date of the Supply Order.
18. **Arbitration:** All disputes or differences arising out of or in connection with the Supply Order shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Supply Order or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms **DPMF 15, DPMF 16, DPMF 17** (Available in MoD website and can be provided on request).
19. **Penalty for use of Undue influence:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Supply Orders or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Supply Order or any other Supply Order with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Supply Order or any other Supply Order with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the Supply Order and all or any other Supply Orders with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other Supply Order, shall render the Seller to such liability/penalty as the Buyer may deem proper, including but not limited to termination of the Supply Order, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.
20. **Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Supply Order and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the Supply Order to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this Supply Order, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Supply Order with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Supply Order either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Supply Order along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any Supply Orders concluded earlier with the Government of India.
21. **Access to Books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the Supply Order as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.

22. **Non-disclosure of Supply Order documents:** Except with the written consent of the Buyer/ Seller, other party shall not disclose the Supply Order or any provision, specification, plan, design, pattern, sample or information thereof to any third party.
23. **Liquidated Damages:** In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this Supply Order, the Buyer may, at his discretion, withhold any payment until the completion of the Supply Order. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the Supply Order price (**excluding taxes and duties**) of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.
24. **Termination of Supply Order:** The Buyer shall have the right to terminate this Supply Order in part or in full in any of the following cases :-
- (f) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (\_\_\_ months) after the scheduled date of delivery.
  - (g) The Seller is declared bankrupt or becomes insolvent.
  - (h) The delivery of material is delayed due to causes of Force Majeure by more than (\_\_\_months) provided Force Majeure clause is included in Supply Order.
  - (i) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this Supply Order and paid any commission to such individual/company etc.
  - (j) As per decision of the Arbitration Tribunal.
25. **Notices:** Any notice required or permitted by the Supply Order shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.
26. **Transfer and Sub-letting:** The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Supply Order or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Supply Order or any part thereof.
27. **Patents and other Industrial Property Rights:** The prices stated in the present Supply Order shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.
28. **Amendments:** No provision of present Supply Order shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Supply Order and signed on behalf of both the parties and which expressly states to amend the present Supply Order.
29. **Taxes and Duties :**
- c) **In respect of Foreign Bidders:** All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present Supply Order in their respective countries.
  - d) **In respect of Indigenous bidders:**
    - iii) **General**
      - (a) If any concession is available in regard to rate/quantum of any Duty/tax, as mentioned by the Seller in their bids, relevant certificate will be issued by the Buyer to enable the Seller to obtain exemptions from taxation authorities.
      - (b) Any changes in levies, taxes and duties levied by Central/State/Local governments on final product upward as a result of any statutory variation taking place within contract period shall be allowed reimbursement by the Buyer, to the extent of actual quantum of such duty/tax paid by the Seller. Similarly, in case of downward revision in any such duty/tax shall be reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc., if any,

obtained by the Seller. Section 64-A of Sales of Goods Act will be relevant in this situation.

- (c) Levies, taxes and duties levied by Central/State/Local governments on final product will be paid by the Buyer on actuals, based on relevant documentary evidence. Taxes and duties on input items will not be paid by Buyer and they may not be indicated separately in the bids. Bidders are required to include the same in the pricing of their product.
- (d) Bidders should note that in case any refund of any tax/duty is granted to them by Central/State authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Tax/ Duty, originally paid for the stores supplied under the contract

(ii) **Customs Duty –**

- 4. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F./CIP prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer Supply Order number..... dated.....
- 5. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
- 6. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

30. **Pre-Integrity Pact Clause:** A pre-Integrity Pact is concluded between Buyer and Seller as per Form DPMF- 23 enclosed to Part-III of this Supply Order.

**Part IV – Special Conditions of Supply Order**

**2. Performance Guarantee:**

- c. **Indigenous cases:** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a **Commercial Bank in India** for a sum equal to \_\_\_\_\_% of the Supply Order value within 30 days of receipt of the confirmed order. Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form ~~DPM-15~~ **DPMF 9** (Available in MoD website and can be provided on request).
- d. **Foreign cases:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from **a Commercial Bank in India or International Bank of repute** in favour of the Government of India, Ministry of Defence to be confirmed by SBI/ public sector bank equal to \_\_\_\_\_% of the total value of this Supply Order i.e. for US \$ ..... (US Dollars (in words) ..... only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other Supply Order obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all Supply Order obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the Supply Order are not fulfilled by the Seller. The specimen of PBG is given in Form ~~DPM-15~~ **DPMF 9** (Available in MoD website and can be provided on request).

**5 Option Clause:** The Supply Order will have an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original Supply Ordered quantity in accordance with the same terms & conditions of the present Supply Order. This will be applicable within the currency of Supply Order. The Bidder is to confirm the acceptance of the same for inclusion in the Supply Order. It will be entirely the discretion of the Buyer to exercise this option or not.

**6 Repeat Order Clause –** The Supply Order will have a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present Supply Order within six months from the date of supply/successful completion of this Supply Order, the cost, terms & conditions remaining the same. The Bidder is to confirm acceptance of this clause. It will be entirely the discretion of the Buyer to place the Repeat order or not.

**30. Payment Terms for Indigenous Sellers -** It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/EFT mechanism instead of payment through cheques, wherever feasible. A copy of the model mandate form prescribed by RBI to be submitted by Bidders for receiving payments through ECS is at Form ~~DPM-11~~ **DPMF 10** (Available in MoD website and can be given on request). The payment will be made as per the following terms, on production of the requisite documents:

- e. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

OR

- f. 100% payment on delivery and acceptance by the user.

OR

- g. Stage-wise payments (To be defined as per complexity of case)

OR

- h. Quarterly payments on submission of User clearance certificate in respect of AMC Supply Orders.

**31. Payment terms for Foreign Sellers –**

- e. The payment will be arranged through Letter of Credit from Reserve Bank of India/State bank of India/any other Public Sector Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller will give a notification within a specified period about the readiness of goods. Letter

of Credit is to be opened by the Buyer within \_\_\_\_\_ days on receipt of notification of readiness from the firm. The Letter of Credit will be valid for \_\_\_\_\_ days from the date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

- f. If the value of the Supply Order is up to US \$ 100,000, payments will be made by Direct Bank Transfer. DBT payment will be made within 30 days of receipt of clean Bill of Lading / AWB/Proof of shipment and such other documents as are provided for in the Supply Order, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the Supply Order.

OR

- g. Stage-wise payments (To be defined as per complexity of case)

OR

- h. Quarterly payments on submission of User clearance certificate in respect of AMC Supply Orders.

32. **Advance Payments:** No advance payment(s) will be made.

OR

- b. Advance payments may be made upto **30%** against appropriate Bank guarantee or any authorised guarantee, as acceptable to the Buyer.

33. **Paying Authority:**

- c. **Indigenous Sellers:** (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- j. Ink-signed copy of contingent bill / Seller's bill.
- xvi. Ink-signed copy of Commercial invoice / Seller's bill.
- xvii. Copy of Supply Order/Supply Order with U.O. number and date of IFA's concurrence, where required under delegation of powers.
- xviii. CRVs in duplicate.
- xix. Inspection note.
- xx. Claim for statutory and other levies to be supported with requisite documents / proof of payment such as **GST** challan, Customs duty clearance certificate, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as applicable.
- xxi. Exemption certificate for **taxes/duties**, if applicable.
- xxii. Bank guarantee for advance, if any.
- xxiii. Guarantee / Warranty certificate.
- xxiv. Performance Bank guarantee / Indemnity bond where applicable.
- xxv. DP extension letter with CFA's sanction, U.O. number and date of IFA's concurrence, where required under delegation of powers, indicating whether extension is with or without LD.
- xxvi. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/Supply Order).
- xxvii. Any other document / certificate that may be provided for in the Supply Order / Supply Order.
- xxviii. User Acceptance.
- xxix. Xerox copy of PBG.

(Note – From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in RFP)

- d. **Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per Supply Order terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:

- j. Clean on Board Airway Bill/Bill of Lading



- xii. Original Invoice
- xiii. Packing List
- xiv. Certificate of **country of Origin of goods.**
- xv. Certificate of Quality and current manufacture from OEM.
- xvi. Dangerous Cargo certificate, if any.
- xvii. Insurance policy of 110% if CIF / CIP Supply Order, **wherever applicable.**
- xviii. Certificate of Conformity & Acceptance Test at PDI, **signed by Buyer's and Seller's QA Deptt, if provided in contract.**
- xix. Phyto-sanitary / Fumigation Certificate, if any.
- xx. Performance Bond
- xxi. Warranty Certificate

**34. Fall clause -**

- d. The price charged for the stores supplied under the Supply Order by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate Supply Order is completed.
- e. If at any time, during the said period the Seller reduces the sale price, sells or offer to sell such stores to any person/organisation including the Buyer or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the Supply Order, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the Supply Order for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to: -
  - j. Exports by the Seller.
  - v. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
  - vi. Sale of goods such as drugs which have expiry dates.
  - vii. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Supply Orders as also under any previous Supply Orders entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.
- f. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate Supply Order – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the Supply Order herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Supply Order at price lower than the price charged to the government under the Supply Order except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below - .....”.

**35. Exchange Rate Variation Clause:**

- (f) Detailed time schedule for procurement of imported material and their value at the FE rates adopted for the Supply Order is to be furnished by the foreign Bidder as per the format given below

Year wise and major currency wise import content break up

Year	Total cost of material	FE content outflow (Equivalent in Rupees – crores)

		Dollar denominated	Euro denominated	Other currencies denominated

- (g) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the Supply Order. Base exchange rate of each major currency used for calculating FE content of the Supply Order will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
- (h) The base date for ERV would be Supply Order date and variation on the base date will be given upto the midpoint manufacture unless Bidder indicates the time schedule within which material will be exported by them. Based on information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.
- (i) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be re-fixed /extended.
- (j) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the vendor in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

**36. Risk & Expense clause –**

- 5. Should the stores or any installment thereof not be delivered within the time or times specified in the Supply Order documents, or if defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of Supply Order, to declare the Supply Order as cancelled either wholly or to the extent of such default.
- 6. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be done in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of Supply Order, to cancel the Supply Order wholly or to the extent of such default.
- 7. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he thinks fit, other stores of the same or similar description to make good:-
  - c. Such default.
  - d. In the event of the Supply Order being wholly determined the balance of the stores remaining to be delivered thereunder.
- 8. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the Supply Order price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed \_\_\_% of the value of the Supply Order.”
- 37. **Buy-Back offer** - Buyer will be hand over the old items and the agreed prices will be adjusted in the final payment to the Seller. It will be the responsibility of Seller to carry away the old items from the Buyer's premises within 15 days of signing of this Supply Order. The expenditure on account of Handling charges and transportation expenses to carry away the old items will be borne by the Seller.

**13. Force Majeure:** Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within (\_\_\_ days) of its occurrence informs the other party in writing. Force Majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of the party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond

the control of either party. A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this Supply Order.

14. **Specification:** The Seller guarantees to meet the specifications as per Part-II of this Supply Order and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques along with necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (\_\_\_) days of affecting such upgradation/alterations.
15. **OEM Certificate:** In case the Seller is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification. **Such quality certification arrangements are to be as per the satisfaction of purchaser and his Quality Assurance Organisation/AHSP.**
16. **Export License:** The Seller is to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.
17. **Earliest Acceptable Year of Manufacture:** \_\_\_\_\_ Quality / Life certificate will need to be enclosed with the Bill.
18. **Buyer Furnished Equipment:** The following equipment will be provided by the Buyer at his expense to the Seller:

.....

.....

19. **Transportation:**

d. **CIF/CIP** – The stores shall be delivered CIF/CIP \_\_\_\_\_(Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer’s risk of loss of or damage to goods during the carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by \_\_\_\_\_ ~~Indian ships only~~. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or trans-shipment without the express/prior written consent of the Buyer. The goods should be shipped by \_\_\_\_\_. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:

- j. Name of the Ship
- vii. Port of Loading and name of Country
- viii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
- ix. Number of Packages and weight.
- x. Nomenclature and details of major equipment.
- xi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

e. **FOB/FAS** -- The stores shall be delivered FOB ..... (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by \_\_\_\_\_. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do

so, the Seller shall not arrange part-shipments and/or trans-shipment without the express/prior written consent of the Buyer. [\[Linked with Para 9.6.10 of this Manual\]](#)

OR

- f. **FCA** - The delivery of the goods shall be FCA \_\_\_\_\_ Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.
- 20. Air lift:** The following Airlift clause will form part of the Supply Order placed on successful Bidder - Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of an intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed. **Airlifting will be done only through the national carrier i.e. Air India.**
- 21. Packing and Marking:** The following Packing and Marking clause will form part of the Supply Order placed on successful Bidder –
- h. The Seller shall provide packing and preservation of the equipment and spares/goods Supply Ordered so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- i. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- j. Each spare, tool and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity Supply Ordered is less than six then tag shall be affixed to complete quantity Supply Ordered of the item. The cartons shall then be packed in packing cases as required.
- j. Part Number :
- vi. Nomenclature :
- vii. Supply Order annex number :
- viii. Annex serial number :
- ix. Quantity Supply Ordered :
- k. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- l. The Seller shall mark each package with indelible paint in the English language as follows:-
- j. EXPORT
- xi. Supply Order No. -----
- xii. Consignee -----
- xiii. Port / airport of destination -----
- xiv. Ultimate consignee -----
- xv. SELLER -----
- xvi. Package No. -----
- xvii. Gross/net weight : -----
- xviii. Overall dimensions/volume : -----
- xix. The Seller's marking.
- m. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.

- n. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.
- 22. Quality:** The quality of the stores delivered according to the present Supply Order shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Supply Order shall be new i.e. not manufactured before (Year of Supply Order), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.
- 23. Quality Assurance:** After the Supply Order is finalized, the seller would be required to provide the Standard Acceptance Test Procedure (ATP) **within \_\_\_ month of this date of Supply Order**. Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.
- 24. Inspection Authority:** The Inspection will be carried out by \_\_\_\_\_. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.
- 25. Pre-Dispatch Inspection -**
- h. The Buyer's representatives will carry out Pre-Despatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPMF-33(Available in MoD website and can be given on request.
- i. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
- j. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least \_\_\_\_\_(No of days) in advance to apply for the necessary authorisations and clearances to be granted.
- k. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.
- l. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
- m. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
- n. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Supply Order.
- 26. Joint Receipt Inspection:**

- d. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of
  - j. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this Supply Order and the invoices.
  - iv. Complete functional checking of the stores/equipment as per specifications in the Supply Order and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
  - v. Check proof and firing, if required.
- e. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.
- f. Upon completion of each JRI, JRI proceedings and Acceptance Certificate will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the Supply Order. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

**27. Franking clause –**

- c. **Franking Clause in the case of Acceptance of Goods** “The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the Supply Order alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the Supply Order”.
- d. **Franking Clause in the case of Rejection of Goods** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the Supply Order.”

**28. Claims:**

- h. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the Supply Order.
- i. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPMF-20 (Available in MoD website and can be given on request).
- j. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPMF-21 (Available in MoD website and can be given on request) .
- k. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller's office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
- l. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller's arrangement.

- m. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.
- n. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

**29. Warranty –**

c.

- j. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this Supply Order shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in Supply Order. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.
- v. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
- vi. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.
- vii. Warranty to the affect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**OR**

d.

- j. The Seller warrants that the goods supplied under the Supply Order conform to technical specifications prescribed and shall perform according to the said technical specifications.
- x. The Seller warrants for a period of \_\_\_\_\_ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the Supply Order and each component used in the manufacture thereof shall be free from all types of defects/failures.
- xi. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.

- xii. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within \_\_\_ % of the warranty period.
- xiii. The Seller shall associate technical personnel of the Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.
- xiv. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds \_\_\_% of the warranty period, the complete equipment shall be replaced free of cost by the Seller within a stipulated period of \_\_\_ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.
- xv. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this Supply Order, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- xvi. The Seller will guarantee the shelf life of ( \_\_\_\_\_) years under the Indian tropical condition as given below:
  - 4. Minimum temperature - -
  - 5. Maximum temperature ---
  - 6. Average Humidity ---
- xvii. For procurement of oils and lubricants, the following will be applicable –
  - 4. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
  - 5. The penalty amounting to (\_\_\_\_\_ %) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
  - 6. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

**30. Product Support:**

- f. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipment (STE) sub Supply Ordered from other agencies/ manufacturer by the Seller for a maximum period of \_\_\_\_\_years including \_\_\_\_\_ years of warranty period after the delivery of \_\_\_\_\_ (name of equipment).
- g. The Seller agrees to undertake Maintenance Supply Order for a maximum period of \_\_\_\_\_months, extendable till the complete Engineering Support Package is provided by the Seller.
- h. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.
- i. Any improvement/modification/ up gradation being undertaken by the Seller or their sub suppliers on the stores/equipment being purchased under the Supply Order will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.
- j. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this Supply Order for a period of \_\_\_\_\_ years as maintenance Supply Order as specified or provision of complete Engineering Support Package to the Buyer whichever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.

**31. Annual Maintenance Supply Order (AMC) Clause-**



- h. The Seller would provide comprehensive AMC for a period of \_\_\_ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Supply Order. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:
  - (iii) **Preventive Maintenance Service:** The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating base to carry out functional check ups and minor adjustments/ tuning as may be required.
  - (iv) **Breakdown maintenance Service:** In case of any breakdown of the equipment/system, on receiving a call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.
- i. Response time: The response time of the Seller should not exceed \_\_\_\_\_hours from the time the breakdown intimation is provided by the Buyer.
- j. Serviceability of \_\_\_% per year is to be ensured. This amounts to total maximum downtime of \_\_\_days per year. Also unserviceability should not exceed \_\_\_days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.
- k. Maximum repair turnaround time for equipment/system would be \_\_\_\_\_ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.
- l. Technical Documentation: All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.
- m. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.
- n. The Buyer reserves its right to terminate the maintenance Supply Order at any time without assigning any reason after giving a notice of \_\_\_ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the Supply Order, if any payment is due to the Seller for maintenance services already performed in terms of the Supply Order, the same would be paid to it as per the Supply Order terms.

### 32. Engineering Support Package (ESP) clause -

- h. **Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:
  - (j) Unit level repairs - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-
    - 3. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
    - 4. Scaling of special tools and spares as mentioned above including Maintenance manual.
  - (iv) **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-

3. Quantity and specification of spares that need to be stocked for a population of \_\_\_\_\_ equipment.
  4. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).
- (v) **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-
6. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
  7. Quantity and specification of spares, sub assemblies as per population expected to be maintained.
  8. Oils and lubricants necessary for overhaul.
  9. All necessary technical literature.
  10. Calibration facilities for test equipment. This level of repair defines stripping and rebuilding of equipment in a Base workshop.
- i. **Manufacturers Recommended List of Spares (MRLS).** - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPMF-34 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-
- (j) Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
  - (iv) Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
  - (v) High Cost. Greater than 10 % of the unit cost of equipment/subsystem.
- If the complete equipment comprises a number of different sub systems, for e.g. it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.
- j. **Special Maintenance Tools and Test Equipment** - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPMF-35 (Available in MoD website and can be given on request) and is to be included in both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- k. **Technical Literature** - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPMF-36 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- l. **Miscellaneous Aspects** (Applicable only when trials are required) – In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.
- m. **Maintainability Evaluation Trials (MET).** This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. MET details will be given as per format given at Form DPMF-37 (Available in MoD website and can be given on request). To facilitate this process the Bidder is required to provide the following :-

- (j) Technical Literature.
  - 10. User Handbook/Operators Manual in English and Hindi.
  - 11. Design Specifications.
  - 12. Technical Manuals.
    - e. Part I Tech description, specifications, functioning of various systems.
    - f. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
    - g. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
    - h. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
  - 13. Manufacturers Recommended List of Spares (MRLS).
  - 14. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
  - 15. Technical Manual on STE with drawing reference.
  - 16. Complete Equipment Schedule.
  - 17. Table of Tools & Equipment (TOTE) & carried spares.
  - 18. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.
- (xi) One set of Gauges
- (xii) One set of Special Maintenance Tools (SMTs).
- (xiii) One set of Special Test Equipment (STEs).
- (xiv) Servicing Schedule.
- (xv) Condemnation limits.
- (xvi) Permissive repair schedule.
- (xvii) Packing specifications /instructions.
- (xviii) Design Specifications.
- (xix) Any additional information suggested by the OEM.
- n. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

### 33. Price Variation (PV) Clause –

- c. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

$$P_1 = P_0 \left\{ F + a \left( \frac{M_1}{M_0} \right) + b \left( \frac{L_1}{L_0} \right) - P_0 \right\}$$

Where  $P_1$  is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

$P_0$  is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

$L_0$  and  $L_1$  are the wage indices at the base month and year and at the month and year of calculation respectively.

$M_0$  and  $M_1$  are the material indices at the base month and year and at the month and year of calculation respectively.

If more than one major item of material is involved, the material element can be broken up into two or three components such as  $M_x$ ,  $M_y$ ,  $M_z$ . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate vis-a-vis the wage rates.

- d. Following conditions would be applicable to Price Adjustment –
- (j) Base dates shall be due dates of opening of price bids.
  - (vi) Date of adjustment shall be mid point of manufacture.
  - (vii) No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
  - (viii) Total adjustment will be subject to maximum ceiling of \_\_\_\_%.
  - (ix) No price adjustment shall be payable on the portion of Supply Order price paid to the Seller as an advance payment.

**Part V – Other Details**

**1. Distribution –**

a. Paying Authority (Address) –

Following details are given to enable internal audit to admit payments in connection with this Supply Order –

i. Head of Account for this Supply Order –

Major Head\_\_\_\_, Minor Head\_\_\_\_, Code Head\_\_\_\_\_

ii. CFA for this Supply Order - \_\_\_\_\_

iii. Schedule of Powers applicable for this Supply Order - \_\_\_\_\_

iv. It is confirmed that concurrence of IFA has been taken.

b. IFA (Address) – This is with reference to IFA’s concurrence accorded vide U.O. number \_\_\_\_ dated \_\_\_\_\_.

c. Inspection Authority (Address) – Please endure timely inspection by the Inspecting officer.

d. Consignee (Address) – for information and necessary action.

e. Indentor (Address), if applicable –

f. User (Address), if applicable -

**2. Legal addresses of Buyer and Seller**

**SELLER**

**BUYER**

(Full Name and Designation)

(Full Name and designation)

Address, Telephone, Fax, e-mail details

For and On behalf of President of India  
Address, Telephone, Fax, e-mail details

## **APPENDIX 'E'**

(Para 5.21)

### **Subsidiary Instructions to the Buyer for framing the Contract**

6. Part I contains the Preamble and it should be mentioned as it is.
7. Part II contains details of items being contracted and their finalized prices. Format of Price bid in Part-V of RFP should be the base for listing out the details. The information may also contain the following as mentioned in Part-II of the RFP and finalized by the Buyer–
  - m. Relevant technical parameters
  - n. User requirements in terms of functional characteristics
  - o. Specifications / Drawings, if applicable
  - p. Requirement of training / on-job training
  - q. Requirement of installation, Commissioning
  - r. Requirement of FATs, HATs and SATs.
  - s. Requirement of technical documentation.
  - t. Type of future assistance on completion of warranty.
  - u. Earliest Acceptable Year of manufacture
  - v. Delivery Period
  - w. Relevant INCOTERM for Delivery and Transportation
  - x. Consignee details
8. Part III contains Standard clauses which might have a legal bearing. Therefore, neither any deviation from the text given in these clauses nor deletion of any of these clauses should be allowed. In case a deviation from these clauses is required to be allowed due to insistence of the Seller during negotiations, then approval of Raksha Mantri will be required. Para 15 pertaining to Pre Integrity is to be included only for cases above Rs. 100 crores.
9. Part IV contains Special Conditions of the Contract as mentioned in Part-IV of RFP. Though major deviations from RFP should not be done as it will amount to denial of equal opportunity to unsuccessful bidders, minor changes in wordings of these clauses may be done if the Seller insists upon the same or to suit a particular case.
10. Part V contains the list of addresses and Signing formalities.

## CONTRACT FORMAT

### (Particulars of the Buyer signing the contract)

#### FORMAT OF THE CONTRACT

CONTRACT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA, MINISTRY OF DEFENCE AND \_\_\_\_\_ (NAME OF THE SELLER) FOR \_\_\_\_\_ (BRIEF PARTICULARS OF THE GOODS/SERVICES)

CONTRACT No. \_\_\_\_\_ DATED \_\_\_\_\_

#### Part I

##### PREAMBLE

1. This contract is made on this day, \_\_\_\_ (date) day of the month of \_\_\_\_, \_\_\_\_ (Year) in New Delhi, between the President of India represented by the \_\_\_\_\_, Ministry of Defence, Government of India, South Block, New Delhi/\_\_\_\_\_, hereinafter referred to as the 'Buyer' (which term, unless excluded by the context, shall be deemed to include his successor in office) on one part, and \_\_\_\_\_ (name of the company with address), duly represented by \_\_\_\_\_, and incorporated under the laws of \_\_\_\_\_ (name of the country), having its registered office at \_\_\_\_\_ (address of the registered office) (which term, unless expressly excluded by the context, shall be deemed to include its successors and assignees), hereinafter referred to as the 'Seller' on the other part.
2. The Seller undertakes to sell and deliver to the Buyer, and the Buyer undertakes to accept and pay for on the terms & conditions stipulated in this contract, the items/services, quantity, unit price and total value as specified in Part-II of this contract.
3. This Contract is divided into five parts. The Buyer and Seller agree for the following as mentioned in other four parts of this contract -
  - (a) Part II – Buyer agrees to buy and Seller agrees to sell items/services mentioned in Part II at the prices mentioned therein. This Part also contains essential details of the items/services required, such as the Technical Specifications, Delivery Period, Place of Delivery and Consignee details agreed by the Seller.
  - (b) Part III – Buyer and Seller agree to abide by the Standard Conditions of Contract mentioned in Part III.
  - (c) Part IV - Buyer and Seller agree to abide by the Special Conditions of Contract mentioned in Part IV.
  - (d) Part V – It contains list of other addresses, other relevant details and signing formalities pertaining to this contract.

**Part II – Essential Details of Items/Services Contracted**

**6. Schedule of Prices** – List of items / services Contracted is as follows:

SI No	Denomination of items/services	Quantity	Unit price	Total price	Remarks
Grand Total					

**7. Technical Details:**

- k. Functional characteristics of items Contracted
- l. Specifications/drawings, as applicable
- m. Technical details with technical parameters
- n. Details of training/on-job training
- o. Details of installation/commissioning
- p. Details of Factory Acceptance Trials (FAT), Harbor Acceptance Trails (HAT) and Sea Acceptance Trials (SAT)
- q. Details of technical documentation
- r. Nature of assistance required after completion of warranty
- s. Details of pre-site/equipment inspection
- t. Any other details, as considered necessary

**8. Delivery Period** - Delivery period for supply of items would be \_\_\_\_\_ from the effective date of Contract. Please note that Contract can be cancelled unilaterally by the Buyer in case items are not received within the Contracted delivery period. Extension of Contracted delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

**9. INCOTERMS for Delivery and Transportation** – (“E” / “F” / “C” / “D” Terms). The definition of Delivery Period for this Contract will be \_\_\_\_\_

**10. Consignee details** - \_\_\_\_\_



### **Part III – Standard Conditions of Contract**

31. **Law:** The Contract shall be considered and made in accordance with the laws of the Republic of India. The Contract shall be governed by and interpreted in accordance with the laws of the Republic of India.
32. **Effective Date of the Contract:** The Contract shall come into effect on the date of its acknowledgement by the Seller and shall remain valid until the completion of the obligations of the parties under the Contract. The deliveries and supplies and performance of the services shall commence from the effective date of the Contract.
33. **Arbitration:** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms **DPMF 15, DPMF 16, DPMF 17** (Available in MoD website and can be provided on request).
34. **Penalty for use of Undue influence:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offers by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the Contract and all or any other Contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other Contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the Contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.
35. **Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the Contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this Contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any Contracts concluded earlier with the Government of India.
36. **Access to Books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the Contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.

37. **Non-disclosure of Contract documents:** Except with the written consent of the Buyer/ Seller, other party shall not disclose the Contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.
38. **Liquidated Damages:** In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this Contract, the Buyer may, at his discretion, withhold any payment until the completion of the Contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the Contract price (**excluding taxes and duties**) of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.
39. **Termination of Contract:** The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-
- (k) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (\_\_\_ months) after the scheduled date of delivery.
  - (l) The Seller is declared bankrupt or becomes insolvent.
  - (m) The delivery of material is delayed due to causes of Force Majeure by more than (\_\_\_ months) provided Force Majeure clause is included in Contract.
  - (n) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this Contract and paid any commission to such individual/company etc.
  - (o) As per decision of the Arbitration Tribunal.
40. **Notices:** Any notice required or permitted by the Contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.
41. **Transfer and Sub-letting:** 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 to let a third party take benefit or advantage of the present Contract or any part thereof.
42. **Patents and other Industrial Property Rights:** The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.
43. **Amendments:** No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract.
44. **Taxes and Duties :**
- e) **In respect of Foreign Bidders:** All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present Contract in their respective countries.
  - f) **In respect of Indigenous bidders:**
    - iv) **General**
      1. If any concession is available in regard to rate/quantum of any Duty/tax, as mentioned by the Seller in their bids, relevant certificate will be issued by the Buyer to enable the Seller to obtain exemptions from taxation authorities.
      2. Any changes in levies, taxes and duties levied by Central/State/Local governments on final product upward as a result of any statutory variation taking place within contract period shall be allowed reimbursement by the Buyer, to the extent of actual quantum of such duty/tax paid by the Seller. Similarly, in case of downward revision in any such duty/tax shall be reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc., if any,

obtained by the Seller. Section 64-A of Sales of Goods Act will be relevant in this situation.

3. Levies, taxes and duties levied by Central/State/Local governments on final product will be paid by the Buyer on actuals, based on relevant documentary evidence. Taxes and duties on input items will not be paid by Buyer and they may not be indicated separately in the bids. Bidders are required to include the same in the pricing of their product.
4. Bidders should note that in case any refund of any tax/duty is granted to them by Central/State authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Tax/ Duty, originally paid for the stores supplied under the contract

v) **Customs Duty –**

7. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F./CIP prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer Contract number..... dated.....
8. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
9. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

45. **Pre-Integrity Pact Clause:** A pre-Integrity Pact is concluded between Buyer and Seller as per Form DPMF- 23 enclosed to Part-III of this Contract.

## Part IV – Special Conditions of Contract

### 3. **Performance Guarantee:**

- a. **Indigenous cases:** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a **Commercial Bank in India** for a sum equal to \_\_\_\_% of the Contract value within 30 days of receipt of the confirmed order. Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form **DPMF 9**(Available in MoD website and can be provided on request).
- b. **Foreign cases:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from **a Commercial Bank in India or an International Bank of repute** in favour of the Government of India, Ministry of Defence to be confirmed by **SBI/public sector bank** equal to \_\_\_\_% of the total value of this Contract i.e. for US \$ ..... (US Dollars (in words) ..... only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other Contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all Contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the Contract are not fulfilled by the Seller. The specimen of PBG is given in Form **DPMF 9**(Available in MoD website and can be provided on request).

**7 Option Clause:** The Contract will have an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original Contracted quantity in accordance with the same terms & conditions of the present Contract. This will be applicable within the currency of Contract. The Bidder is to confirm the acceptance of the same for inclusion in the Contract. It will be entirely the discretion of the Buyer to exercise this option or not.

**8 Repeat Order Clause** – The Contract will have a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present Contract within six months from the date of supply/successful completion of this Contract, the cost, terms & conditions remaining the same. The Bidder is to confirm acceptance of this clause. It will be entirely the discretion of the Buyer to place the Repeat order or not.

**4. Payment Terms for Indigenous Sellers** - It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/EFT mechanism instead of payment through cheques, wherever feasible. A copy of the model mandate form prescribed by RBI to be submitted by Bidders for receiving payments through ECS is at Form **DPMF 10** (Available in MoD website and can be given on request). The payment will be made as per the following terms, on production of the requisite documents:

- i. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

OR

- ii. 100% payment on delivery and acceptance by the user.

OR

- iii. Stage-wise payments (To be defined as per complexity of case)

OR

- iv. Quarterly payments on submission of User clearance certificate in respect of AMC Contracts.

### **5. Payment terms for Foreign Sellers –**

- i. The payment will be arranged through Letter of Credit from Reserve Bank of India/State bank of India/any other Public Sector Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller will give a notification within a specified period about the readiness of goods. Letter of Credit is to be opened by the Buyer within \_\_\_\_ days on receipt of notification of readiness

from the firm. The Letter of Credit will be valid for \_\_\_\_\_ days from the date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

- ii. If the value of the Contract is up to US \$ 100,000, payments will be made by Direct Bank Transfer. DBT payment will be made within 30 days of receipt of clean Bill of Lading / AWB/Proof of shipment and such other documents as are provided for in the Contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the Contract.

OR

- iii. Stage-wise payments (To be defined as per complexity of case)

OR

- iv. Quarterly payments on submission of User clearance certificate in respect of AMC Contracts.

**6. Advance Payments:** No advance payment(s) will be made.

OR

Advance payments may be made upto **30%** against appropriate Bank guarantee or any authorised guarantee, as acceptable to the Buyer.

**7. Paying Authority:**

Indigenous Sellers: (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- i. Ink-signed copy of contingent bill / Seller's bill.
  - ii. Ink-signed copy of Commercial invoice / Seller's bill.
  - iii. Copy of Contract/Contract with U.O. number and date of IFA's concurrence, where required under delegation of powers.
  - iv. CRVs in duplicate.
  - v. Inspection note.
  - vi. Claim for statutory and other levies to be supported with requisite documents / proof of payment such as **GST** challan, Customs duty clearance certificate, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as applicable.
  - vii. Exemption certificate for **taxes/duties**, if applicable.
  - viii. Bank guarantee for advance, if any.
  - ix. Guarantee / Warranty certificate.
  - x. Performance Bank guarantee / Indemnity bond where applicable.
  - xi. DP extension letter with CFA's sanction, U.O. number and date of IFA's concurrence, where required under delegation of powers, indicating whether extension is with or without LD.
  - xii. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in Contract/Contract).
  - xiii. Any other document / certificate that may be provided for in the Contract / Contract.
  - xiv. User Acceptance.
  - xv. Xerox copy of PBG.
  - xvi. (Note – From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in RFP)
- e. **Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per Contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:
- i. Clean on Board Airway Bill/Bill of Lading
  - ii. Original Invoice
  - iii. Packing List

- iv. Certificate of **country of Origin of goods**
- v. Certificate of Quality and current manufacture from OEM.
- vi. Dangerous Cargo certificate, if any.
- vii. Insurance policy of 110% if CIF / CIP Contract, **wherever applicable.**
- viii. Certificate of Conformity & Acceptance Test at PDI, **signed by Buyer's and Seller's QA Deptt, if provided in contract.**
- ix. Phyto-sanitary / Fumigation Certificate, if applicable.
- x. Performance Bond
- xi. Warranty Certificate

**8. Fall clause -**

- a. The price charged for the stores supplied under the Contract by the Seller shall in no event exceed the lowest prices at which the Contractor sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all Contracts placed during the currency of the rate Contract is completed.
- b. If at any time, during the said period the Contractor reduces the sale price, sells or offer to sell such stores to any person/organisation including the Buyer or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the Contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the Contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to: -
  - a. Exports by the Contractor.
  - b. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
  - c. Sale of goods such as drugs which have expiry dates.
  - d. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Contracts as also under any previous Contracts entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.
- c. The Contractor shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate Contract – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the Contract herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all Contracts placed during the currency of the Rate Contract at price lower than the price charged to the government under the Contract except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below - .....”.

**9. Exchange Rate Variation Clause:**

- (a) Detailed time schedule for procurement of imported material and their value at the FE rates adopted for the Contract is to be furnished by the foreign Bidder as per the format given below

Year wise and major currency wise import content break up

Year	Total cost of material	FE content outflow (Equivalent in Rupees – crores)		
		Dollar denominated	Euro denominated	Other currencies denominated


- (b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the Contract. Base exchange rate of each major currency used for calculating FE content of the Contract will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
- (c) The base date for ERV would be Contract date and variation on the base date will be given upto the midpoint manufacture unless Bidder indicates the time schedule within which material will be exported by them. Based on information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.
- (d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be re-fixed /extended.
- (e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the vendor in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

**10. Risk & Expense clause –**

- 1. Should the stores or any installment thereof not be delivered within the time or times specified in the Contract documents, or if defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of Contract, to declare the Contract as cancelled either wholly or to the extent of such default.
- 2. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be done in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of Contract, to cancel the Contract wholly or to the extent of such default.
- 3. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he thinks fit, other stores of the same or similar description to make good:-
  - (a) Such default.
  - (b) In the event of the Contract being wholly determined the balance of the stores remaining to be delivered thereunder.
- 4. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the Contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed \_\_\_\_% of the value of the Contract.”

**11. Buy-Back offer -** Buyer will be hand over the old items and the agreed prices will be adjusted in the final payment to the Seller. It will be the responsibility of Seller to carry away the old items from the Buyer's premises within 15 days of signing of this Contract. The expenditure on account of Handling charges and transportation expenses to carry away the old items will be borne by the Seller.

**12. Force Majeure:** Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within ( \_\_ days) of its occurrence informs the other party in writing. Force Majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of the party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond the control of either party. A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this Contract.

13. **Specification:** The Seller guarantees to meet the specifications as per Part-II of RFP and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques alongwith necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (\_\_\_) days of affecting such upgradation/alterations.
14. **OEM Certificate:** In case the Seller is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification. **Such quality certification arrangements are to be as per the satisfaction of purchaser and his Quality Assurance Organisation/AHSP.**
15. **Export License:** The Seller is to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.
16. **Earliest Acceptable Year of Manufacture:** \_\_\_\_\_ Quality / Life certificate will need to be enclosed with the Bill.
17. **Buyer Furnished Equipment:** The following equipment will be provided by the Buyer at his expense to the Seller:  
 .....  
 .....
18. **Transportation:** The following Transportation clause will form part of the Contract placed on successful Bidder –
- a. **CIF/CIP** – The stores shall be delivered CIF/CIP \_\_\_\_\_(Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer’s risk of loss of or damage to goods during the carriage. The Seller will Contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by \_\_\_\_\_. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or trans-shipment without the express/prior written consent of the Buyer. The goods should be shipped by\_\_\_\_\_ However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:
- i. Name of the Ship
  - ii. Port of Loading and name of Country
  - iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
  - iv. Number of Packages and weight.
  - v. Nomenclature and details of major equipment.
  - vi. Special instructions, if any stores of sensitive nature requiring special attention.
- OR
- b. **FOB/FAS** -- The stores shall be delivered FOB ..... (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by \_\_\_\_\_. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or trans-shipment without the express/prior written consent of the Buyer. **[Linked with Para 9.6.10 of this Manual]**



- c. **FCA** - The delivery of the goods shall be FCA \_\_\_\_\_ Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.
- d. **Air lift:** The following Airlift clause will form part of the Contract placed on successful Bidder - Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of an intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed. **Airlifting will be done only through the national carrier i.e. Air India.**

**19. Packing and Marking:** The following Packing and Marking clause will form part of the Contract placed on successful Bidder –

- a. The Seller shall provide packing and preservation of the equipment and spares/goods Contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. Each spare, tool and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity Contracted is less than six then tag shall be affixed to complete quantity Contracted of the item. The cartons shall then be packed in packing cases as required.
  - i. Part Number :
  - ii. Nomenclature :
  - iii. Contract annex number :
  - iv. Annex serial number :
  - v. Quantity Contracted :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
  - k. EXPORT
  - xx. Contract No. -----
  - xxi. Consignee -----
  - xxii. Port / airport of destination -----
  - xxiii. Ultimate consignee -----
  - xxiv. SELLER -----
  - xxv. Package No. -----
  - xxvi. Gross/net weight : -----
  - xxvii. Overall dimensions/volume : -----
  - xxviii. The Seller's marking.
- f. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.
- g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.

20. **Quality:** The quality of the stores delivered according to the present Contract shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Contract shall be new i.e. not manufactured before (Year of Contract), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.
21. **Quality Assurance:** After the contract is negotiated, the seller would provide the Standard Acceptance Test Procedure (ATP) within \_\_\_ month of this date of Contract. Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The details in this regard will be coordinated during the negotiation of the Contract. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.
22. **Inspection Authority:** The Inspection will be carried out by \_\_\_\_\_. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.
23. **Pre-Dispatch Inspection -**
- a. The Buyer's representatives will carry out Pre-Despatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPMF-33 (Available in MoD website and can be given on request).
  - b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
  - c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least \_\_\_\_\_(No of days) in advance to apply for the necessary authorisations and clearances to be granted.
  - d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.
  - e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
  - f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
  - g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Contract.
24. **Joint Receipt Inspection:** The following Joint Receipt Inspection clause will form part of the Contract placed on successful Bidder –
- a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by the Buyer. JRI shall be completed within 120 days (for

armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of

- k. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this Contract and the invoices.
- vi. Complete functional checking of the stores/equipment as per specifications in the Contract and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
- vii. Check proof and firing, if required.
- b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.
- c. Upon completion of each JRI, JRI proceedings and Acceptance Certificate will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the Contract. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

**25. Franking clause –**

- a. **Franking Clause in the case of Acceptance of Goods** “The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the Contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the Contract”.
- b. **Franking Clause in the case of Rejection of Goods** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the Contract.”

**26. Claims:–**

- a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the Contract.
- b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPMF-20 (Available in MoD website and can be given on request).
- c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPMF-21 (Available in MoD website and can be given on request).
- d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller's office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
- e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller's arrangement.

- f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.
- g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

**27. Warranty –**

1. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this Contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in Contract. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.
2. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
3. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.
4. Warranty to the affect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**OR**

- i. The Seller warrants that the goods supplied under the Contract conform to technical specifications prescribed and shall perform according to the said technical specifications.
- ii. The Seller warrants for a period of \_\_\_\_\_ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the Contract and each component used in the manufacture thereof shall be free from all types of defects/failures.
- iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.
- iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within \_\_ % of the warranty period.
- v. The Seller shall associate technical personnel of the Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.

- vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds \_\_\_% of the warranty period, the complete equipment shall be replaced free of cost by the Seller within a stipulated period of \_\_\_ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.
- vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this Contract, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- viii. The Seller will guarantee the shelf life of ( \_\_\_\_\_ ) years under the Indian tropical condition as given below:
  - a. Minimum temperature - -
  - b. Maximum temperature ---
  - c. Average Humidity ---
- xviii. For procurement of oils and lubricants, the following will be applicable –
  - 7. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
  - 8. The penalty amounting to ( \_\_\_\_\_ % ) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
  - 9. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

**28. Product Support:**

- k. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipment (STE) sub Contracted from other agencies/ manufacturer by the Seller for a maximum period of \_\_\_\_\_years including \_\_\_\_\_ years of warranty period after the delivery of \_\_\_\_\_ (name of equipment).
- l. The Seller agrees to undertake Maintenance Contract for a maximum period of \_\_\_\_\_months, extendable till the complete Engineering Support Package is provided by the Seller.
- m. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.
- n. Any improvement/modification/ up gradation being undertaken by the Seller or their sub suppliers on the stores/equipment being purchased under the Contract will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.
- o. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this Contract for a period of \_\_\_\_\_ years as maintenance Contract as specified or provision of complete Engineering Support Package to the Buyer whichever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.

**29. Annual Maintenance Contract (AMC) Clause -**

- o. The Seller would provide comprehensive AMC for a period of \_\_\_ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Contract. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:
  - (v) **Preventive Maintenance Service:** The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating base to carry out functional check ups and minor adjustments/ tuning as may be required.

- (vi) **Breakdown maintenance Service:** In case of any breakdown of the equipment/system, on receiving a call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.
- p. Response time: The response time of the Seller should not exceed \_\_\_\_\_ hours from the time the breakdown intimation is provided by the Buyer.
- q. Serviceability of \_\_\_% per year is to be ensured. This amounts to total maximum downtime of \_\_\_ days per year. Also unserviceability should not exceed \_\_\_ days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.
- r. Maximum repair turnaround time for equipment/system would be \_\_\_\_\_ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.
- s. Technical Documentation: All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.
- t. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.
- u. The Buyer reserves its right to terminate the maintenance Contract at any time without assigning any reason after giving a notice of \_\_\_ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the Contract, if any payment is due to the Seller for maintenance services already performed in terms of the Contract, the same would be paid to it as per the Contract terms.

### 30. Engineering Support Package (ESP) clause -

- o. **Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:
  - (k) Unit level repairs - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-
    - 5. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
    - 6. Scaling of special tools and spares as mentioned above including Maintenance manual.
  - (vi) **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-
    - 5. Quantity and specification of spares that need to be stocked for a population of \_\_\_\_\_ equipment.
    - 6. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).
  - (vii) **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India for this purpose (The

actual No would have to be stated for costing).The manufacturer is required to provide the following:-

11. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
  12. Quantity and specification of spares, sub assemblies as per population expected to be maintained.
  13. Oils and lubricants necessary for overhaul.
  14. All necessary technical literature.
  15. Calibration facilities for test equipment. This level of repair defines stripping and rebuilding of equipment in a Base workshop.
- p. **Manufacturers Recommended List of Spares (MRLS).** - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPMF-34 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-
- (k) Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
  - (vi) Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
  - (vii) High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for e.g. it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

- q. **Special Maintenance Tools and Test Equipment** - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPMF-35 (Available in MoD website and can be given on request) and is to be included in both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- r. **Technical Literature** - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPMF-36 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- s. **Miscellaneous Aspects** (Applicable only when trials are required) – In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.
- t. **Maintainability Evaluation Trials (MET).** This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. MET details will be given as per format given at Form DPMF-37 (Available in MoD website and can be given on request). To facilitate this process the Bidder is required to provide the following :-
- (k) Technical Literature.
    19. User Handbook/Operators Manual in English and Hindi.
    20. Design Specifications.
    21. Technical Manuals.
      - i. Part I Tech description, specifications, functioning of various systems.

- j. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
- k. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
- l. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
- 22. Manufacturers Recommended List of Spares (MRLS).
- 23. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
- 24. Technical Manual on STE with drawing reference.
- 25. Complete Equipment Schedule.
- 26. Table of Tools & Equipment (TOTE) & carried spares.
- 27. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.
- (xx) One set of Gauges
- (xxi) One set of Special Maintenance Tools (SMTs).
- (xxii) One set of Special Test Equipment (STEs).
- (xxiii) Servicing Schedule.
- (xxiv) Condemnation limits.
- (xxv) Permissive repair schedule.
- (xxvi) Packing specifications /instructions.
- (xxvii) Design Specifications.
- (xxviii) Any additional information suggested by the OEM.
- u. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

**31. Price Variation (PV) Clause** – The following PV clause will form part of the Contract placed on successful Bidder (Note - DGS&D Manual provides Standardised Price Variation Clauses. Any of those clauses could be considered for inclusion. A sample clause is indicated below)–

- e. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

$$P_1 = P_0 \left\{ F + a \left( \frac{M_1}{M_0} \right) + b \left( \frac{L_1}{L_0} \right) - P_0 \right\}$$

Where  $P_1$  is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

$P_0$  is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

$L_0$  and  $L_1$  are the wage indices at the base month and year and at the month and year of calculation respectively.

$M_0$  and  $M_1$  are the material indices at the base month and year and at the month and year of calculation respectively.

If more than one major item of material is involved, the material element can be broken up into two or three components such as  $M_x$ ,  $M_y$ ,  $M_z$ . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two



elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate vis-a-vis the wage rates.

- f. Following conditions would be applicable to Price Adjustment –
- (k) Base dates shall be due dates of opening of price bids.
  - (x) Date of adjustment shall be mid point of manufacture.
  - (xi) No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
  - (xii) Total adjustment will be subject to maximum ceiling of \_\_\_\_%.
  - (xiii) No price adjustment shall be payable on the portion of Contract price paid to the Seller as an advance payment.

**Part V – Other Details**

**1. Distribution –**

- a. Paying Authority (Address) – Following details are given to enable internal audit to admit payments in connection with this Contract –
- i. Head of Account for this Contract – Major Head\_\_\_\_, Minor Head\_\_\_\_, Code Head\_\_\_\_\_
- ii. CFA for this Contract - \_\_\_\_\_
- iii. Schedule of Powers applicable for this Contract - \_\_\_\_\_
- iv. It is confirmed that concurrence of IFA has been taken.
- b. IFA (Address) – This is with reference to IFA’s concurrence accorded vide U.O. number \_\_\_\_ dated \_\_\_\_\_.
- c. Inspection Authority (Address) – Please endure timely inspection by the Inspecting officer.
- d. Consignee (Address) – for information and necessary action.
- e. Indenter (Address), if applicable –
- f. User (Address), if applicable –

**2. Testimonial and Signature-** The authorized representative of the Seller should be shown to have been so authorized by the Resolution of the Board of Directors of the Company of the Seller or duly authorized by the Memorandum/Article of Association of the Company along with supporting documents for the same.

**3. Legal addresses of the Contracting Parties**

SELLER

BUYER

(Full Name and Designation)

(Full Name and designation)

Address, Telephone, Fax, e-mail details

For and On behalf of President of India

Address, Telephone, Fax, e-mail details

\*\*\*\*\*

**APPENDIX 'F'**  
**(Para 8.1.5 & 8.10.1)**  
**DRAFT SUPPLY ORDER AGAINST RATE CONTRACT**

**Office of the \_\_\_\_\_ : (Name and address of Buyer)**

---

**To**  
 \_\_\_\_\_

**Dear Sir/Madam,**

**Sub - Placement of Supply order No \_\_\_\_\_ dated \_\_\_\_\_**

**Ref - (Name of Central agency) Rate Contract Number \_\_\_\_\_ dated \_\_\_\_\_, valid from \_\_\_\_\_ to \_\_\_\_\_**

1. This order, which is intended for the supply of the stores detailed below, in accordance with the terms and conditions of the Rate Contract mentioned above and in the manner specified herein, shall operate to create a specific contract between the Seller (with whom the contract referred to and the requisition are placed) of the one part and President of India (represented by the Buyer) on the other part.

<b>Item</b>	<b>Ref of Indent</b>	<b>Item No. of Contract</b>	<b>Description of goods</b>	<b>Qty</b>	<b>Rate per Unit</b>	<b>Total</b>
(a)	(b)	(c)	(d)	(e)	(f)	(g)
Total						

<b>Taxes</b>	<b>Transport</b>	<b>Other charge</b>	<b>Total</b>
(h)	(i)	(j)	(k)

2. Total cost in words \_\_\_\_\_
3. Date of delivery \_\_\_\_\_ / days from the date of receipt of this order
4. Designation and address of Inspecting officer \_\_\_\_\_
5. Designation and full address of the Consignee \_\_\_\_\_
6. Designation and full address of Paying Authority \_\_\_\_\_
7. Head of Account to which the cost is debitable:
  - a. Major Head \_\_\_\_\_
  - b. Minor Head \_\_\_\_\_
  - c. Code Head: \_\_\_\_\_
8. Please acknowledge receipt of this Supply Order and arrange supply of stores.

(Name and designation of Buyer)  
For and behalf of President of India

**Copy to**

1. Paying Authority \_\_\_\_\_
  - a. Relevant Schedule of delegated powers - \_\_\_\_\_
  - b. The expenditure involved for the purchase has been approved by the \_\_\_\_\_ as Competent Financial Authority.
  - c. It is confirmed that concurrence of IFA has been obtained.
2. IFA \_\_\_\_\_ This is with reference to their U.O. number \_\_\_\_\_ dated \_\_\_\_\_
3. Consignee \_\_\_\_\_
4. Inspection Agency \_\_\_\_\_

\*\*\*\*\*

APPENDIX 'G'

(Para 15.8.2)

**DRAFT AGREEMENT FOR DESIGN, DEVELOPMENT  
AND FABRICATION CONTRACTS**

THIS AGREEMENT made \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ between the President of India, hereinafter referred to as "the Government" (which expression unless expressly excluded by the context shall be deemed to include his successors and assigns) of the one part and

M/s. \_\_\_\_\_

Shri

a company incorporated under the

carrying on business under the name and style

Companies Act 1956/a partnership firm incorporated under the

as its sole proprietor and having its office at

Indian Partnership Act 1932 and having its Registered Office at

hereinafter referred to as "the contractor" (which expression unless expressly excluded by the context shall be deemed to include its

successors, executors, administrators and assigns and in the

his successors, heirs or assigns

case of partnership firm

partner or partners for the time being of the said firm the survivors of them and their respective successors, executors administrators and assigns) of the other part.

WHEREAS the Government had invited quotations for the designing, developing, fabricating, manufacturing and supply of \_\_\_\_\_ in accordance with the specifications laid down in Para (a) of Schedule A hereto (and hereinafter known as "the said store") and the contractor has submitted his quotation for the same vide his letter reference---- dated \_\_\_\_\_ which has been accepted by the Government

AND WHEREAS an Agreement is required to be executed between the parties in respect thereof.

Or

**(for negotiated contract only)**

WHEREAS the Government desire to entrust to the contractor the work of designing, developing, fabricating, manufacturing and supply of the said store \_\_\_\_\_ in accordance with the specifications laid down in Para (a) Schedule hereto.

AND WHEREAS the contractor has agreed and is in a position to undertake designing, developing, fabricating, manufacturing of the said store and supply the same to the Government.

NOW IT IS AGREED AND DECLARED BY AND BETWEEN THE PARTIES AS FOLLOWS:

**Clause I**

1.1 The contractor shall design\*, develop, fabricate and manufacture the said store and shall supply the same complete with all accessories thereto as per Para --- of Schedule A annexed hereto at the fixed net price of Rs. ,including packing and all packing materials or on cost plus profit basis (as applicable). (The ceiling of the cost including the profit percentage allowed shall be Rs. \_\_\_\_\_ subject to variation either way not exceeding 5% of the ceiling cost mentioned above. ) The cost of the stores or service supplied by the Govt shall be adjusted towards this ceiling).

\* delete where design is not required.

1.2 The contractor shall not be entitled to any other additional payments such as for tooling, dies, designing\* and developing or any other charges on any account whatsoever unless otherwise expressly provided for in this Agreement (not to appear in cost plus contract).

**Clause 2**

2.1 The contractor shall manufacture and deliver the said store by \_\_\_\_\_ for tests and technical trials to the Accepting Officer or the consignee as intimated by the Purchaser in writing.

2.2 Should the Government desire any modifications or improvements, additions or alterations to the specifications laid down in Schedule A hereto the same shall be carried out by the contractor on the undermentioned terms:

(i) If the modifications or improvements are of a minor nature and are intimated before the job under the previous specifications had been carried out. (**without payment**).

(ii) If the modifications or improvements are of a major nature and the result in much additional expenditure to the contractor (**On payment of the additional expenditure as assessed by the Govt**).

Note : The decision of the Government whether the modifications or improvements are of a major or minor nature and whether such additional expenditure is involved or not shall be final and binding on the contractor.

2.3 Should the Government after proper development and acceptance of the said store desire any further technical assistance or any further modification to the store the same shall be undertaken by the contractor on such terms as are agreed between the parties to the contract.

### **Clause 3**

3.1 The contractor shall carry out necessary tests and trials before offering the same for trial to the Government who may detail its representatives to witness these tests if so required.

3.2 The contractor shall afford the Government, without in any way making it responsible, all proper and reasonable facilities for examining, inspecting and testing the stores machinery and workmanship used or intended to be used during the progress of the manufacture of the store and shall also supply free of charge such apparatus, materials, tools or labour as may be required from time to time for the purpose of such examinations, inspections and testing.

### **Clause 4**

4.1 The Contractor undertakes to produce the complete information and data required for production i.e. the procurement drawings, specifications and manuals as required by the design authority as per the list attached hereto and the test equipment, if required by the design authority.

### **Clause 5**

5.1 The contractor agrees to supply free of cost the under mentioned tools and spares required to operate the store during trials and experiments

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

5.2 Additional spare parts except the replacement parts mentioned in \_\_\_\_\_ if required by Government, shall be supplied by the contractor at the prices shown in Schedule ---.

5.3 List of brought out items together with the sources of purchase and their price is attached as Schedule C hereto.

### **Clause 6**

6.1 Save as otherwise provided in the contract all actions taken and all notice to be given or taken hereunder by the Government be taken or given by the Director (of the Estt concerned) or by an officer for the time being entrusted with the functions, duties and powers of the said Director and on behalf of the contractor by its Manager/Proprietor/Authorised Partner.

6.2 After signing of this agreement the Contractor shall correspond direct with the Director or the said officer in all matters concerning the contract and the implementation of the terms thereof.

### **Clause 7**

The parties agree that in respect of all other matters relating to the designing, developing, fabricating, manufacturing and supply of the said store the general conditions of contract enclosed as Appendix A to this agreement and the special conditions enclosed as Appendix B to this Agreement shall apply.

### **Clause 8**

The contractor agrees to bear the stamp duty payable on this Agreement under the Indian Stamp Act, -----.

IN WITNESS WHEREOF the President of India has caused \_\_\_\_\_ to sign this Agreement for and

on behalf and the common seal of the Company has been affixed hereto and these presents signed by \_\_\_\_\_ and \_\_\_\_\_ Manager/Sole Proprietor/Authorised Parties of the Company the day months and year first above written.

Signed for and on behalf of the President  
of India by

1. \_\_\_\_\_

2. \_\_\_\_\_

The common seal of the Company has been affixed and these present have been signed by \_\_\_\_\_  
and \_\_\_\_\_.

Manager/Sole Proprietor/Authorised Partner of the Company In the presence of

1. \_\_\_\_\_

2. \_\_\_\_\_

\*\*\*\*\*

APPENDIX 'H'

(Para 15.8.3)

FABRICATION CONTRACT

Office of Issue ( \_\_\_\_\_ Organisation/Establishment)

Schedule ----- to the Acceptance Letter No. \_\_\_\_\_ dated \_\_\_\_\_

1. Name and address of contractor

2. Contractor's quotation No and date

3. Name of Indenter \_\_\_\_\_

4. Quantity and description of store/s : (as per Annexure I)

5. Debits in r/o deliveries made against this order to be raised against: Controller of Defence Accounts \_\_\_\_\_

6. Cost debitable to Head Major Head, Minor Head Sub Head  
Code head of the Defence Services Estimates.

7. Conditions of contract General conditions of contract enclosed with the  
Invitation to quote and the special conditions contained herein. Where these are at variance, the latter shall apply.

8. Delivery schedule:

9. Dispatch instructions and consignee The prototype duly packed and preserved for transport by rail and road shall be addressed for delivery as indicated in writing by the Director \_\_\_\_\_. The prototype shall be dispatched against Military Credit Note which will be issued by the said Indenter \_\_\_\_\_ on demand by you.

Forwarding charges shall be paid as actually incurred. In case the prototype is required to be transported back to the works of the contractor for any modification/improvement at any time during tests, the cost of such transportation from the place of testing to the works of the contract and back shall be borne by the Indenter.

10. Particulars governing supply As per Appendix-1

11. Inspection authority Director/Accepting Officer or their authorized nominee.

12. Tests: (a) The contractor shall carry out necessary tests on Prototype \_\_\_\_\_ before offering the same for tests to Director/Accepting Officer who may detail his representative (s) to witness these tests.

(b) Director/Accepting Officer or representative(s) may, at his discretion carry out tests of the finished prototype \_\_\_\_\_ at any or all stages of development. For this purpose the contractor shall provide free of cost at its premises such test facilities as are required by the Director/Accepting Officer or rep(s) and are available with the contractor.

(c) Director/Accepting Officer or nominee may at his discretion carry out any tests as required to be undertaken by him. The prototype shall be accepted by the Accepting Officer only after it has passed all required tests to his entire satisfaction.



13. Price :

(a) Rs (.....in words) (Rs..... (in

will be paid extra. Form D is enclosed herewith for obtaining reduction in Sales Tax.

(b) The contractor shall refund a sum of Rs..... only as developmental rebate at the rate of Rs.....bulk orders received by him from any source and when add upto ..... pieces, and such figures) FOR ..... (Station), Central Sales Tax/Local Sales Tax/Service Tax as leviable and levied on complete ..... refund will continue until the above sum of Rs..... is paid back. (if applicable)

14. Paying authority:

PCDA/CDA /AAO etc.

15. Terms of payment:

As in the general conditions

(a) The contractor shall be responsible for properly packaging the prototype in commercial /trade packaging for transport by rail/and or road so as to ensure that no loss or damage takes place en route.

(b) Any damage in transit shall be recoverable from the contractor unless it is proved that such damage was not due to any negligence or default on the part of the contractor.

(c) Design of the ..... and any drawings and other documents whether supplied by the Central Government in the Ministry of Defence or made by the contractor for the purposes of this fabrication order are the property of Government and shall not be copied or used by the contractor for any other purposes without the written consent to be obtained through the Director ..... of the Government. The said drawings and documents shall be returned to the Government immediately after the expiry of a termination of the contract.

(d) All queries on technical matter shall be preferred by the contractor to the Director/Nominated Officer ..... or any other officer intimated by him till such time as bulk production is established and the contractor is informed of transfer of technical contract to an inspection agency by the Director .....

(e) You are requested to deposit a sum of Rs.....as security deposit within 15 days of the receipt of this letter.

(Initials of the Officer signing the Fabrication Order)

\*\*\*\*\*

**Appendix K-'I'**

**(Para 5.17.8)**

**INDICATIVE LIST OF DETAILS TO BE  
PROVIDED IN A PROCUREMENT SANCTION**

**Subject of Sanction (Procurement of \_\_\_\_\_)**

1. Broad purpose of the expenditure sanction
2. Name of the item/items and name of the vendor/supplier/undertaking etc.
3. quantum of item/items or scope of services being sanctioned and the relevant financial year/s.
4. Value of sanction-both per unit cost and total cost (indicating the taxes and duties whether inclusive or exclusive. Where it is exclusive of the taxes, it should be indicated whether taxes are payable in addition, and if so, which taxes and duties are payable).
5. Reference of Government Authority/Letter and Schedule/Sub-Schedule of delegation of financial powers under which the sanction/approval is being accorded.
6. Whether being issued under powers to be exercised without concurrence or with concurrence of IFA.
7. Name of she paying agency.
8. Budget Major Head, Minor Head, Sub Head, Detailed head and Code Head under which the expenditure will be booked. (as mentioned in the Defence Services Classification Hand Book, as amended).
9. Approval of CFA give vide Note Number \_\_\_\_\_ dated \_\_\_\_\_ in File Number \_\_\_\_\_ (in case communication of sanction is being signed on behalf of CFA by a Staff Officer).
10. UO Number allotted by the integrated finance (when the CFA's delegated powers are being exercised with financial concurrence).
11. Communication of Sanction: Whether being signed by the CFA or staff officer authorized by CFA to sign financial documents on his behalf and authority/letter number and date of such authorization.
12. If the sanction is issued overruling the advice of the IFA, a copy of the order recorded by the CFA in writing, containing a gist of the objection of CDA/IFA and reasons for overruling the advice will be attached.

CFA

or

Duly Authorized Staff Officer

Other details:

File/Serial No. of Sanction .....

Date of issue.....

## APPENDIX 'I' 'J'

### [Para 16.9.5(vi)]

#### INFORMATION SECURITY GUIDELINES FOR PROCUREMENT OF ICT GOODS AND SERVICES

1. ICT projects are complex systems integration projects which have hardware, system software (Operating systems/hypervisor/virtualization layer etc) and application software (both off-the-shelf and custom developed in various programming languages).
2. “Malicious code or malware” is defined as a computer program attached to or a section of code and hidden within the software that performs a function unauthorized by the OEM’s published documentation and is intended to damage/conduct detrimental activity. Malware is generally in the form of Trojans, viruses, worms, root kits, spyware, code scripts, active content etc. It is also known as “computer contaminant” in legal parlance. Malicious code could be introduced into information & communication systems, to be exploited by external or internal agents to do one or more of the following:
  - (a) Distrupt the functioning of the system at a critical juncture
  - (b) Provide a backdoor entry for leakage of information from the system
3. Hence, from a cyber threat perspective, it is important that clear guidelines are laid down on the cyber/information security threat mitigation approach which should address the risks and also be implementable and verifiable.
4. The approach followed by leading IT manufacturing companies against cyber threats is to control the firmware installed in the IT components which is the “intelligence” in the hardware that is targeted by malicious code. The sub-systems like controller cards & hard disks get shipped with the OEM’s approved firmware or microcode version while configuring the system before delivery or installation. These firmware and microcode is common for all the countries across the world and the files are usually available on OEM’s website.
5. In addition, it is also important to track the malicious code in systems during the project lifecycle as follows:-
  - (a) OEMs can certify that their products do not have malicious code embedded in them when the products are dispatched from their premises. However, it is possible that malicious code could be introduced into the hardware and software systems after they have been dispatched from the OEM premises or even later on during the operational phase, through unauthorized patches/upgrades.
  - (b) The system integrator (Sis) will therefore have the ownership and responsibility to MoD during installation, warranty and support period, to mitigate the risks due to malicious code and security vulnerabilities in all the products supplied by them. Sis in turn, should have the required agreements with the OEMs.
6. In view of the above the following measures should be implemented:-
  - (a) A certificate should be obtained by the Buyer from the Seller stating that all known security issues and malware have been addressed in the products including hardware/firmware at the time of supplying the hardware/software products.
  - (b) Seller will also provide a document indicating the patch level update of the system
  - (c) In case any security issued have not been addressed in the hardware/firmware/software at the time of supply, the seller should provide an undertaking that such issues would be addressed whenever solutions/patches for the same are available. In such a case, the Buyer may exercise the discretion to accept such a product provided such security issues do not interfere with the functionality/integrity of the system.
  - (d) The seller should also undertake to provide security patches and updates to address subsequent vulnerabilities during the installation, warranty and support period of the equipment provided OEM has not declared end of support for the same.
7. Sample malicious code certificates to be provided by OEMs and Sis are given at Annexure
8. Notwithstanding the provisions specified elsewhere in the Security Guidelines, the System Integrator will be overall responsible for all cyber/information security related aspects pertaining to the ICT goods and services and will be the single points of contact for addressing all Cyber/information security related

issues for the goods and services supplied by the SI as part of the contract. It will be responsibility of the SI to enter into such agreements/contracts with the OEMs as may be necessary to ensure that all cyber/information security aspects are addressed holistically and comprehensively. The SI will provide list of tests conducted by OEM or an accredited certification agency along with list of such test reports for the ICT goods and services provided as part of contract.

#### **Information Security Aspects Related to ICT Hardware**

9. From a cyber-security threat perspective, ICT hardware can be broadly categorized as follows:-
  - (a) Components which have no electronic circuitry-e.g., power & other cables, connectors, racks, chassis hardware etc.
  - (b) Sub-systems/PCBs which have electronic circuitry, but no intelligence in terms of software/firmware/microcode-e.g. backplanes, keyboard, mouse, monitor, printer etc.
  - (c) Sub systems/PCBs which have device-specific intelligence that is built into firmware/microcode-e.g controller cards, hard disk drives, motherboards server management modules etc.
  - (d) Appliances with a high level of intelligence built into firmware/microcode, embedded OS & software - e.g., L2/L3 switches, routers, etc.
10. Following may be considered to mitigate information Security Risks in ICT hardware:-
  - (a) Identify critical projects and procurements, which are vital to the organization and whose disruption can cause catastrophic failure. This step is basically to keep the scope of validation to a manageable limit.
  - (b) Shortlist the trusted OEMs, who have clear and verifiable processes in managing their suppliers and supply chains, both from quality and cyber security threat perspectives.
  - (c) At the RFP stage, specifically mention the components/categories out of those mentioned at Para 9 above, which will be tested by the customer for cyber threats, which may be done in the OEM's or an accredited lab premises.
  - (d) Obtain malicious code certificate from OEM and SI as specified in Annexure.
  - (e) At the time of delivery, the OEM will provide details of the firmware/microcode installed in each of the components specified in Para 9 above. If required, Buyer may ask for the firmware/microcode may be reloaded in the OEM's service centre's.
  - (f) Step (e) above be carried out every time the component is replaced of upgraded.

#### **Information Security Aspects Related to Software Projects**

11. In case of software projects including be spoke software development, the following information should be supplied by Seller:-
  - (a) List of changes being made to Operating System due to software installation. (E.g. Files added to the system, registry entries being made)
  - (b) List of dependencies (e.g. software components such as DOTNET framework, DLL files).
  - (c) List of processes including 'child processes ' and service/daemon being created in the Operating System.
  - (d) Network Protocols and Ports being used by the product. (E.g. SMB, TCP, HTTP, Port 80 etc). In the event of custom protocols, complete description of the protocols is to be given.
  - (e) Cryptographic Hash values of the files being provided.
  - (f) A certificate stating "No known security issues, Malware, Trojans exist in the software components being provided".
  - (g) A code Audit Certificate providing details regarding known exploit techniques (e.g. like buffer/heap overflow), bugs, backdoors, list of components that could not be audited and Third party DLLs used.
  - (h) Any other aspect related to information/cyber security depending on type/nature of the project.
12. For Management Information Systems, bespoke/customised software and Enterprise wide solutions, Vulnerability Assessment will be undertaken by a CERT-IN empanelled vendor or Info Security agencies/dept of the respective Services and will be included in the RFP.

**CERTIFICATE TO BE OBTAINED FROM OEM/SI FOR PROCUREMENT OF ICT GOODS AND SERVICES**

Sample formats of malicious code certificates from Sis and OEMs are given below. Amendments/additions/deletions may be made to the formats given below to meet the project specific requirements and these should form part of the RFP and contract agreement.

**Malicious Code Certificate from Hardware OEM**

1. It is certified that the firmware/microcode installed in the hardware products listed below, which is proposed to be delivered by our Business Partner M/s \_\_\_\_\_, is approved by the OEM. The products have been thoroughly tested and found to be working as per the OEM's specifications at the time of delivery and no malicious code has been found in these products. Patch level update of the system is enclosed.
2. "Malicious Code" is defined as a computer program attached to or a section of code hidden within the firmware/microcode that performs a function unauthorized by the OEM's published documentation. It includes Trojans, viruses, worms, spyware etc.
3. The latest security patches as available at the time of supply, have been updated in the firmware. We undertake to provide solutions to address all security issues during the installation, warranty and support period of the equipment, provided end of support for the same has not been declared for the equipment by the OEM(s).

**Malicious Code Certificate from Software OEM**

1. It is certified that we have taken reasonable steps to ensure that the software products listed below, which is proposed to be licensed by \_\_\_\_\_ is found to be working as per the OEM's specifications at the time of delivery and no malicious software has been introduced in these products. Patch level update of the software is enclosed.
2. "Malicious Code" is defined as a computer program attached to or a section of code hidden within the software that performs a function unauthorised by the OEM's published documentation. It includes Trojans, Viruses, Worms, spyware etc.
3. The latest security patches as available at the time of supply, have been updated in the software. We undertake to provide solutions to address all security issues during the installation, warranty and support period of the software, provided end of support for the same has not been declared for the equipment by the OEM(s).

**Malicious Code Certificate from SI**

1. This is to warrant that the hardware and software being offered, as part of the Contract does not contain embedded malicious code at the time of installation and commissioning. Patch level update of the hardware/software is enclosed.
2. "Malicious Code" is defined as a computer program attached to or a section of code hidden within the hardware/software that performs a function unauthorized by the OEM's published documentation. It includes Trojans, viruses, worms, spyware etc.
3. The firm will be considered to be in breach of the contract, in case any physical damage or any compromise in information and cyber security is caused due to activation of any malicious code embedded in the hardware/software.
4. The latest security patches as available at the time of installation and commissioning, have been updated in the hardware/software. We undertake to provide sololutions to address all security issues during the warranty and support period of the hardware/software, provided end of support for the same has not been declared for the equipment by the OEM(s).

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**DPMF-1**

(Para 2.5.1)

**List of Handloom items notified for Purchase from KVIC/ACASH**

Ministry of Textiles O. M. No. 4/2/88-DCH/M &amp; E dated 17th February 1992

website: [http://handlooms.nic.in/User\\_Panel/UserView.aspx?TypeID=1199](http://handlooms.nic.in/User_Panel/UserView.aspx?TypeID=1199)

<b>Title</b>	<b>IS Code</b>
<b>Cotton-Handloom</b>	
Angacastam	7216 -1974
Bandage cloth	863 -1969
Bed dutties	1557 -1972
Bed sheets	745-1975
Bleeding Madras, loom state.	1937-1961
Buckram cloth	1102-1968
Bunting cloth dyed	747-1982
Calico, bleached or dyed	1241-1958
Cambric, bleached	1098-1957
Cellular shirting, handloom cotton	1101-1981
Cloth for plaster of paris bandages and cut bandages	6237-1971
Coating, handloom cotton	1243-1981
Colour fastness of handloom cotton textiles, requirements	6906-1982
Crepe	1100-1978
Dhoties	748-1974
Dosuti Grey, scoured, bleached or dyed	756-1984
Dress material, bleached, dyed printed or striped or checked	1095-1957
Drills	1451-1979
Dungri cloth	749-1978
Dustors	859-1978
Floor durries	1450-1972
Gada cloth	1094-1976
Gause, absorbent, non-sterilized, handloom cotton	758-1975
Handkerchiefs	1939-1975
Holland cloth, unsecured	1096-1957
Honey comb towels and towelling cloth	855-1979
Huckaback towels	856-1971
<b>Title</b>	<b>IS Code</b>
Jaconet cloth, grey, dressed	86-1982
Light sheeting, grey	864-1956
Lining cloth, dyed	1099-1957
Lint, absorbent, bleached	757-1971
Longcloth, bleached or dyed	1244-1958
Lungies	750-1976
Madras check	1247-1958
Madras handkerchiefs. Handloom cotton	1093-1981
Malnal bleached	755-1984
Mazricloth (loomstate)	751-1984
Mixs	8039-1976
Moots striped or checked	1814-1961
Mosquito netting	1097-1979
Muslin, bleached	752-1984
Nainseek, bleached or dyed	1240-1958
Napkins, bleached, striped, checked or dyed	857-1956
Poplin, bleached or dyed	1556-1960
Poplin cloth bleached or dyed	753-1983
Pyjamma cloth, grey, with stripes	1245-1958.
Saries	754-1974.
School uniform fabric	797-1971
Shirting	1242-1975
Sponge cloth, grey, striped and checked	860-1956

Table cloth and napkins, handloom cotton	858-1981
Ticking cloth, grey, striped	862-1956
Turkish towels and towelling cloth handloom cotton	854-1981
Twills	1579-1979
<b>Silk-Handloom</b>	
Bush Shirt cloth, Loomstate	1686-1960
Dhotis, Loomstate	1583-1960
Kora (loomstate) cloth	1687-1960
Shirting, loomstate	1584-1960
<b>Wool-Handloom</b>	
Blanketing cloth	895-1957
Blanket, scarlet	2901-1964
Blankets, natural grey brown	892-1980
Blankets, ordinary, plain or check	893-1957
Blankets, shoddy (double faced)	2157-1962
Blankets, shoddy (single faced)	2481-1963
Blankets, brick red	894-1980
Bunting cloth, worsted, heavy	889-1957
Bunting cloth, worsted, light	890-1957
Cloth, collar, white	2715-1964
Kamblies, foomstate	896-1957
Lohis, worsted	1268-1958
Melton (shoddy) cloth	2173-1962
Serge	1266-1958
Shirting worsted	891-1957
Pile Fabrics	2714-1964

The following items shall be procured on the basis of samples approved by purchaser, mutually agreed specifications.

1. Khes
2. Bedcover
3. Counter pane
4. Furnishing
5. Chaddar
6. Durets/Jamakkalam
7. Bastha cloth
8. Lowreed pick cloth
9. Silk Sarees
10. Shawls, Mufflers, Pankhis
11. Woolen tweed.

**DPMF-2**  
(Para 2.5.2)

**Salient features of Pharmaceuticals Purchase Policy, 2013**

1. Pharmaceuticals Purchase Policy in respect of 103 (one hundred and three) medicines would be valid for a period of five years from the date of issue (30/10/2013) of orders by Department of Pharmaceuticals.
2. Pharmaceuticals Purchase Policy will extend only to Central Public Sector Enterprises (CPSEs) under the administrative control of Department of Pharmaceuticals such as Indian Drugs and Pharmaceuticals Limited (IDPL), Hindustan Antibiotics Limited (HAL), Bengal Chemicals and Pharmaceuticals Limited (BCPL), Karnataka Antibiotics and Pharmaceuticals Limited (KAPL) and Rajasthan Drugs and Pharmaceuticals Limited (RDPL) and their subsidiaries where Government of India owns 51% (fifty one percent) or above shares.
3. This would be applicable to purchases by Central Government Departments, their Public Sector Undertakings, and Autonomous Bodies, etc. This would also be applicable to purchase of medicines by State Governments under Health Programmes funded by Government of India such as the National Rural Health Mission etc.
4. The pricing of the products would be done by National Pharmaceutical Pricing Authority (NPPA) using the cost based formula, as mentioned in the Drugs Price Control Order, 1995. A uniform discount of 16% (Sixteen percent) would be extended to all products. All the taxes, whatsoever, would have to be passed on to buyers.
5. Annual revision of prices would be linked to Wholesale Price Index as per provisions contained in Drugs Prices Control Order, 2013.
6. The Procuring Entity would purchase from pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules.
7. In case pharma CPSEs and their subsidiaries fail to supply the medicines, the Procuring Entity would be at liberty to make purchases from other manufacturers. If the pharma CPSEs or their subsidiaries fail to perform as per the purchase order, they would also be subject to payment of liquidated damages or any other penalty as per the terms of the contract.
8. The list of medicines may be reviewed and revised by the Department of Pharmaceuticals as per requirement.

**List of Medicines reserved for procurement from Pharma CPSEs**

<b>Sl No.</b>	<b>Capsules</b>
1.	AMOXYCILLIN IP
2.	AMOXYCILLIN IP + CLOXACILLIN IP
3.	AMPICILIN IP
4.	B-COMPLEX + VIT.- C & ZINC
5.	CEPHALEXIN IP
6.	DOXYCYCLINE IP
7.	FLUCONAZOL
8.	OMEPRAZOLE IP
9.	OMEPRAZOLE+DOMPERIDONE
10.	CEFADROXIL
11.	TETRACYCLINE
<b>Tablets</b>	
12.	ACECLOFENAC + PARACETAMOL
13.	ACECLOFENAC 100 MG
14.	ALBENDAZOLE
15.	AMLODEPIN
16.	AMOXYCILLIN+CLAVULANIC ACID
17.	ASCORBIC ACID IP
18.	ATENOLO
19.	ATROVASTATIN
20.	AZITHROMYCIN
21.	CALCIUM+VITAMIND3
22.	CEFIXIME TABS/CAPS
23.	CEFPODOXIMEPROXETIL
24.	CEFUROXIME AXETIL
25.	CETRIZINE HCL BP
26.	CETRIZINE+PARACETAMOL+PHENYL EPHERIN



27.	CHLOROQUINE PHOSPHATE IP
28.	CIPROFLOXACIN+TINIDAZOLE
29.	CIPROLOXACIN IP
30.	CO-TRIMOXAZOLE IP
31.	DICLOFENAC SODIUM
32.	DICYLOMINE+PARACETAMOL
33.	DOMPERIDONE
34.	ERYTHROMYCIN STERATE IP
35.	IBUPROFEN IP
36.	LEVOCETRIZINE
37.	LEVOFLOXAACIN
38.	LOSARTAN
39.	METRONIDAZOLE IP
40.	NIMESULIDE
41.	NORFLOXACIN+TINIDAZOLE
42.	NORFLOXACIN IP
43.	OFLOXACIN
44.	OFLOXACIN+ORNIDAZOLE
45.	ORAL CONTRACEPTIVEPILLS
46.	PANTOPRAZOLE
47.	PARACETAMOL
48.	PARACETAMOL IP+DICLOFENAC SODIUM
49.	PARACETAMOL+IBUPROFEN
50.	PENICILLIN V
51.	POLY VITAMIN PROPHYLACTIC (NFI)
52.	RANITIDINE HCL IP
53.	ROXITHROMYCIN
54.	METFORMIN
55.	SPARFLOXACIN
56.	TINIDAZOLE
57.	VITAMINE B-COMPLEX
<b>Suspensions/Syrups</b>	
58.	ALBENDAZOLE SUSP.
59.	AMOXYCILLIN DRY SYP.
60.	CETRIZINE SYRUP
61.	COTRIMOXAZOLE SUSP
62.	COUGH SYP. EACH 5 ML CONTAINS-CPM IP :
63.	COUGH SYP. EACH 5ML CONTAINS- DYPHENHYDRAMINE
64.	DOMPERIDONE SUSP.
65.	PRACETAMOL SYP.
66.	VITAMIN A SOLUTION IP
<b>Oral Powders</b>	
67.	ORAL REHYDRATION SALT (WHO FORMULA)
<b>External</b>	
68.	GLUTARALDEHYDE
69.	CHLORHEXIDINE GLUCONATE SOLUTION
<b>Ointments</b>	
70.	CLOTRIMAZOLE OINTMENT
71.	DICLOFENACO GEL
72.	POVIDONE IODINE SOLUTION/OINTMENT
73.	SILVER SULPHADIAZINE
<b>I.V. Fluids (Infusion)</b>	
74.	CIPROFLOXACIN
75.	LEVOFLOXACIN IV
76.	MANNITOL

77.	METRONIDAZOLE
78.	PLAZMA VOLUME EXPENDER
79.	RINGER LACTATE I.V.
<b>Dry Powders / Liquid Injections</b>	
	AMIKACIN
81.	AMOXICILLIN SODIUM+CLAVULANATE POTASSIUM
82.	AMPICILLIN IP
83.	AVS LIQUID (LYFOLYSED)
84.	BENZATHENE PENICILLIN IP
85.	BENZYLE PENICILLIN IP
86.	CEFEPIME
87.	CEFOPERAZONE
88.	CEFOPERAZONE+SULBACTAM
89.	CEFOTAXIME SODIUM USP
90.	CEFOTAXIME SODIUM+SULBACTAM
91.	CEFTAZADIME
92.	CEFTRIAZONE
93.	CEFTRAXONE+SULBACTAM
94.	DICLOFENAC SODIUM
95.	ETO-THEOPHYLLINE
96.	ATROPIN INJ.
97.	FRUSEMIDE
98.	GENTAMYCIN IP
99.	MEROPENEM INJ.
100.	PENTAZOCIN
101.	PIPERACILLIN+TAZOBACTAM
102.	RANITIDINE IP
<b>Tablets</b>	
103.	GLIMEPIRIDE

**Public Procurement Policy for Micro and Small Enterprises (MSEs)**

1. From time to time, the Government of India lays down procurement policies to help inclusive national economic growth by providing long-term support to small and medium enterprises and disadvantaged sections of society and to address environmental concerns. The Procurement Policy for Micro and Small Enterprises, 2012 has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy are available on the MSME website <http://dcmsme.gov.in/pppm.htm>
2. Micro and Small Enterprises (MSE) must, along with their offer, provide proof of their being registered as MSE (indicating the terminal validity date of their registration) for the item tendered, with any agency mentioned in the notification of the Ministry of Micro, Small and Medium Enterprises (Ministry of MSME), indicated below –
  - a. District Industries Centres;
  - b. Khadi and Village Industries Commission;
  - c. Khadi and Village Industries Board;
  - d. Coir Board;
  - e. National Small Industries Corporation;
  - f. Directorate of Handicraft and Handloom; and
  - g. Any other body specified by the Ministry of MSME.
3. For ease of registration of Micro and Small Enterprises (MSMEs), Ministry of MSE has started Udyog Aadhar Memorandum which is an online registration system (free of cost) w.e.f. 18th September, 2015 and all Micro & Small Enterprises (MSEs) who are having Udyog Aadhar Memorandum should also be provided all the benefits available for MSEs under the Public Procurement Policy for Micro and Small Enterprises (MSEs), Order 2012.
4. The MSEs are provided tender documents free of cost and are exempted from payment of earnest money, Subject to furnishing of relevant valid certificate for claiming exemption.
5. Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
6. In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty five) percent of total tendered value. The 25 (twenty five) percent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.
7. Within this 25% (Twenty five percent) quantity, a purchase preference of 25% (Twenty five percent) out of 25% (twenty five percent) is reserved for MSEs owned by Scheduled Caste (SC)/Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price). Provided that, in event of failure of such SC/ST MSE to participate in tender process or meet tender requirements and L1 price, four per cent sub-target shall be met from other MSE. MSEs would be treated as owned by SC/ ST entrepreneurs –
  - a. In case of proprietary MSE, proprietor(s) shall be SC /ST
  - b. In case of partnership MSE, the SC/ST partners shall be holding at least 51% (fifty-one percent) shares in the unit
  - c. In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ST promoters.
8. Out of the total annual procurement from Micro and Small Enterprises, 3% (three percent) from within the 25 (twenty five) percent target shall be earmarked for procurement from Micro and Small Enterprises owned by women.
9. For enhancing participation of MSEs owned by SCs /STs in Government procurement, Central Government Ministries/Departments/PSUs may conduct Special Vendor Development Programmes/Buyer-Seller Meets. In the opinion of Ministry of MSME, in case of tender item is non-split-able or non-dividable, etc. MSE quoting price within price band L1+15% (fifteen percent) may be awarded for full/complete supply of total tendered value to MSE, considering spirit of policy for enhancing the Govt. procurement from MSE, in terms of sub-para 6 above.
10. Ministry of MSME have clarified that all Central Ministries/Departments/Central Public Sector Undertakings may relax condition of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurements subject to meeting of quality and technical specifications.
11. Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to

these also.

12. This Policy is meant for procurement of only goods produced and services rendered by MSEs and not for any trading activities by them. An MSE Unit will not get any purchase preference over another MSE Unit.
13. Exemptions from the policy - Given their unique nature, defence armament imports shall not be included in computing 25 (twenty five) per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation. In other cases, Review Committee of Ministry of MSME may consider any request of Ministries /Departments /CPSUs for exemption from 25% (twenty five percent) age procurement targets on case to case basis.

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**DPMF-4**  
(Para 2.5.4)

**Salient features of Procurement Preference for domestically manufactured electronic Products**

1. The procurement preference for Domestically Manufactured Electronics Products (DMEP) will be given to all notified electronic products manufactured by entities registered in India, including in Special Economic Zones (SEZs), and engaged in manufacture of such electronic products which would include Original Equipment Manufacturers (OEMs) and their contract manufacturers but not traders. Sole selling agents/authorised distributors/authorised dealers/authorised supply houses of domestic manufacturers are eligible to bid on behalf of domestic manufacturers provided they submit requisite authorization and Self-certification from the OEM. Additionally, such products shall meet the criterion of specified domestic value addition (on a self-certification basis) as laid down in the policies, issued vide various notifications, for being classified as DMEP. The template<sup>13</sup> of provisions to be included in the tender documents has been issued by the MeitY, which has to be included in the Standard Bidding Documents (SBDs).
2. The products notified for preference provision to domestic manufacturers are:
  - a. Desktop PCs
  - b. Dot matrix printers
  - c. Tablet PCs
  - d. Laptop PCs
  - e. Contact smart cards
  - f. Contactless smart cards
  - g. LED products
  - h. Biometric access control/authentication devices
  - i. Biometric finger print sensors
  - j. Biometric iris sensors
3. For notified electronic products, the DMEP bidder quoting a price within the band of L1 + 20 (twenty) per cent, in a situation where the L1 price is not from a DMEP, is eligible for being awarded the specified percentage (by value as notified for the product- minimum 30 (thirty) per cent) of the total tendered value, if he agrees to match the L1 price. In case the first eligible DMEP bidder fails to match the L1 bid, the DMEP bidder with the next higher bid will be invited to match the L1 bid and so on. However, the Procuring Entity may choose to divide the order amongst more than one successful bidder as long as all such bidders match the L1 bid and if the criteria for allocating the tender quantity amongst a number of successful bidders are clearly articulated in the tender document. In case all eligible domestic manufacturers fail to match the L1 bid, the actual bidder holding the L1 bid will secure the order for the full procurement value. Examples of various scenarios of Preferred Market Policy based procurements are given below –
4. **Example 1 - Procurement of one lakh laptops**

Under a Government project, it is intended to procure one lakh laptops, notified under the policy. In order to fulfil the norm of the proposed policy, they have to procure 30,000 (thirty thousand) laptops (30% - thirty percent) from domestic manufacturer. The bid documents should specifically provide preference to Domestically Manufactured Electronic Products (DMEP) quoting a price within the band of L1 + 20 (twenty) per cent in terms of 30% (thirty percent) of procurement value subject to matching of L1 price and on satisfying technical specifications of the tender. Suppose there are five bids. Consider Original Manufacturer (OM) as Domestic Manufacturer and NDM as Non Domestic Manufacturer.

**Case 1** - After opening of commercial bids, position is like L1: DM1, L2: NDM1, L3: NDM2, L4:NDM3 and L5:DM2. Then the entire quantity shall be awarded to DM1.

**Case 2A** - After opening of commercial bids, position is like L1: NDM1, L2: NDM2, L3: NDM3, L4:DM1 and L5: DM2. NDM1 qualifies as L1, and DM1 is the lowest-priced domestic manufacturer. Then NDM1 shall be given purchase order for 70% and 30% (seventy and thirty percent) of the purchase order shall be given to DM1, subject to the later matching the L1 price.

**Case 2B** - If DM1 declines to undertake the tendered work at L1 price, DM2 should be given the offer to supply the 30% (thirty percent) at L1 prices.

**Case 3** - After opening of commercial bids, position is like L1: NDM1, L2: NDM2, L3: NDM3, L4: NDM4 and L5: NDM5. In this case, no domestic electronic product manufacturer is available; hence the full order will be awarded to NDM1
5. **Example 2 – Procurement of Supercomputer**

Procuring Entity desires to procure a Super Computer with prescribed specification for Rs.50 (Rupees Fifty) crore. The order cannot be split between two parties. The Procuring Entity is not able to apply 70:30 norms. Hence this policy cannot be implemented in this tender. Therefore, in subsequent procurement of electronic products by the said agency, it should reserve an additional value of Rs. 15 (Rupees Fifty) crore (30% (Thirty percent) of the value of the earlier tender) for domestic manufactured electronic products.

**PMF-5**  
(Para 2.5.5)

Udyog Bhawan, New Delhi  
Dated 28<sup>th</sup> May 2018

To  
All Central Ministries/Departments/CPSUs/AII concerned

**ORDER**

**Subject: Public Procurement (Preference to Make in India), Order 2017 – Revision; regarding.**

**Department of Industrial Policy and Promotion, in partial modification of Order No.P-45021/2/2017-B.E.-11 dated 15.6.2017, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' with immediate effect:-**

**Whereas** it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

**Whereas** procurement by the Government is substantial in amount and can contribute towards this policy objective, and

**Whereas** local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

**Now therefore the following Order is issued :**

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

*'Local content'* means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

*'Local supplier'* means a supplier or service provider whose product or service offered for procurement meets the minimum local content as prescribed under this Order or by the competent Ministries / Departments in pursuance of this order.

*'L1'* means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

*'margin of purchase preference'* means the maximum extent to which the price quoted by a local supplier may be above the L1 for the purpose of purchase preference.

*'Nodal Ministry'* means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

*'Procuring entity'* means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

*'Works'* means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.

3. Requirement of Purchase Preference : Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to local suppliers in all procurements undertaken by procuring entities in the manner specified hereunder"
  - a. "In procurement of goods, services or works in respect of which the Nodal Ministry has communicated that there is sufficient local capacity and local competition, and where the estimated value of procurement is Rs. 50 lakhs or less, only local suppliers shall be eligible. If the estimated value of procurement of such goods or services or works is more than Rs. 50 lakhs, the provisions of subparagraph b or c, as the case may be, shall apply";
  - b. "In the procurements of goods or works which are not covered by paragraph 3a and which are divisible in nature, the following procedure shall be followed";
    - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract for full quantity will be awarded to L1.
    - ii. If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity subject to the local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or

accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.

- c. "In procurements of goods or works not covered by sub-paragraph 3a and which are not divisible, and in procurement of services where the bid is evaluated on price alone, the following procedure shall be followed":-
- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.
  - ii. If L1 is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such local supplier subject to matching the L1 price.
  - iii. In case such lowest eligible local supplier fails to match the L1 price, the local supplier with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.
4. Exemption of small purchases: Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
5. Minimum local content: The minimum local content shall ordinarily be 50%. The Nodal Ministry may prescribe a higher or lower percentage in respect of any particular item and may also prescribe the manner of calculation of local content.
6. Margin of Purchase Preference: The margin of purchase preference shall be 20% .
7. Requirement for specification in advance: The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. Government E-marketplace: In respect of procurement through the Government E- marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. Verification of local content:
- a. The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.
  - b. In cases of procurement for a value in excess of Rs. 10 crores, the local supplier shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
  - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
  - d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/accountant's certificates on random basis and in the case of complaints.
  - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
  - f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
  - g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
  - h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:

- i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
- ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
- iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

**10. Specifications in Tenders and other procurement solicitations:**

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of local suppliers who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.
- d. If a Nodal Ministry is satisfied that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, it may, if it deems appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and/ or other items relating to that Nodal Ministry. A copy of every instruction or decision taken in this regard shall be sent to the Chairman of the Standing Committee.
- e. For the purpose of sub-paragraph 10 d above, a supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India."

**11. Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

**12. Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

**13. Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

**14. Powers to grant exemption and to reduce minimum local content:** Ministries /Departments of Government of India and the Boards of Directors of Government companies or autonomous bodies may, by written order,

- a. reduce the minimum local content below the prescribed level;
- b. reduce the margin of purchase preference below 20% ;
- c. exempt any particular item or procuring or supplying entities or class or classes of items or procuring or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be marked to the Member-Convenor of the Standing Committee constituted under this Order.

**15. Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

**16. Standing Committee:** A standing committee is hereby constituted with the following membership:

Secretary, Department of Industrial Policy and Promotion-Chairman

Secretary, Commerce-Member

Secretary, Ministry of Electronics and Information Technology-Member Joint Secretary

(Public Procurement), Department of Expenditure-Member Joint Secretary (DIPP)-

Member-Convenor.

The Secretary of the Department concerned with a particular item shall be a member in respect of



issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

17. **Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary but not less than once in six months. The Committee
- shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
  - shall annually assess and periodically monitor compliance with this Order
  - shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
  - may require furnishing of details or returns regarding compliance with this Order and related matters
  - may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
  - may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
  - may consider any other issue relating to this Order which may arise.
18. **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.
19. **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
20. **Transitional provision:** This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(B.S. N Under India  
Secretary to Government 61257

**DPMF - 6**  
(Para 3.3.4)

**FORMAT OF CAPACITY/CAPABILITY REPORT ON FIRMS  
PART - I**

**FACTUAL INFORMATION FURNISHED BY THE FIRM**

1. Name and registered address of the firm :
- 2 Name and address of subsidiary/associated industry within India :
- 3 Factory location and address :
- 4 Telegraphic address :
- 5 Name and address of Managing Director :
- 6 Telephone No. :  
Office : :  
Factory : :
- 7 Details of the Organisation :
  - (a) Brief History :
  - (b) Area – present set up and provisions for future expansion :
  - (c) Covered accommodation :
  - (d) Main Departments Tech/managerial :
  - (e) Design office and Library details :
  - (f) Sales and service set up :
- 8 Approximate capital Investment :
  - (a) Authorised capital :
  - (b) Capital Investment :
  - (c) Financial position (*comments with latest copy of Balance Sheet and income*) :
- 9 Main items of machinery/equipment and test/inspection facilities available :
- 10 Labour :
  - (a) Strength presently employed :
    - (i) Skilled :
    - (ii) Semi-skilled :
    - (iii) Non-skilled :
  - (b) Availability of labour for future expansion :
- 11 Power: :
  - (a) Source :
  - (b) Present load :
  - (c) Availability of power for future expansion :
- 12 Raw materials :
  - (a) Requirements :
  - (b) Period for which reserve stock of raw materials is held. :
  - (c) Sources of procurement :
  - (d) Percentage of indigenous improved raw materials :
  - (e) Any difficulty regarding normal product or likely order :
- 13 Is the firm registered with DGS&D or with any other Defence or Civil Govt Department? If so, give details. :
- 14 Has the firm any collaboration and technical :

- know-how agreement with foreign firms? If so, give details. :
- 15 Details of items for which patent rights of the firm exist :
- 16 Are you having any development activities? Are you having in hand any basic research program? :
- 17 Details of qualified managerial and technical personnel. :
- Is any member on your staff a foreigner or foreign qualified specialist?
- 18 Is your product "Type Approved" or has ISI certification mark? If so, give details. :
- 19 Training program of staff :
- 20 Details of stores under production or development (Appendix 'A') :
- 21 Any other information you wish to provide :

**Place :**

**Date :**

**Seal**

**Signature :**

**Name:**

**Designation :**

Enclosures : Appendix A (Details of Stores under production or development))

**Annexure**

(Attached to the Report)

M/s. \_\_\_\_\_

(To be filled in by the firm)

Details of stores the firm is :

(a) Producing at present :

(b) Developing at present :

(c) Interested in for future development/production :

S No	Present products	Monthly Production	Remarks
		(Give number of shifts)	
		Present Capacity available	Spare Capacity

*Present Production*

*Production under Development*

*Future plan for Development*

Signature  
Name of firm

**PART II**  
**CERTIFICATE BY INSPECTION TEAM**

1. Name and designation of the Inspecting team :
2. Date on which the firm was inspected :
3. Comment on the standard of know-how and adequacy of the production process for the end product :
4. Comments on arrangement for inspection/ testing and quality control of products :
  - (a) Adequacy of equipment :
  - (b) Application of planned inspection during production :
  - (c) Inspection of components raw materials procured from sub-contractors :
  - (d) Evidence of proper work study possibility of improvement of man power :
  - (e) Built in training programme for improvement of man power :
5. Are Management-labour relations good? Any labour problems which may hold up production :
6. Are they supplying their product to any leading Manufacturers or Govt undertakings/departments? Give details. :
7. Comments on potential to carry out research/ Development as normal feature If so percentage of total expenditure on such activities :
8. Are they considered suitable for production/ development order :
9. Is the firm capable of providing a relevant paper particulars for AHSP work, i.e., user handbook/ workshop manual, part/identification list recommended spares for two years maintenance and one overhaul :
10. Comments on past performances for producing quality goods, adhering delivery schedule, attention to complaints as security consciousness :
11. General remarks (give any other observation not already covered) :
12. Do you consider the firm to be financially sound :
13. Final recommendations regarding suitability of the firm for placement of development orders :

**Signature and Designation of the Inspecting Team**

**DPMF-7**

(Para 5.16.6)

**Format for TEC Report**

(a) Clear Cut Parameter/QRs (as per relevant para/s of RFP)

<b>S. No.</b>	<b>Vendor/ Sample</b>	<b>Essential QRs (Serially listed)</b>	<b>Acceptable Range</b>	<b>Sample Reading</b>	<b>Within Range (Yes/No)</b>	<b>Technically Acceptable</b>	<b>Remarks</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>

**Note- TEC Format to form a part of the tender documents to provide for transparent technical evaluation criterion.**

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DPMF-8  
**(Para 7.4.5)**

**FORMAT FOR BANK GUARANTEE FOR ADVANCE PAYMENT**

From :

Bank \_\_\_\_\_

To

The President of India

Sir,

With reference to contract No. \_\_\_\_\_ dated \_\_\_\_\_ concluded between the President of India, hereinafter referred to as 'the Purchaser' and M/s \_\_\_\_\_

\_\_\_\_\_ hereinafter referred to as the "the contractor" for the development and supply of \_\_\_\_\_ as detailed in the above contract which contract is hereinafter referred to as "the Said Contract" and inconsideration of the Purchaser having agreed to make an advance payment in accordance with the terms of the Said Contract to the said contractor, we the \_\_\_\_\_ bank, hereinafter call 'the Bank' hereby irrevocably undertake and guarantee to you that if the Said Contractor would fail to develop and supply the stores in accordance with the terms of the Said Contract for any reason whatsoever or fail to perform the Said Contract in any respect or should whole or part of the said on account payments at any time become repayable to you for any reason whatsoever, we shall, on demand and without demur pay to you all and any sum upto a maximum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) paid as advance to the Said Contractor in accordance with the provisions contained in Clause \_\_\_\_\_ of the Said Contract.

2. We further agree that the Purchaser shall be the sole judge as to whether the contractor has failed to develop and deliver the stores in accordance with the terms of the Said Contract or has failed to perform the said contract in any respect or the whole or part of the advance payment made to Contractor has become repayable to the Purchaser and to the extent and monetary consequences thereof by the Purchaser.

3. We further hereby undertake to pay the amount due and payable under this Guarantee without any demur merely on a demand from the Purchaser stating the amount claimed. Any such demand made on the Bank shall be conclusive and binding upon us as regards the amounts due and payable by us under this Guarantee and without demur. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

4. We further agree that the Guarantee herein contained shall remain in full force and effect for a period of 12 months from the date the last advance payment was made or for a period of 90 days from the date on which final delivery of the stores after development was made and accepted by the Purchaser whichever falls later unless the Purchaser in his sole discretion discharges the Guarantee earlier.

5. We further agree that any change in the constitution of the Bank or the constitution of the contractor shall not discharge our liability hereunder.

6. We further agree that the Purchaser shall have the fullest liberty without affecting in any way our obligations hereunder with or without our consent or knowledge to vary any of the terms and conditions of the Said Contract or to extend the time of development/delivery from time to time or to postpone for any time or from time to time any of the powers exercisable by the Purchaser against the contractor and either to forbear or enforce any of the terms and conditions relating to the Said Contract and we shall not be relieved from our liability by reason of any such variation or any indulgence or for bearance shown or any act or omission on the Purchaser or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so relieving us.

7. We lastly undertake not to revoke the Guarantee during the currency of the above said contract except with the prior consent of the Purchaser in writing.

Yours faithfully,  
for \_\_\_\_\_ Bank  
(Authorised Attorney)

Place : \_\_\_\_\_

Date : \_\_\_\_\_

Seal of the Bank

**DPMF-9**  
**(Para 7.7.1)**

**Performance Bank Guarantee Format**

1. In consideration of the President of India (hereinafter called 'the Government') having agreed to exempt \_\_\_\_\_ [hereinafter called 'the said Contractor(s)] from the demand, under the terms and conditions of an Agreement dated \_\_\_\_\_ made between \_\_\_\_\_ and \_\_\_\_\_ for \_\_\_\_\_ (hereinafter called 'the said Agreement', of security deposit for the due fulfillment by the said Contractor(s) of the terms and conditions contained in the said Agreement, on production of a bank Guarantee for Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) We, \_\_\_\_\_ (hereinafter referred (indicate the name of the bank) to as 'the Bank') at the request of \_\_\_\_\_ [contractor(s)] do hereby undertake to pay to the Government an amount not exceeding Rs. \_\_\_\_\_ against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms or conditions contained in the said Agreement.

2. We \_\_\_\_\_ (indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said contractor(s) of any of the terms or conditions contained in the said Agreement or by reason of the contractor(s) failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_.

3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the contractor(s)/supplier(s) shall have no claim against us for making such payment.

4. We \_\_\_\_\_ (indicate the name of bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till \_\_\_\_\_ Office/Department/Ministry of \_\_\_\_\_ certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the \_\_\_\_\_ we shall be discharged from all liability under this guarantee thereafter.

5. We, \_\_\_\_\_ (indicate the name of bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor(s) or for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Supplier(s).

7. We, \_\_\_\_\_ (indicate the name of bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Government in writing.

8. Dated the \_\_\_\_\_ day of \_\_\_\_\_ for \_\_\_\_\_ (indicate the name of the Bank).

**DPMF-10**

[Para 7.8.3]

**Model ECS Mandate Format**

Customer's option to receive payments through e-Payment (ECS/ EFT/ DIRECT CREDIT/ RTGS/ NEFT/ Other payment mechanism as approved by RBI.)

**Credit Clearing Mechanism**

1. Customer's name
2. Particulars of Bank Account –
  - a. Bank name
  - b. Branch name
  - c. Address
  - d. Telephone numbers
  - e. IFS code
  - f. 9 Digit code number of Bank and Branch appearing on MICR cheque issued by Bank
  - g. Account Type (S.B. Account / Current Account or Cash)
  - h. Ledger number
  - i. Ledger Folio number
  - j. Account number as appearing on Cheque Book
3. Please attach a blank cancelled cheque, or, photocopy of a cheque or front page of your savings bank passbook issued by your bank for verification of the above particulars.
4. Date of Effect

“I, hereby, declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I would not hold the user institution responsible. I have read the option invitation letter and agree to discharge the responsibility expected of me as a participant under scheme.”

(.....)

Date -

Signature of Customer

Certified that the particulars furnished above are correct as per our records.

Bank's Stamp: (.....)

Date:

Signature of the Authorized Official from the Bank



**DPMF-11**  
**(Para 7.9.4)**

**Model Amendment letter for Extension of Delivery Period for FOB/FAS/CIF Contract**

Registered Acknowledgement Due  
Address of the Buyer

-----  
-----

To  
M/s .....

Subject : This office contract no..... dated ..... placed on you for supply of .....  
Ref : Your letter no..... dated .....

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to \_\_\_\_\_. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from \_\_\_\_\_ (last delivery period) to \_\_\_\_\_ (presently agreed delivery period).

2. Please note that in terms of clause..... of the contract, a sum equivalent to .....% (..... per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re- fixed delivery date (as & if applicable) viz. \_\_\_ will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the further condition that, notwithstanding any stipulation in the contract for increase in price on any ground, no such increase, whatsoever, which takes place after \_\_\_\_\_ shall be admissible on such of the said goods as are delivered after the said date. But, nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on any ground (including the impact of the price variation clause, if incorporated in the contract), which takes place after the expiry of the above mentioned date namely \_\_\_\_\_.

4. You are also required to extend the validity period of the performance guarantee for the subject contract from ..... (present validity date) to ..... (required extended date) within fifteen days of issue of this amendment letter.

5. Please intimate your unconditional acceptance of this amendment letter within ten days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

6. All other terms & conditions of the contract remain unaltered.

Yours faithfully,  
(.....)  
for and on behalf of.....

Copy to :

.....  
.....  
.....

*(Note - The entries which are not applicable for the case under consideration are to be deleted.)*

**DPMF-12**  
**(Para 7.9.4)**

**Model Amendment letter for Extension of Delivery Period for**  
**Contract other than FOB/FAS/CIF Contract**

Registered Acknowledgement Due  
Address of the purchase office  
-----

To

M/s .....

Sub : This office contract no..... dated ..... placed on you for supply of .....

Ref : Your letter no..... dated .....

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to \_\_\_\_\_.

In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from \_\_\_\_\_ (last delivery period) to \_\_\_\_\_ (presently agreed delivery period).

2. Please note that in terms of clause..... of the contract, a sum equivalent to .....% (..... per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable) viz. \_\_\_\_\_ will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the following further conditions:-

i) That no increase in price on account of any statutory increase in or fresh imposition of custom duty, GST or on account of any other tax or duty leviable in respect of the goods specified in the said contract, which take place after \_\_\_\_\_ shall be admissible on such of the said goods as delivered after the said date.

ii) That notwithstanding any stipulation in the contract for increase in price on any ground, no such increase whatsoever, which takes place after \_\_\_\_\_ shall be admissible on such of the said goods as are delivered after the said date.

iii) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of custom duty, excise duty, sales tax or on account of any other tax or duty or any other ground whatsoever, including the impact of price variation clause (if incorporated in the contract), which takes place after the expiry of the above mentioned date namely \_\_\_\_\_.

4. You are also required to extent the validity period of the performance guarantee for the subject contract from .....(existing date) to ..... (required extended date) within fifteen days of issue of this letter.

5. Please intimate your unconditional acceptance of this amendment letter, to reach this office within ten days of issue of this letter, failing which the contract will be cancelled at your risk and expense without any further reference to you. All other terms & conditions of the contract remain unaltered.

Yours faithfully,  
(.....)  
for and on behalf of.....

Copy to :

(Note - The entries which are not applicable for the case under consideration are to be deleted.)

\*\*\*\*\*

**DPFM-13**  
**(Para 7.9.4)**  
**Format for Performance Notice**

Registered Acknowledgement Due  
To

M/s \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sub : Contract No..... dated ..... placed on you  
for supply of .....

Dear Sirs,

Your attention is invited to the acceptance of tender cited above, according to which supplies ought to have been completed by you on or before \_\_\_\_\_. In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that \_\_ (Details of outstanding goods) \_\_ are still outstanding even though the date of delivery has expired.

2. Although not bound to do so, the delivery date is hereby extended to \_\_\_\_\_ and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

3. ....

Yours faithfully,  
(-----)  
for .....

\*\*\*\*\*

**DPMF-14**  
**(Para 7.9.4)**

**MODEL FORMAT FOR CORRESPONDENCE WITH SELLER**  
**AFTER BREACH OF CONTRACT**

Registered Acknowledgement Due  
To

M/s \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Sub : Contract No..... dated .....**  
**for supply of .....**

Dear Sirs,

The date of delivery of the subject contract expired on \_\_\_\_\_. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity so far supplied and, also, the quantity so far inspected but not yet despatched and the quantity so far not tendered for inspection before the expiry of the date of delivery. The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach.

This is without prejudice to the rights and remedies available to the Buyer in terms of the contract and law applicable in this behalf.

Yours faithfully,  
(-----)  
for.....

\*\*\*\*\*

**DPMF-15**  
**(Para 7.12.1)**

**Format of Arbitration Clause – Indigenous Private bidders**

(i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof, should be settled by bilateral discussions.

(ii) Any dispute, disagreement or question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to a sole Arbitrator.

(iii) Within sixty (60) days of the receipt of the said notice, an arbitrator shall be nominated in writing by the authority agreed upon by the parties.

(iv) The sole Arbitrator shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

(v) The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.

(vi) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.

(vii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

*(Note - In the event of the parties deciding to refer the dispute/s for adjudication to an Arbitral Tribunal then one arbitrator each will be appointed by each party and the case will be referred to the Indian Council of Arbitration (ICADR) for nomination of the third arbitrator. The fees of the arbitrator appointed by the parties shall be borne by each party and the fees of the third arbitrator, if appointed, shall be equally shared by the buyer and seller).*

\*\*\*\*\*

**DPMF-16**  
**(Para 7.12.1)**

**Format of Arbitration Clause – Foreign bidders**

- (i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof, should be settled by bilateral discussions
- (ii) Any dispute, disagreement or question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to the Arbitration Tribunal consisting of three arbitrators.
- (iii) Within sixty (60) days of the receipt of the said notice, one arbitrator shall be nominated in writing by the SELLER and one arbitrator shall be nominated by the BUYER.
- (iv) The third arbitrator, who shall not be a citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties, the said arbitration shall be nominated by the parties within (90) days of the receipt of the notice mentioned above, failing which the third arbitrator may be nominated under the provisions of UNCITRAL by the International Chamber of Commerce, Paris at the request of either party. However the said nomination would be after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned above. The arbitrator nominated under this clause shall not be regarded nor act as an umpire.
- (v) The Arbitration Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.
- (vi) The arbitration proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts or as may be mutually agreed between the parties.
- (vii) The decision of the majority of the arbitrators shall be final and binding on the parties to the contract.
- (viii) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the third arbitrator shall be shared equally by the Seller and the Buyer, unless otherwise awarded by the Arbitration Tribunal.
- (ix) In the event of a vacancy caused in the office of the arbitrators, the party which nominated such arbitrator shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the outgoing arbitrator.
- (x) In the event of one of the parties failing to nominate its arbitrator within 60 days as above or if any of the parties does not nominate another arbitrator within 60 days of the place of arbitrator falling vacant, then the other party shall be entitled after due notice of at least 30 days to request the International Chamber of Commerce to nominate another arbitrator as above.
- (xi) If the place of the third arbitrator falls vacant, his substitute shall be nominated according to the provisions herein above stipulated.
- (xii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

*(Note - The provisions with regard to appointment of an Arbitrator by the International Chamber of Commerce, Paris shall only be resorted to in cases of International Commercial Arbitration. Similarly, the UNCITRAL provisions will only apply with regard to appointment of Arbitrator, fixation of fees of the Arbitrator when it is a foreign arbitration. The procedure to be adopted during arbitration will be as provided in the Indian Arbitration & Conciliation Act, 1996.)*

\*\*\*\*\*

**DPMF-17**  
**(Para 7.12.1)**

**Format of Arbitration Clause – CPSUs/DPSUs**

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party to the Permanent Arbitration Machinery set up in the Department of Public Enterprises and that if the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

\*\*\*\*\*

**DPMF -18**  
**(Para – 9.6.12)**

<b>FD SWIFT-700</b>	<b>[APPLICATION &amp; GUARANTEE FOR ISSUE OF DOCUMENTARY CREDIT]</b>
	<b>FORM NO. 2</b>

(TO BE STAMPED AS AN AGREEMENT: NOT TO BE ATTESTED)

**THE A.G.M.**  
**STATE BANK OF INDIA**  
**FOREIGN EXCHANGE DIVISION**  
**MAIN BRANCH, 11 SANSAD MARG**  
**NEW DELHI – 110001.**

**IMPORTER' CODE NO:**

**BY SWIFT,**

**20:#**

**L/C NO:**

**PLEASE ESTABLISH WITH YOUR BRANCH 31C**  
**CORRESPONDENTS IN**

**DATE:**

**A DOCUMENTARY CREDIT AS PER DETAILS**  
**ON : PREADY/**  
**BELOW**

**23:**

**PREADVISED**

40 D #	TYPE OF L/C	[ ] IRREVOCABLE [ ] IRREVOCABLE/TRANSFERABLE [ ] REVOLVING		
31 D #	DATE & PLACE OF EXPIRY	DATE: (YYMMDD)	PLACE:	
50 #	NAME & ADDRESS OF THE APPLICANT			
59 #	NAME & ADDRESS OF THE BENEFICIARY			
32 B #	CURRENCY & AMOUNT OF CREDIT (IN FIGURES & WORDS) TERMS:	USD/EUR _____	CIF/C & F/FOB / EX-WORKS / CLF	
39A.B.C	VARIATION IN L/C AMT OR ADDITIONAL AMTS PERMITTED			
41 A 3	CREDIT AVAILABLE WITH CREDIT AVAILABLE BY	[ ] PAYMENT: [ ] NEGOTIATION: [ ] ACCEPTANCE: [ ] DEF PAYMENT		
42 C	USANCE OF THE DRAFTS	[ ] AT SIGHT: [ ] (SPECIFY) _____ DAYS FORM BL/AWB INCLUSIVE / EXCLUSIVE / FREE ON INTEREST		
42 A	DRAFTS TO BE DRAWN ON	NEGOTIATION BANK/ADVISING BANK/OPENING BANK/OPENER		
42 P	DEFERRED PAYMENT, IF ANY			
43 P	PARTIAL SHIPMENTS	[ ] PERMITTED: [ ] PROHIBITED:	43 T TRANSHIPMENT	[ ] PERMITTED: [ ] PROHIBITED:
44 A	SHIPMENT FROM		44 B SHIPMENT TO	
44 C	LATEST SHIPMENT DATE (YYMMDD) (IN ANY CASE IT SHOULD NOT BE AFTER THE EXPIRY OF LC)			
45 A	DESCRIPTION OF GOODS : DEFENCE STORE AS PER CONTRACT NO.			
46 A	1. DRAFT FOR 100 PERCENT OF THE INVOICE VALUE. 2. COMPLETE SET OF CLEAN SHIPPED ON BOARD BILL OF LANDING MARKED FREIGHT PREPAID / TO PAY MADE OUT TO ORDER OF STATE BANK OF INDIA. FOREIGN EXCHANGE DIVISION, MAIN BRANCH, NEW DELHI -1, ACCOUNT APPLICANT, NOTIFY APPLICANT AND US. <p align="center">OR</p>			



	<p>3. ORIGINAL AIRWAY BILL MARKED FREIGHT PREPAID/TO PAY MADE OUT IN THE NAME OF STATE BANK OF INDIA, FOREIGN EXCHANGE, DIVISION MAIN BRANCH, NEW DELHI -1, ACCOUNT APPLICANT , NOTIFY APPLICANT AND US.</p> <p style="text-align: center;">OR</p> <p>4. INSURANCE POLICIES OR CERTIFICATED IN DUPLICATE COVERING MARINE/AIRBORNE INSURANCE AS PER INSTITUTE CARGO CLAUSE(A) INSTITUTE WAR CLAUSE (CARGO), AND INSTITUTE STRIKES CLAUSE (CARGO). COVER FOR C.I.F. VALUE PLUS PERCENT CLAIM IF ANY PAYABLE IN INDIA. INSURANCE MUST REMAIN IN FORCE AT LEAST FOR 90 DAYS FROM THE DATE OF LANDING OF GOODS IN INDIA AN ALL RICKS SHOULD COVERED FROM THE SUPPLIERS WARE HOUSE TO APPLICANT'S WAREHOUSE.</p> <p style="text-align: center;">OR</p> <p>INSURANCE WILL BE ARRANGED BY THE APPLICANT BUT BENEFICIARY MUST ADVISE WITHIN DAYS FROM THE DATE OF SHIPMENT/DESPATCH IS EFFECTED. COMPLETE DETAILS OF SHIPMENT/DESPATCH TO APPLICANT BY FAX/CABLE/TELEX SUCH AS NAME OF STEAMBER, B/L NO. AND DATE/FIGHT NO. AWB NO. DATE, QUANTITY SHIPPED/DESPATCHED. TOTLA, VALUE AND EVIDENCE/COPY OF FAX/CABLE/TELEX, MUST ACCOMPANY DOCUMENT</p>	
46 A Contd.	<p>DOCUMENTS REQUIRED CONTD</p> <ol style="list-style-type: none"> <li>1. SIGNED INVOUCES IN QUARDRUPLAICTE/TRIPPLICATE/ _____</li> <li>2. CERTIFICATE OF _____ ORIGIN ISSUED BY _____ COPIES</li> <li>3. PACKING LIST _____ COPIES</li> <li>4. CERTIFICATE OF CURRENT MANUFACTURE _____ COPIES</li> <li>5. DEPATCH NOTE SIGNED BY _____ IN _____ COPIES</li> <li>6. ACT SIGNED BY _____ IN ORIGINAL</li> <li>7. JRI/PDI CERTIFICATED SIGNED BY _____ IN ORIGINAL</li> <li>8.</li> <li>9.</li> </ol>	
47 A	<p>ADDITIONAL CONDITIONS:</p> <ol style="list-style-type: none"> <li>1. ALL DOCUMENTS SHOULD MENTION L/C NO. &amp; CONTRACT NO.</li> <li>2. DISCREPANT DOCUMENTS TO BE SENT ON APPROVAL BASIS.</li> <li>3. LD CLAUSE(AS APPLICABLE)</li> <li>4. REVOLVEMENT/REPLENISHMEDNT CLAUSE(IN CASE OF REVOLVING LC)</li> <li>5. ULTIMATE CONSIGNEE/LANDING OFFICER: NAME AND ADDRESS</li> <li>6. THIS LETTER OF CREDIT IS GOVERNED UNDER UCPDC 600 REV 2007</li> <li>7.</li> <li>8.</li> </ol>	
71 B	SPECIFY, IF ANY CHARGES ARE TO BENEFICIARY'S A/C	<input type="checkbox"/> ALL CHARGES : <input type="checkbox"/> (SPECIFY)
48	DOCUMENTS TO BE PRESENTED	WITHIN _____ DAYS FROM THE DATE OF _____
49 #	CONFIRMATION INSTRUCTIONS	<input type="checkbox"/> CONFIRM: <input type="checkbox"/> (WITHOUT CONFERMATION)
57 A	CREDIT TO BE ADVICE TO THE BENEFICIARY THROUGH (BANK)	NAME AND ADDRESS OF THE BENEFICIARY'S BANK

IN CONSIDERATION OF YOUR OPENING A LETTER OF CREDIT AS ABOVE, I/WE HEREBY UNDERTAKE TO ACCEPT AND PAY IN DUE COURSE ALL DRFTS DRAWN WITHIN THE TERMS THEREFORE, AND/OR TO TAKE UP AND PAY FOR ALL DOCUMENTS NEGOTIATED THERE UNDER OR PRESENTAION, AND IN DEFAULT OF MY/OURS DOING YOUR MAY SELL THE GOODS BEFORE OR AFTER ARRIVAL AND I/WE UNDERTAKE TO REIMBURSE YOU FOR ANY SHORT FALL THAT MAY OCCUR AND I/WE HERE BY FURTHER UNDERTAKE FORTHWITH ON DEMAND MADE BY YOUR IN WRITING TO DEPOSIT WITH YOU SUCH SUM OR SECURITY OR FURTHER SUM OR SECURITY AS YOU MAY FROM TIME TO TIME SPECIFY AS SECURITY FOR THE DUE FULFILMENT OF OUR OBLIGATION HEREUNDER AND ANY SECURITY SO DEPOSITED WITH YOU IN WRITING TO DEPOSIT WITH YOU SUCH SUM OR SECURITY OR FURTHER SUM OR SECURITY AS YOU MAY FROM TIME TO TME SPECIFY AS SECURITY FOR THE DUE FULFILMENT OF OUR OBLIGATION HEREUNDER AND ANY SECURITY SO DEPOSITED WITH YOU MAY BE SOLD BY YOU ON YOUR GIVING REASONABLE NOTICE OF SALE TO US AND THE SAID SUM OR THE PROCEEDS OF SALE

OF THE SECURITY MAY BE APPROPRIATED BY YOU IN OR TOWARDS SATISFACTION OF OUR SAID OBLIGATION AND ANY LIABILITY OF OURS ARISING OUT OF THE NONFULFILLMENT HEREOF.

YOU ARE TO HAVE A LIEN ON ALL GOODS, DOCUMENTS AND POLICIES AND PROCEEDS THEREOF FOR ANY OBLIGATIONS OR LIABILITIES PRESENT OR FURTHER INCURRED BY YOU UNDER OR ARISING OUT OF THIS CREDIT.

I/WE APPROVE OF THE NEGOTIATION OF DRAFTS DRAWN UNDER THIS CREDIT BEING CONFINED TO YOUR BRANCHES. THE RELATIVE SHIPPING DOCUMENTS HAVE TO BE SURRENDERED TO ME/US AGAINST PAYMENT/ACCEPTANCE.

IF AT ANY TIME AND FROM TIME TO TIME HERE AFTER AND AT OUR REQUEST YOU ENHANCE THE AMOUNT OF THE LETTER OF CREDIT OR AMEND ANY OF THE TERMS THEREOF (INCLUDING EXTENSION OF THE VALIDITY OF THE CREDIT FOR SHIPMENT AND/OR NEGOTIATION OF DOCUMENTS). THEN NOTWITHSTANDING THE AMOUNT AND THE TERMS SPECIFIED IN THIS APPLICATION, OUR GUARANTEE SHALL COVER AND BE DEEMED TO COVER THE ENTIRE AMOUNT OF THE ENHANCED LETTER OF CREDIT ISSUED BY UOU AND ANY OTHER AMENDMENTS EFFECTED THERETO AND OUR LIABILITY WILL BE FOR THE ENTIRE AMOUNT OF THE LETTER OF THE CREDIT TO BE ENHANCED AND/OR AMENDED AT OUR REQUEST. WE SHALL CONTINUE TO BE BOUND BY ALL THE OTHER TERMS AND CONDITIONS OF THE APPLICATION AND GUARANTEE NOWITHSTANDING SUCH ENHANCEMENT OR AMENDMENTS FROM TIME TO TIME AS YOU MAY MAKE AT OUR REQUEST IN THE VALUE AND TERMS OF THE LETTER OF THE CREDIT.

I/WE HEREBY AGREE AND DECLARE THAT IN THE EVENT OF MY/OUR FAILING TO RETIRE THE BILLS DRAWN UNDER L/C ON DUE DATES IN CASE OF USANCE BILLS WITHIN TEN DAYS FROM THE DATE OF RECEIPT OF THE DOCUMENTS BY YOU IN CASE OF SIGHT BILLS YOU SHALL BE AT LIBERTY TO CRYSTALLISE THE FOREIGN CURRENCY RUPEES LIABILITY THERE UNDER ON THE DUE DATE ON THE EXPIRY OF THE TENTH DAY AS THE CASE MAY BE AND CONVERT THE SAME TO RUPEES AT THE PREVAILING BILL SELLING RATE OR AT THE CONTRACT RATE WHICHEVER APPLICABLE.

I/WE UNDERTAKE TO REIMBURSE TO YOU ON DEMAND THE RUPEE EQUIVALENT SO DETERMINE TOGETHER WITH INTEREST THERE ON AT NORMAL RATE FROM THE DATE OF CRYSTALLISATION AND THEREAFTER AT PENAL RATE AS APPLICABLE THERETO.

YOU WOULD BOOK FORWARD CONTRACTS IF I/WE DECIDE TO COVER THE FLUCTUATION IN THE EXCHANGE RATES. I/WE UNDERTAKE TO SUCH FORWARD CONTRACTS WITH YOU ONLY IN CASE SUCH AS THE BOOKING OF FORWARD CONTRACTS FORMS PART OF THE ARRANGEMENT BY YOU UNDER THE L/C I/WE BOOK FORWARD CONTRACTS WITH OTHER BANK'S AGAINST THE LETTER OF CREDIT. I/WE ARE LIABLE TO PAY TO YOU 1/4% COMMISSION IN THE LIEU OF EXCHANGE IN ADDITION TO SWAP COST AND INTEREST FROM THE DATE OF NEGOTIATION AT THE FOREIGN CENTRE TILL THE DATE OF CREDIT OF PROCEEDS IN YOUR NOSTRO ACCOUNTS.

IN CASE I/WE DO NOT BOOK THE FORWARD CONTRACT I/WE UNDERTAKE TO BUY THE RELATIVE FOREIGN EXCHANGE IN CONNECTION, WITH RETIREMENT OF THE BILLS, DOCUMENT ETC. UNDER THE LETTER OF CREDIT FROM YOU AT THE RULING RATE OF EXCHANGE IN CASH FOREIGN EXCHANGE IN CONNECTION WITH RETIREMENT OF THE BILLS/DOCUMENTS ETC. IS BOUGHT COMMISSION IN LIEU OF EXCHANGE IN ADDITION TO SWAP COST AND INTEREST FROM THE DATE OF NEGOTIATION AT THE FOREIGN CENTRE TILL THE DATE OF CREDIT PROCEEDS IN YOUR NOSTRO ACCOUNTS.

I/WE HEREBY DECLARE THAT THE TRANSACTION(S) THE DETAILS OF WHICH ARE SPECIFICALLY MENTIONED IN THE SCHEDULE HEREUNDER DOES NOT INVOLVE AND IS NOT DESIGNED FOR THE PURPOSE OF ANY CONTRAVENTION OR EVASION OF THE PROVISIONS OF

**DPMF-19**  
**(Para 9.6.15)**

**Guidelines on confirmation of Bank Guarantees**  
**of Foreign Banks by Indian Banks**

1. In terms of Reserve Bank of India's guidelines issued vide letter No AP (DIR Series) Circular No 15 dated 17 September, 2003, all remittances of foreign exchange beyond US\$ 100,000 are to be against BGs/stand by Letter of Credit from banks of international repute. Accordingly, Ministry of Defence will obtain Bank Guarantees (BGs) from foreign suppliers from banks of international repute for:-

- (a) Advances paid to them.
- (b) Performance of contracts as Performance BGs.
- (c) Warranty bonds to ensure warranty support of equipment supplied by the vendors.

2. To ascertain whether BGs given by foreign vendors are from banks of international repute, Ministry of Defence will be assisted by the Parliament Street Branch of SBI.

3. With a view to institutionalize the procedure to be adopted for obtaining advice of State Bank of India, an Arrangement Letter has been signed with SBI which covers the services that SBI will offer.

4. While CNC commences its commercial deliberations, SBI's advice on the BG will be sought in parallel. The advisory role of SBI will be put into action in the following manner-

- (a) On receiving details of BG proposed to be submitted by the vendor, the matter is to be referred to SBI.
- (b) SBI will render its advice within 7 days from the date of receipt of reference/details of the BG from MoD.
- (c) SBI's advice will be as follows:-
  - (i) In case the BG is from a bank of international repute and country rating is satisfactory, SBI will advise MoD to accept BG without need for confirmation of the BG by an Indian bank.
  - (ii) In case the advice of SBI is that the BG is not from a bank of international repute and / or a confirmation of a local bank is required to be obtained by MoD, the vendor will be asked by MoD to instruct its banker to mutually settle the issue of BG with SBI who will in turn advise MoD regarding further action to be taken.
  - (iii) Only in case the vendor's bank is unable to settle the issue of BG with SBI, the matter will be referred back to MoD by SBI.
  - (iv) In such cases, as required, MoD will associate SBI officials in Contract Negotiation Committee (CNC) for settling the issue of BG with the vendors.

**DPMF-20**  
**[Para 9.6.28 (c)]**

**QUANTITY CLAIM FORMAT**

Quantity Claim to the Contract No .....dated .....

Claim Protocol number .....

Laid down .....

For inter/tare storage

Commission, consisting of Chairman ..... and Members  
..... having examined the state of the delivered  
equipment ascertained as follows:-

1. The equipment was delivered by M/s ..... against Bill of Lading No  
..... of ..... in the quantity of one collie with the Marking  
..... Case No .....

2. The obtained equipment is delivered under Contract number..... Item Sr Number  
..... Cost.....

3. The state of packing and seals on goods packages, correspondence of the gross weight and the weight indicated  
in the way bills (packing lists) Nos of the collies are to be pointed out ..... Condition of  
the collie ..... Gross weight of the collie  
..... Net weight of the collie .....

4. While unpacking the goods packages, the following discrepancy between the shipping documents (packing lists  
as the packed equipment was discovered/separately for the each package .....

5. Conclusion of the commission .....

6. The following documents confirming the justification of the complaint are attached to the report (Packing list,  
photos of the damaged ~~sports~~ goods and  
others).....

Chairman .....

Members .....

Place and date of issue .....

\*\*\*\*\*

**DPMF-21**  
**[Para 9.6.28(c)]**  
**QUALITY CLAIM FORMAT**

Quality Claim to the Contract No .....dated  
..... Claim Protocol number ..... Laid down on Concerning  
(Name of the claimed equipment) Commission  
Members..... Chairman

..... The Commission has acquainted with the claimed equipment and made the following decision:-

1. .... Serial No  
..... (equipment) Production by the..... Made by the  
manufacturer..... (date of manufacture) No  
of running hours.....With guarantee period of .....(completed)

.....  
(years, months) From the beginning of operation, the product has been operating for .....  
hours.

2. Indicate operation conditions of the equipment  
.....  
.....

(State type of fuel and oil used during operation of the equipment)

3. Description of the defect .....  
.....

(the date and circumstances under which the defect was ascertained, short description of the probable causes and probable consequences of the defect)

4. List of units (or their parts)  
.....

(defective equipment will remain in that organization store-room when it has been operating till arrival of the Seller's instruction)

5. Conclusion of the Commission  
.....  
.....

(on investigation the commission decided that the claimed equipment is not serviceable and that it must be subject to repair or must be replaced with a new equipment. The kind of repair and place where the repair should be carried out are to be stated).

The following parts are required for the repair of the equipment (or its parts)  
.....  
.....

The defect occurred ..... within the guarantee period from the reason as follows  
.....  
.....

The costs of the repair of the equipment or its parts .....  
.....  
.....

The defect occurred ..... within the guarantee period from the reason as follows.....

..... The costs of the repair will be debited to (..... manufacturer/owner.....)

To settle the claim, the Seller has to replace the equipment and dispatch the unit and other parts, indicate the parts and where the repair should be carried out (manufacturer's side), the manner of reimbursement of costs connected with the repair of the equipment, etc.

Supplementary data:

The equipment was handed over in accordance with the ..... No  
..... on (date)  
.....

The following documents are enclosed to this claim protocol to support the justification of the claim (photos,

samples, results of analysis, packing sheets, etc.)

Signature of the commission members

.....

.....

**INCOTERMS – 2010**

**1. In INCOTERMS 2010, the delivery and transportation of goods are grouped into four categories as under: -**

(a) **“E” – Terms** - Implies Ex-works, where under, the seller only makes the goods available to the buyer at the seller’s own premises. The responsibility of providing the carrier is that of the buyer.

(b) **“F”-Terms**- FCA, FAS and FOB are various clauses of “F” terms under which the seller is called upon to deliver the goods to a carrier appointed by the buyer. The responsibility of providing the carrier is that of the buyer.

(c) **“C”-Terms**- CFR, CIF, CPT and CIP are various clauses of “C” terms under which the seller has to contract for carriage, but without assuming the risk of loss of or damage the goods or additional costs due to events occurring after shipment and dispatch.

(d) **“D”- Terms**- DAF, DES, DEQ, DDU and DDP are various clauses of “D” terms under which the seller has to bear costs and risks needed to bring the goods to the place of destination.

2. **Ex-works (EXW)** “Ex-Works” means that the seller delivers when he places the goods at the disposal of the buyer at the seller’s premises or another named place (i.e., works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle. This term thus represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller’s premises.

3. However, if the parties wish the seller to be responsible for loading of the goods on departure and to bear the risks and all the costs of such loading, this should be made clear by adding explicit wording to this effect in the contract of sale. This term should not be used when the buyer cannot carry out the export formalities directly or indirectly. In such circumstances, the FCA term should be used provided the seller agrees that he will load at his cost and risk.

4. **Free Carrier (FCA)**- “Free Carrier” means that the seller delivers the goods, cleared for export, to the carrier nominated by the buyer at the named place. This term may be used irrespective of the mode of transport, including multi-modal transport. “Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes. If the buyer nominates a person other than a carrier to receive the goods, the seller is deemed to have fulfilled his obligation to deliver the goods when they are delivered to that person.

5. **Free Alongside Ship (FAS)**- “Free Alongside Ship” means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment. The FAS term requires the buyer to clear the goods for export. However, if parties wish the buyer to clear goods for export, this should be made clear by adding explicit wording to this effect in contract of sale. This term can only be used for sea or inland waterway transport.

6. **Free on Board (FOB)**- “Free on Board” means that the seller delivers when the goods pass the ship’s rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from the point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the FCA term should be used.

7. **Cost and Freight (CFR)**- “Cost and Freight” means that the seller has delivered when the goods pass the ship’s rail in the port of shipment. The seller must pay the cost and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, or any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. The CFR term requires the seller to clear the goods for export. This term can be used only for sea and inland waterway transport.

8. **Cost, Insurance and Freight (CIF)**- “Cost, Insurance and Freight” (CIF) means that the seller delivers when the goods pass the ship’s rail in the port of shipment. The seller must pay the costs and freight necessary to bring the goods to the named port of destination. In case of CIF term, the seller also has to procure marine insurance against the buyer’s risk of loss of or damage to the goods during the carriage. Consequently, the seller contracts for insurance and pays the insurance premium. The CIF term requires the seller to clear the goods for export. This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the CIP term should be used.

9. **Carriage Paid To (CPT)**- “Carriage Paid to (CPT)” means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to be named destination. This means that the buyer bears all risks and any other cost occurring after the goods have been so delivered. The CPT term requires the seller to clear the goods for export. The term may be used irrespective of the mode of transport including multi-modal transport.

10. **Carriage and Insurance Paid To (CIP)**- “Carriage and Insurance Paid To (CIP)” means that the seller delivers goods to the carrier nominated by him, but the seller must in addition pay cost of carriage necessary to bring goods to be named destination. This means that the buyer bears all risks and any additional cost occurring after the goods have been so delivered. However, in CIP, the seller also has to procure insurance against the buyer’s

risk of loss of or damage to the goods during the carriage. Consequently, the seller contracts for insurance and pays the insurance premium.

11. The buyer should note that under the CIP term, the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements. "Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air sea, inland waterway or by a combination of such modes. If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier. The CIP requires the seller to clear the goods for export. This term may be used irrespective of the mode of transport including multi-modal transport.

**12. Delivered At Place (DAP)** - "Delivered at Place" means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. Parties are advised to specify as clearly as possible the point within the agreed place of destination, because risks transfer at this point from seller to buyer. The seller bears all risks involved in bringing the goods to the named place.

**13. Delivered At Terminal (DAT)** - "Delivered at Terminal" means that the seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination. "Terminal" includes a place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

**14. Delivered Duty Paid (DDP)**- "Delivered Duty Paid" means that the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

**15. Documents**- In all cases of foreign contracts, the suppliers should forward to the purchaser copies of all documents concerning delivery and payment, by speed post, courier or other fastest means of dispatch **including electronic communication**. This should be in addition to the documents dispatched to the bank for payment through Letter of Credit. The supplier should give at least six weeks notice, with regard to the readiness of the consignment, to the purchaser and his agent. The date of bill of lading or airway bill will be considered as the actual date of delivery with reference to the stipulated date of delivery in the contract.

**16. Consignee's Right of Rejection**- Notwithstanding the fact that an item may have been inspected prior to dispatch, the consignee will have the right to reject it, in whole or part, if it is observed that the item supplied does not conform to the specifications or has been damaged. Such rejection will be communicated to the supplier within 90 days of the item reaching the consignee's premise. If an item is rejected, the supplier is required to replace the item within a period determined by the supplier, which should not be less than 45 days, failing which he shall make financial restitution base don't he order value. However, in all such cases the provisions contained in the International Chamber of Commerce Publication, INCOTERM 2010, including that regarding change of the right of property, as amended from time to time, will be considered as foreign contracts are governed by international laws.

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**DPMF-23**  
**(Para 10.13.2)**

**Format for Pre-Integrity Pact clause**

**General**

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of \_\_\_\_\_ 2010, between, on one hand, the President of India acting through Shri....., Designation of the officer Ministry/Department, Government of India (hereinafter called the "BUYER", which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s\_\_\_\_\_ represented by Shri\_\_\_\_\_, Chief Executive Officer (hereinafter call the "BIDDER/Seller" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the BUYER proposes to procure (Name of the Stores/Equipment/Item) and the BIDDER/Seller is willing to offer/has offered the stores and

WHEREAS the BIDDER is a private company/public company/Government undertaking/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the BUYER is a Ministry/Department of the Government of India/PSU performing its functions on behalf of the President of India.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to , during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling the BUYER to obtain the desired said stores/equipment at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER will commit to prevent corruption, in any form by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

**Commitments of the BUYER**

- 1.1 The BUYER undertakes that no official of the BUYER, connected directly or indirectly with the contract, will demand, take a promise for accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The BUYER will during the pre-contract stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.
- 1.3 All the officials of the BUYER will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the BUYER with full and verifiable facts and the same is prima facie found to be correct by the BUYER, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the BUYER and such a person shall be debarred from further dealings related to contract process. In such a case while an enquiry is being conducted by the BUYER the proceedings under the contract would not be stalled.

**Commitments of BIDDERS**

3. The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

- 3.1 The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees brokerage or inducement to any official of the BUYER, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The BIDDER further undertakes that it has not give, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.
- 3.3 BIDDERS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.

- 3.4 BIDDERS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
- 3.5 The BIDDER further confirms and declares to the BUYER that the BIDDER is the original manufacturer/integrator/authorised government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the BUYER or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the BUYER or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the BUYER as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the BUYER, or alternatively, if any relative of an officer of the BUYER has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filling of tender. The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.
- 3.13 The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the BUYER.
4. **Previous Transgression**
- 4.1 The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.
- 4.2 The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.
5. **Earnest Money (Security Deposit)**
- 5.1 While submitting commercial bid, the BIDDER shall deposit an amount \_\_\_\_\_(to be specified in RFP) as Earnest Money/Security Deposit, with the BUYER through any of the following instruments:
- (i) A confirmed guarantee by any Commercial Bank in India, promising payment of the guaranteed sum to the BUYER on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the BUYER shall be treated as conclusive proof of payment.
- (ii) Any other mode or through any other instrument (to be specified in the RFP).
- 5.2 The Earnest Money/Security Deposit shall be valid upto a period of five years or the complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER and the BUYER, including warranty period, whichever is later.
- 5.3 In case of the successful BIDDER a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 5.4 No interest shall be payable by the BUYER to the BIDDER on EARNEST Money/Security Deposit for the period of its currency.
6. **Sanctions for Violations**
- 6.1 Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the BUYER to take all or any one of the following actions, wherever required:-

- (i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
  - (ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the BUYER and the BUYER shall not be required to assign any reason therefore.
  - (iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
  - (iv) To recover all sums already paid by the BUYER, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the BUYER in connection with any other contract for any other stores, such outstanding payment could also be utilised to recover the aforesaid sum and interest.
  - (v) To encase the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the BUYER, along with interest.
  - (vi) To cancel all or any other Contracts with the BIDDER. the BIDDER shall be liable to pay compensation for any loss or damage to the BUYER resulting from such cancellation/rescission and the BUYER shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
  - (vii) To debar the BIDDER from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the BUYER.
  - (viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
  - (ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the BUYER with the BIDDER, the same shall not be opened.
  - (x) Forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of the Pact.
- 6.2 The BUYER will be entitled to take all or any of the actions mentioned at para 6.19i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the BUYER to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER, However, the BIDDER can approach the Independent Monitor(s) appointed for the purposes of this Pact.
7. **Fall Clause**
- 7.1 The BIDDER undertakes that it has not supplied/is not supplying similar product/systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar product/systems or sub systems was supplied by the BIDDER to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the BUYER, if the contract has already been concluded.
8. **Independent Monitors**
- 8.1 The BUYER has appointed independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given).
- 8.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 8.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 8.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- 8.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the BUYER.
- 8.6 The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the BUYER including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.
- 8.7 The BUYER will provide to the Monitor sufficient information about all meetings among the parties related

to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.

8.8 The Monitor will submit a written report to the designated Authority of BUYER/Secretary in the Department/within 8 to 10 weeks from the date of reference or intimation to him by the BUYER/BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

9. **Facilitation of Investigation**

In case of any allegation of violation of any provisions of this Pact or payment of commission, the BUYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

10. **Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BUYER.

11. **Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

12. **Validity**

12.1 The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the BUYER and the BIDDER/Seller, including warranty period, whichever is later, In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

13. The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

BUYER

Name of the Officer

Designation

Deptt./MINISTRY/PSU

BIDDER

CHIEF EXECUTIVE OFFICER

Witness

1. \_\_\_\_\_

2. \_\_\_\_\_

Witness

1. \_\_\_\_\_

2. \_\_\_\_\_

\* Provisions of these clauses would need to be amended/deleted in line with the line with the policy of the BUYER in regard to involvement of Indian agents of foreign suppliers.

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**FORM DPMF-24**

**[Para 13.5.2(f)]**

**COST ANALYSIS FORMAT**

Dept / Wing	Break – Up of Fixed Price Quotation  (Rs. In Lakhs)		Appendix-I	
			Produce	
			Base Year of Quote	
			Quantity	
SI No.	Particulars	Previous Year Rs.	Year of Quote Rs.	Remarks
1.1	MATERIAL Imported i) Raw Materials Rejection ( % on (i) ii) Bought Out items Rejection ( % on (ii) Sub-total- 1.1			
1.2	Indigenous i) Raw Materials Rejection ( % on (i) ii) Bought Out items Rejection ( % in (ii) iii) ATF iv) Sub-tolat-1.2 Total- 1.1+1.2			
1.3	Freight & Insurance Charges ( % of (1.1+1.2)			
1.4	Storage & Handling Charges ( % of (1.1+1.2) Material Cost sub-Total-1			
2	CONVERSION COST Manhours x MHR Sub-Total -2			
3	NON-RECURRING COST Sub-Total – 3			
4	SUNDRY DIRECT CHARGES Sub-Total -4			
5	FINANCING COST Sub- Total- 5			
6	Total of Sub-totals (1 to5)			
7	Warranty Cost ( % of 6)			
8	Total Cost (6+7)			
9	Profit ( % of 8)			
10	Selling Price (8+9)			

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**DPMF 25 to 27 Deleted**

**DPMF-28**  
**(Para 17.5.3)**

**Salient features & Short-listing processing in EoI for Consultancy cases**

1. The EoI document shall contain following sections –
  - a. **Letter of Invitation**  
It shall include a copy of the advertisement whereby consultants are invited to submit their EoI.
  - b. **Instructions to the consultants**  
It may include instructions regarding nature of job; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction.
  - c. **Description of Services - Brief Purpose and Scope of Work**  
This may include brief purpose/objective statement; Service outcomes statement; broad scope of work including time frames; inputs to be provided by the Procuring Entity; and expected deliverables of the assignment. This may also include the place of execution of the assignment. The request for EoI shall not include the assignment ToR. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry.
  - d. **Qualification Criteria**  
This may clearly lay down the qualification criteria, which shall be applied by the Procuring Entity for short-listing the consultants. The EoI should ask for sufficient information so that the Procuring Entity may evaluate the consultant's capabilities and eligibility to undertake the assignment. Information should include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organization of the firm; and (d) general qualifications and number of key staff. In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services. Consultants should not be asked about their approach to the services or to submit any curricula vitae of key personnel because these documents will be dealt with in the RfP. No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.
  - e. For preparing EoI format, DPMF-68 may also be seen for guidance.
2. **Short Listing Process of Consultants**
  - a. The Procuring Entity shall evaluate the consultants for shortlisting, inter-alia, based on their past experience of handing similar types of projects, strength of their man power and financial strength of the firm. For example, it is important to find out if the firm: (i) is a small specialized firm or a large firm with access to a pool of expertise; (ii) has been in business for an extended period and has a track record in the field of assignment and in the region; and (iii) has appropriate certification in in-house quality control (firm adheres to the requirement of International Organization for Standardization (ISO)) as relevant to the task and has an ethics code in place.
  - b. It is important for the Procuring Entity to hire consultants who have a reputation for integrity and impartiality rooted in independence from third parties. It is seen that the process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and scope) and shortlisting criteria.
  - c. Finally, if the same firm is considered for concurrent assignments (for example, a construction supervision consultant for different stretches/packages of rehabilitation/ reconstruction of a road contract), the Procuring Entity shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list. However this needs to be pre-declared in the EoI documents.
  - d. The short list of firms is required for the selection of consultancy services in a competitive process with a minimum of three and generally not more than eight.
  - e. The Procuring Entity may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EoI. Each criteria may be sub-divided into further sub-criteria, if called for. Normally, the weightages shown in Table below may be used for such an evaluation (this is just an indicative criteria to assist the evaluators. The criteria and their weightage may be changed as per the need of Procuring Entity.

Table – Qualification criteria and their weightages

Sl. No.	Criteria	Weightage
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	Sub-criteria	Criteria Total	Sub-criteria
1	Past experience of the consultant ( track record)	60%	
	<ul style="list-style-type: none"> <li>• Number of years' relevant experience</li> <li>• Past experience of studies of similar nature</li> <li>• Past experience in carrying out <ul style="list-style-type: none"> <li>◆ Studies in the related sector</li> <li>◆ Studies carried out in the region</li> </ul> </li> </ul>		20% 50% 20% 10%
2	General profile of qualification, experience and number of key staff (not individual CVs)	25%	
	<ul style="list-style-type: none"> <li>• Qualifications</li> <li>• Relevant experience</li> </ul>		30% 70%
3	Overall financial strength of the consultant in terms of turnover, profitability and cash flow (liquid assets) situation	15%	
	Turnover figure for last three years.		50%
	Net profit figure for last three years		50%
	Totals	100%	

- f. The Procuring Entity shall short list all the consultants who secure the minimum required marks [normally 75% (seventy five per cent)]. The minimum qualifying requirement shall be specified in the EoI document.
- g. In EoI, simplified evaluation criteria can also be used, instead of marking schemes as mentioned above. A fail-pass, minimum benchmark in each criteria/sub-criteria can be specified e.g. Must have past experience of at least two similar projects; key professionals must have at least seven years' experience and must have Master's Qualification in relevant field; Firm must have a turnover of at least Rs 10 (Rupees Ten) crore and so on. Any bidder which passes these benchmarks is declared as qualified.
- h. However, this exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality.
- i. The short lists shall normally comprise at least three firms but not more than eight (to avoid inordinate delays in evaluation of subsequent RfP). The short list may comprise only national consultants (firms registered or incorporated in the country), for small assignments and indicated in the EoI. This situation is applicable where qualified national firms are available at a competitive cost or if the nature of the assignment is such that a foreign consultant's inclusion is not justified (for example, a training or outreach to be carried out in local language) or if foreign consultants have not expressed any interest. RfP documents would be issued only to the shortlisted consultants.
- j. The evaluation committee may submit its EoI evaluation report to CFA for approval. DPMF-68 can be mutadis-mutandis used for this purpose.

#### **Shortlisting – Risks and Mitigation**

Risks	Mitigation
Conflict of interest situations: It is possible that conflict of interest situations are not reported or declared by the participating consultants (or sometimes by members of the evaluation committee).	These situations need to be dealt with by signing declarations in specified formats both at the EoI bid stage as also in the technical proposal (and by CEC members before undertaking the evaluation of proposals).
Qualifications leasing: Local Bidders with insufficient qualifications may show association with well qualified (foreign or local) consultants, just to use their qualification documents to get the contract. These well-qualified consultants lease their qualification – but do not or only minimally contribute experience or key personnel at the execution stage.	This issue needs to be dealt with from the EoI stage by very clearly identifying the qualified applicant and putting on record/ contract the guaranteed contribution from the partner with qualification.

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**DPMF-29**  
**[Para 18.5 (e)]**

**Certificate for Procurement of Non-consultancy services without Bid**

“I, \_\_\_\_\_, am personally satisfied that the other services executed as described below are of the requisite scope and performance standards and have been got executed from a reliable service provider at a reasonable price.”

Description of Service:	
Justification:	
Place and Nodal Officer for Availing the Services	
Contract Basis	Lump-sum/Unit(Item)Rate/Time-based
Scope/Quantum/Performance Standards	
Rate:	
Taxes/Duties:	
Other Charges:	
Total Contract Price:	
Service provider	M/S
Vide Bill No.:	
Cheque may be drawn in favour of	
Name of Procuring Officer:	
Designation:	
Signature:	





**DPMF- 30**  
**Para 18.5 (e)**  
**Purchase Committee Certificate for Procurement of Other Services**

Description of Service:							
Justification:							
Place and Nodal Officer for availing the Services							
Contract Basis						Lump-sum/Unit(Item)Rate/Time-based	
Scope/Quantum/Performance Standards							
Details of Prices Ascertained							
Service provider	Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendation & Comments	
Selected service provider							
Unit Rate, Taxes/Duties/Other Charges							
Total Unit Rate							
Total Value of Purchase							
Cheque may be drawn in favour of							
Signature:			Signature:			Signature:	
Name1:			Name2:			Name3:	
Designation:			Designation:			Designation:	

“Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the above described Services are executed at a reasonable price and are of the requisite scope and performance standards and have been got executed from a reliable service provider and it is not debarred by Ministry of Defence/ Department concerned.” The details of recommended purchase are:

**DPMF-31**

**[Para 18.7.1(i)]**

**Activity and Other Schedule for Non-Consultancy Services**

- i) Description of Assignment
- ii) Procuring Entity's Organisation and Assignment Background
- iii) Statement of Purpose/Objectives
- iv) Statement of Assignments Outcomes
- v) Itemized Activity Schedule and Time-lines
  - a. Tasks, Activities, dependencies, categorized into classes, location and features affecting prices.
  - b. Frequency of Activities ,Quantum, Length and Duration of Activities
  - c. Performance standards for such activities
- vi) Labour/ Personnel Deployment Schedule:
  - a. Type of Personnel, Number of each type, Place, Shifts, Frequency of deployment
  - b. Project Managers, Supervisors, Their qualifications/ experience, numbers
  - c. Leave reserve and reliving staff needed are not included in the numbers of personnel, these must be included in the rate of each personnel
- vii) Material Schedule, if any: Materials, Consumables, Tools of Trade, to be consumed/ deployed, tabulate, quantum, specifications, per unit of activity/Manpower/ day/ location etc.
- viii) Essential Equipment Schedule: Deployment of essential machinery (equipment, Trucks, Cranes, Washing Machines, vessels/ crafts, plant & machinery)–mention quantity/ activity, specifications, capacity, age. Possession/ access to such machinery may also be included in the qualification requirements.
- ix) Outcomes, deliverables, reports and Time Schedule for Deliverables
- x) Statutory and contractual obligations to be complied with by the contractor: Various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations and Procuring Entity's own regulation about safety, security, confidentiality etc. must be listed, so that price implications and compliance is taken care of by the bidder.
- xi) Facilities and Utilities to be provided by the Procuring Entity to service provider at Site: It should be mentioned, if any facility /utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/Water supplied to the service provider, the same may be mentioned, including the rate of charges. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis.
- xii) Institutional and organizational arrangement
  - a. Counterpart Project Manager and Team
  - b. Chain of Command for reporting
- xiii) Procedure for review of the work of consultant after award of contract.

**DPMF-32**  
**(Para 18.9)**

**Features of Request for Proposals for Non-Consultancy Outsourcing procurements**

1. **Preparation of the RFP** - In procurement of Non-consultancy services, a standard RFP document should be basis for preparation of bid documents. There are variations in the way information and sections in standard RFPs are formulated but essential information/sections are as follows –
  - a. A letter of invitation (LoI)
  - b. Instructions to Bidders (ITB) and data sheet (which contains assignment specific information);
  - c. Qualification/Eligibility Criteria for service providers;
  - d. Activity Schedules and other Requirements:
    - i. Description of Service,
    - ii. Activity Schedule,
    - iii. Manpower Schedule: Assessment of Manpower for Deployment,
    - iv. Materials Schedule (indicating the specification and quantity of such materials/ consumables/tools to be consumed/deployed per unit activity/day/location/per manpower deployed),
    - v. Essential Equipment: Any essential equipment, machinery that the service provider must have as a qualifying requirement along with specification, capacity, age of equipment etc.,
    - vi. The statutory and contractual obligations to be complied with by the contractor,
    - vii. Services & Facilities to be provided by the Procuring Entity and respective obligations of the Procuring Entity and service provider.
  - e. General Conditions of Contract (GCC);
  - f. Special Conditions of Contract (SCC);
  - g. Formats:
    - i. Service provider's Bid Cover Letter
    - ii. Qualification Information,
    - iii. Standard formats for the technical proposal,
    - iv. Standard Format for the Financial Proposal,
    - v. Letter of Acceptance,
    - vi. Contract Form,
    - vii. Securities Formats:
      1. Bid Security (Bank Guarantee),
      2. Bank Guarantee for Advance Payment,
      3. Performance Security (Bank Guarantee)

**2. Important Provisions of RFP**

- a. **Eligibility Criteria** –Eligibility for firms to be considered as responsive bid in procurement of other (Non-consultancy) services should be specified. For example:
  - i. The bidder must be registered under appropriate authorities i.e. must be registered with Service tax authorities/ Income tax/ EPF/ESI authorities/ PSARA/PAN etc;
  - ii. Joint Ventures (JV) are normally not permitted in the procurement of other (Non-consulting) services;
  - iii. Must not have been under any declaration of ineligibility by any authority. A declaration to the effect should be furnished;
  - iv. A consistent history of litigation or arbitration awards against the applicant may result in disqualification;
  - v. Each bidder shall submit only one bid for one RfP. The system shall consider only the last bid submitted through the e-Procurement portal. In case of packaging/ slicing of services, it should be clarified, how multiple bids and discounts by a bidder in different slices would be considered.
- b. **Sample Qualifying Criteria** – Qualifying criteria to be met by bidders to qualify for award of the contract may be specified. Although the qualification criteria would depend on the type of service, its complexity and volume, but a sample qualifying criteria is given below –
  - i. **Financial Capability** –
    1. Average Annual financial turnover of related services during the last three years, ending 31st March of the previous financial year, should be at least 30% (Thirty percent) of the estimated cost.
    2. Liquid assets and/ or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the contract, of no less than the amount specified in

the BDS.

ii. **Past Experience –**

1. The bidder must have at least three years experience (ending month of March prior to the bid opening) of providing similar type of services to Central/StateGovernment/PSUs/ Nationalized Banks/Reputed Organizations. Services rendered with list of such Central/State/PSUs/Nationalized Banks/Reputed Organizations with duration of service shall be furnished.
2. The bidder must have successfully executed/completed similar services (definition of “similar services” should be clearly defined),over the last three years i.e. the current financial year and the last three financial years –
  - a. Three similar completed services costing not less than the amount equal to 40%(Forty percent) of the estimated cost; or
  - b. Two similar completed services costing not less than the amount equal to 50%(Fifty percent) of the estimated cost; or
  - c. One similar completed service costing not less than the amount equal to 80%(Eighty percent) of the estimated cost.

iii. **Equipment and Managerial Capability –**

1. Ownership/proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;
2. A Contract Manager with five years experience in services of an equivalent nature and volume, including no less than three years as Manager.

c. **Qualification Documents to be submitted:** To judge their qualification, all bidders should be asked to include the following information and documents with their bids–

- i. Copies of original registration certificate documents defining the constitution or legal status, place of registration and principal place of business; written power of attorney of the signatory of the bid to commit the bidder. Appropriate business licences/ registrations –
  1. Service Tax registration certificate;
  2. PAN number;
  3. Copies of EPF, ESI, Labour license;
  4. Copy of valid license under the Private Security Agencies (Regulation) Act,2005 or the similar Act/Rules promulgated by State in which the service is performed (in case of Security Service).
- ii. Total monetary value of services performed for each of the last five years;
- iii. Copies of work orders and experience in services of a similar nature and size for each of the last three years and details of services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
- iv. Evidence of adequacy of working capital for this contract (access to line(s) of credit and availability of other financial resources);
- v. Audited financial statements for the last three years (copies of the Profit and Loss (P/L) statements along with Balance Sheet for the concerned period);
- vi. Bank Account details;
- vii. Authority to seek references from the bidder’s bankers;
- viii. Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned and disputed amount; and
- ix. Proposals for subcontracting components of the services amounting to more than 10(Ten) percent of the contract price.

d. **Site Visit** –The bidder, at the bidder’s own responsibility and risk, may be encouraged to visit at their own cost and examine the site of required services and its surroundings and obtain all information that may be necessary for preparing the bid and entering into a contract for the services.

e. **Restrictions regarding Personnel Deployed** –The quoted rates shall not be less than the minimum wage fixed/notified by the **Central Government/State Government, whichever is higher** – where the service is performed and shall include all statutory obligations. However bids without any element of cost over and above such minimum wage (or below it) shall be treated as ‘Nil’ price quotation and would be rejected. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Procuring Entity shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Procuring Entity. The service provider shall ensure to get the Police verification for all the manpower deployed

by them and the contractor should ensure that the manpower deputed should bear good moral character.

- f. **Workmen Safety and Insurance** –The service provider shall alone be fully responsible for safety and security and insurance or life insurance of their personnel who is working on the operation and maintenance works. The service providers (a) shall take out and maintain and shall cause any Subcontractors to take out and maintain, at their(or the Subcontractors’, as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks and for the coverage, as shall be specified in the SCC; and (b)at the Procuring Entity’s request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid. The service provider shall provide and ensure sufficient protection gears like safety shoes, hand gloves, ladders, etc. are being used by their workers while carrying out works. The Procuring Entity shall not be liable for any compensation in case of any fatal injury/death caused to or by any man power while performing/discharging their duties/for inspection or otherwise.
  - g. **Liquidated Damages for Delay in Performance** -The service provider shall pay liquidated damages to the Procuring Entity at the rate per day stated in the SCC for each day that the completion date is later than the intended completion date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the service provider. Payment of liquidated damages shall not affect the service provider’s liabilities.
  - h. **Penalty for Non-performance**- If the service provider has not corrected a defect within the time specified in the Procuring Entity’s notice, a penalty for lack of performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the defect corrected, assessed as described in SSC.
  - i. **Filling up the Financial Bid by the Bidders**-The Bidder should be asked to fill in rates and prices for all items of the services described in the in the Activity Schedule. Items for which no rate or price is entered by the bidder will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. The priced Activity Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses. All duties, taxes and other levies payable by the service provider under the contract, or for any other cause, as in the month prior to the month of the deadline for submission of bids, should be included in the total bid price submitted by the bidder. For the purpose of determining the remuneration due for additional services, a break down of the Lump-sum price shall be provided by the bidder. Bidding documents should include a clause that “if a firm quotes NIL charges/consideration, the bid shall be treated as un responsive and will not be considered”.
3. **Standard Formats for Technical and Financial proposals**
- a. The standard formats for technical proposals should include –
    - i. Service provider’s Bid Cover Letter(including eligibility, following Code of Integrity in Public Procurement-CIPP);
    - ii. Power of attorney;
    - iii. Qualification Information with enclosures;
    - iv. Write up on Bidder’s Organization, confirmation of compliance with(or deviations from) Description of Services, Activity Schedule, Essential Equipment Schedule, Manpower/Team, Statutory Obligation and Facilities to be provided by the Procuring Entity, Statutory and Contractual requirements, Respective obligations of Procuring Entity and service provider, Contract For, GCC and SCC; etc. and
    - v. Enclosures: Cost of Bid/Bid Processing Fee/Bid Security.
  - b. The standard formats for a financial proposal include –
    - i. Financial Bid Format;
    - ii. Summary Price Schedule;
    - iii. Priced Activity Schedule;
    - iv. Priced Material Schedule;
    - v. Priced Miscellaneous Schedule (including administrative costs, Essential Equipment, Operating Manpower);
    - vi. Breakdown of Contract Prices.

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**DPMF-33**  
**[Appendix 'C' Part-IV Para 25(a)]**  
**Certificate of Conformity format**

Date :

No :

Product Name :

Product No :

Lot No :

Quantity :

Contract No :

Packaging List No :

THIS IS TO CERTIFY THAT THE ABOVE MENTIONED PRODUCT/S HAVE SUCCESSFULLY PASSED ALL THE ACCEPTANCE TESTS IN ACCORDANCE WITH THE RELEVANT SPECIFICATIONS AND DRAWINGS.

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**DPMF 34**  
**[Appendix 'C' Part-IV Para 32(b)]**  
**Format for MRLS clause**

Equipment \_\_\_\_\_  
OEM \_\_\_\_\_

Sl No.	Part No.	Source of Supply	Nomenclature	Nos fitted in one eqpt	ISPL reference	Unit Cost	Rec Scale for Qty 100 eqpt for two years	Total cost	Remarks
Total Cost									

**Note –**

1. Recommended scale and cost be given separately for Unit repair, Field repair, Intermediate and Base repair.
2. Maintenance spares/stores like lubricants, sealing compound, gases should be given separately giving source of supply.
3. Spares for component repairs should be included under the column of nodal repair & Base Repair as suggested by OEM.
4. In Remarks column, following information (if applicable) be given:-
  - a. If an item has a shelf/operational life it be marked as 'G' and life indicated.
  - b. Matching set of components be indicated.
  - c. Items which can be locally manufactured should be marked 'LM'.
  - d. Items which cannot be manufactured in India due to sophisticated design/technology may be marked as 'SI' special item.
  - e. If a component/assembly is common to other similar equipment offered by the OEM earlier these should be marked 'CM' and name of the equipment be indicated.
5. MRLS should be drawn out of the Part List of the equipment, which should be separately given as part of Technical Manual.
6. If the main equipment consists of other equipment, then MRLS should be prepared for them under proper heads.
7. MRLS be prepared as per the maintenance concept of the customer.
8. Items provided along with the equipment as spares should also be included in MRLS.
9. Modules/ Shop Replaceable Unit (SRU)/ assemblies should be listed and their components should be included under them so as to relate each item of spare to their module / SRU / assembly.
10. Complete MRLS should be costed separately for Field, Nodal and Base repairs as it is required to be included as part of Total Costed Engineering Support Package (ESP). OEM may give cost details in confidence to Price Negotiation Committee (PNC), but other details as above be provided during Maintainability Equipment Trial(MET).
11. MRLS for test equipment should also be provided on the similar format.

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**DPMF 35**  
**[Appendix 'C' Part-IV Para 32(c)]**  
**Format for SMT/STE/TJ/Fixtures clause**

**COMPLETE LIST OF ACCOMPANIED ACCESSORIES/ USER REPLACEABLE PARTS/ EXPENDABLES, SPARES AND SMTs/STE/TJ FOR EQPT**

**1. Sub-assemblies for equipment**

SI No.	SI No. of offer	Part No.	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**2. Accessories along with equipment**

SI No.	SI No. of offer	Part No.	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**3. Optional items**

SI No.	SI No. of offer	Part No.	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**4. Spares**

SI No.	SI No. of offer	Part No.	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**5. Additional items required for completeness of spares and consumables**

SI No.	SI No. of offer	Part No.	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**6. List of SMTs/STEs/TJs**

SI No.	SI No. of offer	Part No.	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**Note** – The Seller confirms for authenticity, completeness and correctness of the data given in this Annexure.

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## DPMF 36

### [Appendix 'C' Part-IV Para 32(d)]

#### Format for Technical Literature Clause

1. **Operator Course.** This course is designed to give the student the necessary knowledge to operate an Equipment \_\_\_ effectively. It also covers unit maintenance procedures and procedures for unit level repair and replacement of parts.

##### Course Description & Materials

- a. This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. Materials - Slide Show, User Guide.
- b. This course allows the student to do practical exercises with an Equipment \_\_\_. Materials - User Guide, Equipment \_\_\_ unit, Practical outline.
- c. This time allows the student to ask any questions they have and review for the test. Materials - User Guide, Equipment \_\_\_ unit.
- d. Operator Test - The student takes the certification test. Materials - User Guide, Test paper.

2. **Trainer Course.** This course is designed to give the student an understanding of the Equipment \_\_\_ as well as first line maintenance techniques that will help the student to keep the (Equipment) \_\_\_ working properly. In addition to that there will be a course on training others how to use the (Equipment) \_\_\_ by stressing the important issues using the (Equipment) \_\_\_. Following the course there will be a certification test which will then allow the student to train other users on the (Equipment) \_\_\_.

##### Course Description & Materials

- a. This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. It will also include first line maintenance techniques used in the field. Materials - Slide Show, Supervisor Guide.
- b. This course allows the student to do practical exercises with an (Equipment) \_\_\_. Materials - Supervisor Guide, (Equipment) \_\_\_ unit, Practical outline.
- c. This course cover the important issues in training other users on the (Equipment) \_\_\_. Materials - Trainer Guide, (Equipment) \_\_\_ unit.
- d. This course allows the students to practice training other users on the (Equipment) \_\_\_ under supervision. Materials - Trainer Guide, Slide Show, (Equipment) \_\_\_ unit.
- e. Supervisor Test - The student takes the certification test. Materials - Supervisor Guide, Test paper Trainer Guide.

3. **Field Repair Level Maintenance Training:** This course is designed to give the student an understanding of the (Equipment) \_\_\_ as well as first line maintenance techniques that will the student to keep the (Equipment) \_\_\_ working properly. Then the course will discuss the Mechanical/Automotive/Electronic/Armament portion of the (Equipment) \_\_\_. A break down of all components as well as the calibration procedure is taught. The student will then take apart and rebuild an (Equipment) \_\_\_ going over various points. Following the classes there will be a certification test which will allow the student to then do any repairs needed on the (Equipment) \_\_\_.

##### Course Description & Materials

- a. This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. It will also include first line maintenance techniques used in the field. Materials - Slide Show, Supervisor Guide.
- b. This course allows the student to do practical exercises with an (Equipment) \_\_\_. Materials - Supervisor Guide, (Equipment) \_\_\_ unit, Practical outline.
- c. This course covers all the electronics in the (Equipment) \_\_\_. A look at all the PCBs in the unit and the procedure of analyzing samples. Materials - Technical Guide, (Equipment) \_\_\_ unit.
- d. This course discusses the troubleshooting techniques used for repairing an (Equipment) \_\_\_. Materials - Technical Guide, (Equipment) \_\_\_ unit.
- e. This course cover the proper procedure in calibrating and (Equipment) \_\_\_. Materials - Technical Guide, (Equipment) \_\_\_ unit.

4. **Component level Maintenance Training.** This course is designed to train students to undertake component level repair of all assemblies, subassemblies, modules, PCBs. etc.

5. **Base Repair Maintenance Training.** The syllabus for base repair maintenance training will be finalised during MET as per the requirement of the BUYER.

6. **Technical Know How.** The SELLER shall provide the complete know how on the technology used, repair and maintenance of the equipment and shall not withhold such information during the conduct of the training. Maintenance philosophy will be discussed and suggested norms for major maintenance tasks will be provided by the SELLER.

**DPMF 37**

**[Appendix 'C' Part-IV Para 32(f)]**

**Format for Maintenance Evaluation Trials Clause**

1. This is carried out with a view to facilitate provisioning of effective engineering support for the life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance spares, tools, test equipment and technical literature. To facilitate this process, the SELLER is required to provide the following in addition to one complete set of the equipment apart from the quantity being procured vide this contract. :-

- a. Technical Literature.
  - b. User Handbook/Operators Manual.
  - c. Design Specifications.
  - d. Technical Manuals.
    - i. Part- I. Technical description, specifications, functioning of various systems.
    - ii. Part – II. Inspection/Maintenance tasks, repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs) /Special Test Equipment (STEs).
    - iii. Part – III. Procedure assembly/disassembly, repair up to component level safety precautions.
    - iv. Part – IV. Part list with drawing reference and list of SMTs/STEs Test Bench.
  - e. Manufacturers Recommended List of Spares (MRLS) with schematic references and part numbers for all the items.
  - f. Illustrated Spare Part List (ISPL).
  - g. Technical Manual on SMT/STE with drawing reference.
  - h. Complete Equipment (TOTE) & carried spares.
2. One set of Gauges.
3. One set of complete SMTs/STEs/TJs and Test set up.
4. Servicing Schedule and condemnation limits.
5. Permissive Repair Schedule for repairs possible at various levels with available infrastructure.
6. Packing specification/ instructions.
7. Any additional information suggested by the OEM such as infrastructure/facilities/Buyer furnished items for use and maintenance/repair of eqpt.
8. The vendor technical representative shall be present during complete duration of MET. On completion of MET, the SELLER can take back all the items produced for evaluation and maintenance training.

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**DPMF-38**  
**[Para 12.5.2 (C) (ii)]**  
**ANNEXURE D**

**TYPE OF LETTER OF CREDIT:**

**AMOUNT:**

**TERMS OF DELIVERY:**

**SUPPLIER: (FULL NAME AND ADDRESS)**

**BENEFICIARY: (FULL NAME AND ADDRESS)**

**DETAILS OF ITEMS:**

**BASIS OF DELIVERY:**

**CONTRACTS DETAILS:**

**BASIS OF DELIVERY: FOB / CIF**

**FROM..... (PORT / AIRPORT) TO.....**

**ADDRESS FOR SENDING DOCUMENTS:**

**CLASUSE (1) PART SHIPMENT – PERMITTED/PROHIBITTED**

**(2) TRANSHIPMENT - PERMITTED/PROHIBITTED**

**DOCUMENTS REQUIRED:**

**MOWING DOCUMENTS ARE TO BE SUBMITTED WITHIN ..... DAYS THE DATED OF DESPACH.**

**INVOICE..... NO. OF COPIES.**

**AIRWAY BILL / BILL OF LANDING ..... NO. OF COPIES**

**PACKING LIST.**

**CERTIFICATE OF ORIGIN.**

**CERTIFICATE OF CONFORMITY.**

**CERTIFICATE OF QUALITY.**

**INSURANCE/OTHER DOCUMENTS.**

**BANK CHARGES TO BE BORNE BY:**

**OTHER INSTRUCTION TO BE MENTIONED IN SPECIAL INSTRUCTION.**

**CONSIGNEE:**

**LANDING OFFICER:**

**ULTIMATE CONSIGNEE:**