



**Ministry of Defence
Government of India**



**Defence Procurement Manual – 2006
(Revenue Procurement)**



FOREWORD

Defence Procurement Manual – 2006 (DPM-2006) is an updated version of DPM-2005 which was promulgated to provide transparent requests for proposals, uniformity in interpretation of various contracting clauses and issues, clear timeframe for each stage and process of procurement to cut down on delays, general guidelines for assessing reasonability of prices and summary of CVC guidelines and banking instruments.

In **DPM-2006**, further measures taken by MoD in the light of the experiences gained during the last one year have been incorporated to make it a more effective and transparent document. Major highlights of **DPM-2006** are: -

- Incorporation of GFR – 2005 provisions relating to Limited Tender Enquiry, Cash purchase limit, purchase through Propriety Article Certificate, price variation clause and limits for advance payment.
- Apportioning quantity to L2 and L3 when L1 does not have capacity to supply as per RFP requirement, at L1's rate in line with CVC's guidelines.
- Re-floating tenders, when the Tender Evaluation Committee shortlists only one vendor, after reformulating Services Qualitative Requirement to ensure competitive bidding.
- Providing level playing field to indigenous vendors vis-à-vis foreign vendors by comparing CIF price with indigenous vendor's offer without Excise Duty, Sales Tax and local levies.



- Rate contract for common user items for three years to ensure economy of scale while providing safeguard provisions like fall clause and short closure in the event of fall in prices.
- Reduction in repeat order quantity to 50% with such orders to be placed within six months while certifying no downward trend in prices.

The updated DPM would be part of MoD Website www.mod.nic.in to ensure wide publicity and complete transparency in our defence procurement. With enhanced delegation of financial powers to the Services, the document seeks to strike a fine balance between pragmatism in the procurement process with compliance to basic financial and propriety norms, Services' Quality requirements and timely supply of revenue stores.

A handwritten signature in black ink, appearing to read 'Pranab'.

(Pranab Mukherjee)

New Delhi
August 24th, 2006

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CHAPTER I

GENERAL

Definitions

1.1. **Procurement** The term procurement means acquiring all types of equipment, stores, spares, goods and services including packing, unpacking, preservation, transportation, insurance, delivery, special services, leasing, technical assessment, consultancy, system study, software, literature, maintenance, updates, conservancy, etc. Procurement is undertaken through various types of contract, including Rate Contract, Price Agreement and Memorandum of Understanding (MOU) between the purchaser and supplier as per existing laws and procedures.

1.2. **Purchaser** In all cases of procurement on behalf of the Central Govt., purchaser is the President of India acting through the authority issuing purchase orders. In cases of procurement by the departments of the state Govt., the purchaser is the Governor of the state while for PSU, the chief executive of the unit is the purchaser. So far as Defence procurement is concerned, the President of India is the purchaser.

1.3. **Supplier.** Supplier is the party, which contracts to supply goods and services. The term includes his employees, agents, successors, authorised dealers, stockists and distributors.

1.4. **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.

(Sections-2,10,11,13 & 14 of Contract Act

1872)

1.5. **Stores** The term 'stores' applies generally to all articles and materials purchased or otherwise acquired for the use of Govt. including not only expendable, consumable, and issuable articles in use or accumulated for specific purposes, but also articles of dead stock of the nature of plant, machinery, tools and machinery spares, instruments, furniture, equipment, fixtures, armaments, victualling, messtraps, live stock and clothing etc., but excluding books publications, periodicals etc., in a library.

1.6. **Financial Powers** Financial power is the powers vested in an authority by the GOI or delegated to an authority to approve expenditure from the funds placed at the disposal of that authority. While the powers vested by the President of India is known as intrinsic powers and can be delegated to subordinate authorities, delegated financial powers can not be further sub-delegated. However, the CFA may authorize staff officers to sign the financial document on his behalf with the clear understanding that the accountability for the correctness of such documents remains with the CFA. No CFA can approve an expenditure involving amounts beyond his financial powers.

1.7. **Competent Financial Authority.** The Competent Financial Authority (CFA) is an authority duly empowered by the Govt. of India to sanction and approve expenditure from public accounts to a specified limit in terms of amount of such expenditure and availability of funds. All financial powers are to be exercised by the appropriate CFA.

1.7.1 **Next Higher CFA** Where more than one authority has been delegated financial powers under the same Serial/Head, authority with higher delegated financial power will constitute next higher CFA.

1.8. **Indent.** An indent 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 distinct item code / part No. All necessary details of the item including quantity, denomination, estimated price, specification, scope of supply, date required by and inspection authority are to be indicated in the indent to enable prompt procurement of the item.

In case of OFB, indent is an authority to undertake manufacturing of the end store and purchase of all raw materials, components on the basis of Bill of Material.

1.9. **Rate Contract.** A Rate Contract (RC) is an agreement between the Purchaser and the supplier to supply stores at specified prices during the period covered by the contract. A RC is in the nature of a standing offer from the supplier and no minimum drawal need be guaranteed. A contract comes in to being only when a formal order is placed by the CFA or the Direct Demanding Officers (DDOs) on the vendor.

1.10. **AHSP.** Authority Holding Sealed Particulars (AHSP) is the authority Empowered to draw up the specification of the item, and hold the detailed particulars of the item. AHSP may be the DGQA or an authority in the Service Headquarters for service specific items. Ordnance factories are AHSP for 'B' vehicles and items issued to indentors other than defence. The AHSP is authorised to modify, update and promulgate the specifications for the range of items under his

purview only after consulting manufacturer, user Directorate and GSEPC. The procurement officers, the suppliers and the inspection agencies will comply with the specifications drawn up by the AHSP.

1.11. **Inspection Authority.** Normally, the AHSP is designated as the inspection authority. This can be DGQA for defence related items, AHSP in service Headquarters for specified category of items and the ADG(QA) in DGS&D for general items procured by them. The inspection authority is to promulgate inspection methodology and nominate suitable inspection agency for specific contracts.

In respect of Ordnance factories, GM's are the inspecting authority for items required by indentors other than defence.

1.12. **Inspection Agency.** The Inspection authority based on the type of items and geographical location of the purchaser and supplier nominates the Inspection agency and the Inspection officer. The Inspection Officer need not necessarily be from the organisation of the Inspection authority. Departmental inspection, user inspection, joint inspection and self-certification by reputed manufacturers may also be considered for specific items where desirable.

1.13. The terms and expressions not defined herein shall have the meaning assigned to them if any in the India Sale of Goods Act 1930, or the Indian Contract act 1872, or the General Clauses Act 1897, or the other Govt. Instructions as amended from time to time.

Applicability of Provisions

1.14. The provisions contained in the DPM are in conformity with Govt. Manuals like GFR, FR and other Govt. Instructions & CVC instructions duly updated and modified and should be applicable to the Procurement activity by all wings of the Ministry of Defence. However, wherever in doubt about the import and interpretations of any specific provision in the DPM vis-à-vis the manuals and statutory provisions, the latter shall prevail. However, orders and instructions, if any in respect of various wings of the MoD, wherein different procedures and practices had crept in, would stand modified by those contained in the DPM- 2006 in order to achieve uniformity amongst the purchase practices followed by various wings of the Ministry. **The manual will be applicable to all committee (TPC/NLC/WPC/ASPC/APC) based Central Provisioning and Procurement proposals of Revenue Stores only.**

1.15 In the event of variation between provisions of DPM – 2006 and Material Management Hand Book of OFB, the contents / clarification of DPM – 2006 shall prevail.

1.16 This procedure would be in supersession of the Defence Procurement Manual 2005. DPM – 2006 will come into effect from 01 September 2006.

CHAPTER II **PROCUREMENT - OBJECTIVE AND POLICY**

Procurement

2 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, transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

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

(i) 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. Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;

(ii) offers should be invited following a fair, transparent and reasonable procedure;

(iii) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;

(iv) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;

(v) 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.

2.1 De-centralisation. With implementation of the New Management Strategy (NMS) in the three Services, the Govt. has de-centralised decision-making process so as to enhance efficiency and expedite decision-making. The procurement function has also been de-centralised and most defence departments undertake bulk of the central procurement and local purchase themselves. While DGS&D continues to conclude Rate Contracts for supply of general use items, service specific items are being procured by the procurement agencies of the service concerned. However, it must be ensured that all procurement officers meticulously follow the laid down procedures.

2.2. Delegation of Powers. With the objective of de-centralising powers to enable effective use of resources by the actual operators, financial powers have been delegated to various authorities in the defence establishments. These powers are to be used within the framework of laid down procedures, financial cannons and amplificatory instructions. The powers so delegated also imply accountability and the CFA must ensure that financial propriety and probity are observed in all cases.

Types of Procurement

2.3. **Capital Procurement.** As per Rule 90 of GFR-2005 "Expenditure of a capital nature shall be an expenditure with the object of increasing assets of material and procurement characters. It should bear charges for first construction and equipment of a project as well as charges for immediate maintenance of the work while not yet open for service. Detailed procurement procedures have been promulgated by the Govt. in the form of DPP - 2006 for procurement under Capital Head. **In respect of OFB, powers for Capital Procurement for New Capital has been delegated to OFB.**

2.4. **Revenue Procurement.** As per Rule 91 of GFR - 2005, revenue should bear all subsequent charges for maintenance and all working expenses; these include all

expenditure on working and upkeep of the project and also on such renewals and replacement and such additions, improvement or extensions, as under rules made by the Govt. are debitable to revenue account. The revenue procurement, therefore, is for 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 have been established and accepted by the Govt. For Revenue Procurement, Govt. has delegated financial powers under revenue head to a number of functionaries in each department. Procurement involving financial implication beyond delegated powers is undertaken with the approval of MOD.

2.5. **Indigenous Procurement.** Procurement from indigenous sources is called indigenous procurement. It is the policy of the Govt. to encourage indigenisation, 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 level playing field to the indigenous manufacturers. Payments against indigenous procurement are normally made in rupee terms.

2.6. **Foreign Procurement (Import).** For such defence equipment and assets, which are of foreign origin, items required to maintain and operate these equipment also need to be procured from suppliers abroad. In such procurement, international trade practices are followed and sometimes our standard terms and conditions are not acceptable to certain Russian Suppliers. Payment against foreign procurement is made in foreign currency through a Letter of Credit (LC) or Bank Transfer (BT). A number of restrictions are imposed by the foreign Govt. in respect to supply of defence related items in general and military goods in particular. All procurement officers need to be aware of these provisions to obviate complication in contracting and final delivery.

2.7. **Central Procurement.** Central Procurement (CP) is undertaken against indents resulting from the planned provisioning process like the annual review, refit planning, obsolescence planning and planned routines. Central Procurement indents are normally beyond LP powers of the provisioning authority and such procurement is undertaken by the designated central procurement agencies in the department/service. CP indents normally cover the entire requirement of the item for the duration of the provisioning period.

2.8. **Local Procurement.** Local Purchase (LP) is undertaken within the LP powers of the provisioning authority to meet ad-hoc and urgent requirement of the department. Such procurement may be done through the central procurement agency or other CFAs including units and formations.

2.8.1 **Purchase of goods without quotation :** Purchase of goods upto the value of Rs. 15,000/- (Rupees Fifteen Thousand) only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority in the following format.

"I, _____, am personally satisfied that these goods purchased are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price."

2.8.2 **Purchase of goods by purchase committee :** Purchase of goods costing above Rs. 15,000/- (Rupees Fifteen Thousand) only and upto Rs. 1,00,000/- (Rupees One lakh) only 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 Head of the

Department. The committee will 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 purchase committee are jointly and individually satisfied that the goods 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. "

2.8.3 In case of OFB substantial LP powers have been delegated for production purposes and detailed procedure has been provided for in Material Management Hand Book.

2.8.4 Provisions of DPM will not be applicable in the case of emergent requirements involving operational and technical necessities in respect of powers to be exercised by CFAs without IFA concurrence.

2.9. Cash and Carry Procurement. Cash and carry purchase is a type of LP 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 authorities who reimburses the amount after due audit of the transaction. Cash Purchase should be encouraged as not only many supplier insist on cash payment, but generally, cash purchases are cheaper than on credit.

2.10 Spot Payment. In case of critical stores, which are urgently required, wherein the supplier is not willing to accept normal payment terms, Spot payment can be effected. The spot payment limits have to be clearly laid down and the payment is to be effected by means of Cheque/Cash (as at para 2.9 above) only after inspection of stores at site. Prompt action is to be taken to bring on charge the stores and clear the advance, preferably within one month.

Purchase Policy

2.11. Product Reservation. In order to encourage indigenous manufacturing particularly by the SSI, Handloom and Khadi Bhandars, the Govt. has issued administrative instructions to reserve certain items for procurement from the KVIC, ACASH, CCIC and SSIs only. These units are also exempted from payment of Performance Security Deposit. **The special dispensation to Kendriya Bhandar and NCCF is no longer in force.** Accordingly, any purchase/procurement of goods for use by all Government of India offices **will now be guided by the relevant provisions of the General Financial Rules, 2005**, which is also available in website www.finmin.nic.in.

2.12. Price Preference. As per existing Govt. instructions, SSIs can be allowed price preference up to 15% in comparison to the large scale Industries. However, such a preference "is to be considered strictly on merit in consultation with the IFA in such a manner as to discourage inflation and prevent profiteering and creation of sense of self

complacency in economy". **The RFP can mention regarding existing Govt instructions on price preference consideration to SSIs.**

2.13. **Purchase Preference.** As per DPE's letter dated 26 Oct 2004, purchase preference is to be granted to the Central Public sector Enterprise (CPSE) **at lowest valid price (L1) if the price quoted by a CPSE is within 10% of the L1 price. Such preference is to be granted when**

- (a) Tender / Notice to invitation to tender is of Rs.5 Crores and above
- (b) CPSE's holding in JV is 51% or more
- (c) Minimum value additional of 20% or more by CPSEs/JVs by way of manufacturing and / or services.
- (d) Purchase preference provision shall be part of Notice Inviting Tenders (NIT)

2.14. **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 best value for money. However, the 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. **Vetting of necessity and single tender enquiry/LTE where required must be done by IFA within 4 weeks to pre-empt any disruption in operational/production/ maintenance requirements.** A flow chart showing major activities and time frame prescribed is placed at **Appendix 'A'**

CHAPTER III

SOURCING AND QUALITY

General

3.1. Proper source knowledge and identification of suitable suppliers capable of meeting the product quality of defence departments, particularly that of the armed forces, are vital functions for ensuring procurement of quality goods. Providing equal opportunity and ensuring fair play are also important requirements in any procurement process so as to achieve transparency. Hence, the selection and registration of firms, their performance appraisal and classification must be clearly spelt out and properly disseminated.

Registration of Firms

3.2. All central procurement agencies, including the DGS&D, are expected to regularly identify suitable sources of supply and to periodically update the vendor list. The detailed procedures for registration of firms are normally promulgated by the DGQA or the AHSP responsible for registering firms. However, in case of foreign vendors there is no role of AHSP / DGQA in registration. The list of registered vendors are to be updated every six months by DGQA and the AHSPs and all central procurement agencies are to be intimated of the same.

3.2.1 It is essential that the credentials of the firms applying for registration with the defence departments, including their financial status, the manufacturing and quality control facilities, the business ethics and their market standing are thoroughly scrutinised before registering them as an approved source of supply. On receipt of application from the firm, the DGQA/AHSP normally undertake the capacity verification of the firm and consider their capabilities as well as ability to meet the product quality required by the defence department. In case of items of special nature, type approval by the DGQA is also required, for which prototype or samples may be called for, and registration of the firm for supply of these specific items should be approved only on demonstration of satisfactory performance.

OFB can also take up registration in a transparent manner by spelling out the procedure to be followed for Vendor Registration, Grading and de-registration on lines adopted by DGQA in Joint Services Guide.

3.2.2 A vendor registered with one department of MOD can be considered for procurement by other departments of the ministry. **However, specific needs of the various Wings/departments are to be**

kept in mind and complied with. Whenever, inspection by the defence inspection agency is involved, type approval by the respective defence Inspection Authority will be essential.

Vendor Evaluation

3.3. Performance of vendors must be reviewed by the procurement agency periodically, preferably once a year. The general performance criteria for assessing performance of vendors may comprise the following:-

(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 supplier. The purchaser from his computer records could generate the percentage of orders that met the original delivery date as per contract and that, which did not.

(c) **Price.** Price competitiveness of a vendor has to be assessed against his 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 automatically generated by the computer.

(d) **Response.** The response analysis of the vendors would be indicated in terms of number of quotes submitted against the number of TEs sent to them. Computer generated data for quotes received, as a percentage of TE sent would be one of the valid criteria for response analysis.

(e) **Product Support.** Product support record of a manufacturer may be determined on the basis of response to enquiries for spare parts and maintenance services for the equipment originally supplied by him.

3.3.1 The technical and financial capabilities of the vendors must be carefully evaluated & verified by a Board of officers constituted by AHSP / Registering Agency including their past performance before issuing tenders.

Removal from the Approved List

3.4 Whenever a vendor is found lacking in performance in terms of response, delivery compliance, capacity, quality standards or ethics, the vendor may be removed from the approved list with the approval of the registering authority namely the AHSP/DGQA after giving performance notice. Besides, there may be registered firms who may have ceased to exist or may have been acquired by or merged with another firm, may have switched over to other sector of business operation or indulged in unethical business practices and influence peddling. Such firms should be removed from the list of approved vendors.

3.4.1 Whenever a firm is removed from the list of approved vendors, their registration stands cancelled. Such removal must be promulgated to all concerned agencies so that any department of the MOD conducts no further business relation with such firms who have failed to supply satisfactorily even though SOs were placed on them during a three year period.

Ban and Blacklisting

3.5 When the misconduct of a firm or its continued poor performance justifies imposition of ban on business relation with the firm or ultimately its blacklisting, this action should be taken by the appropriate authority after due consideration of all factors and circumstances of the case. Ban for a specified period of time may be imposed by AHSP/DGQA, procurement agency and the MOD. Black listing also may be approved by the AHSP/DGQA, procurement agency, keeping MOD informed.

Specification

3.6 Items bought by the defence department, particularly the armed forces, must be manufactured as per or conforming to stringent 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 concerned procurement agencies periodically. Normally, the following types of specifications are relevant to the defence items: -

- (a) **PAC Specifications**. These are available only with the PAC firm and are protected by the intellectual property right. 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 made available.
- (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 at the firms guarantee.
- (c) **Industrial Specification**. There are standard industrial specifications like the IS, BS, DIN and GOST available for sale in the market. Every purchase agency and the inspection authority should acquire such specifications and hold with them 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 armed forces. These are Joint Services Specification, Milspecs, etc. Copies of such specifications should be available with the purchase agency, inspection authority and the AHSP.

(e) **Indigenised Items**. The manufacturing agency, QA agency, DRDO and Service Hqrs, involved in the indigenisation efforts often successfully indigenise 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 as the case may be to guide future production. Such specifications should be available with the purchase agency as well as the inspection authority so as to ensure conformity to 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, can not be procured from the original manufacturer and have to be procured from another manufacturer as per sample in absence of detailed specifications or drawing. Such items are manufactured through the reverse engineering process and the supplier prepares detailed specification as well as the drawing. The purchaser and the inspection authority should acquire such specifications and drawing 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, which are common use items freely available in open market. However, as the quality of products of various manufacturers vary widely, such items should be procured from reputed manufacturers capable of meeting quality standards of the items for defence.

3.7 **Waiver of Inspection Note** There would be no requirement of Inspection

Note in respect of items procured against specification at 3.6 (f), (g) & (h) above / Commercially off the shelf (COTS)/ Self certified items for settlement of bills as these would be procured on firms guarantee. Relevant certificate from the firm may be enclosed with the bill by the procurement agency.

CHAPTER IV

TENDERING

Types of Tendering

4.1. **PAC Tendering**. Certain items, particularly equipment, are the propriety product of a manufacturing firm. Such items are only available with that firm or their dealers, stockist or distributors as the detailed specifications are not available for others to manufacture the item. In such situations, a Propriety Article Certificate (PAC) is issued to the original equipment manufacturer (OEM) and items procured on PAC basis from that particular firm or their authorised dealers or distributors. While PAC is issued only in respect of the concerned OEM, the item may be bought from any supplier listed in that particular PAC provided the purchase is accompanied by a proper manufacturer certification. PAC once issued will be valid for one year from the date of issue unless cancelled earlier by the CFA.

4.1.1 PAC bestows monopoly and obviates competition. Hence, PAC status must be granted after careful consideration of all factors like fitness, availability, standardisation and value for money. Many OEMs do not manufacture assemblies, sub-assemblies and components but out source these items. Hence, such items may be available at cheaper prices with the actual manufacturers. The procurement officers must therefore keep abreast with 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.

4.1.1.2 The PAC Certificate would be as per the following format.

- (i) The indented goods are manufactured by M/s.....
- (ii) No other make or model is acceptable for the following reasons:-
.....
.....
.....
- (iii) Concurrence of finance wing to the proposal vide:-
.....
- (iv) Approval of the competent authority vide.....

(Signature with date and designation
of the Procuring Officer)

4.1.2 Where many of the OEMs are not permitted to respond to RFP as per governmental rules / laws, as in case of Russia, RFP can be issued to such designated agencies like M/s. ROE of Russia.

4.2 **Single Tender.** As per GFR, “invitation to one firm only” is called ‘Single Tender’. Single Tendering for non PAC items may be resorted to only on the grounds of urgency or operational or technical requirements. The reasons for single tender enquiry (STE) and selection of a particular firm must be recorded and approved by the CFA prior to single tendering. Purchases on STE basis should be made from reputed firms after determining reasonableness of rates.

However, when defence PSUs/OFB have specifically developed an item for the department of defence or have taken TOT, such sources could be treated at par with the PAC firms. This, however, will not be applicable to procurements based on provisioning /scales.

4.3 **Limited Tender Enquiry.**

(i) This method may be adopted when estimated value of the goods to be procured is up to Rupees Twenty-five Lakhs. 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 as referred under Rule 142 above. The number of supplier firms in Limited Tender Enquiry should be more than three. Further, web based publicity should be given for limited tenders. Efforts should be made to identify a

higher number of approved suppliers to obtain more responsive bids on competitive basis.

(ii) *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.*

(a) The competent authority in the Ministry or Department 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 Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

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 those being tapped, is remote.

(iii) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

4.4 Open Tender. Open Tendering is the preferred mode of procurement for common use items of generic or commercial specifications to ensure adequate competition. All items of common use, which are normally available in open market with a wide range of sources, should be procured against open tender enquiry (OTE). Open tender system involves wide publicity through advertising media (Press, Trade, Journals etc). Open tender notifications will be sent to Director General of Commercial Intelligence and Statistics, Calcutta for publication in their weekly issue of Indian Trade Journal and to the DAVP, New Delhi for publication in leading National News Papers.

All OTEs should be put on the Ministry of Defence web site, service HQrs/OFB, DRDO HQrs web site (Wherever in place) to ensure wide publicity.

In case of OTE, tender forms are also sent to all registered suppliers for the particular range of items. Normally, **Four** weeks time should be given to submit the quotes. Ministry of Finance in their OM dated 17-7-2004, **Appendix 'D'** has maintained that NIT for open tenders should be on the departments website and also on the main website of NIC. This should be invariably done in case of Non-lethal/Security non sensitive items. **Bidding documents, which are distributed by an electronic system, must be secured to avoid possibility of modification and restriction of access to bidders.**

4.4.1. The details of award of tenders / contracts must be invariably placed on the website / bulletin of the organization as directed in the Commission's Order No.13/3/05 in F.No.004/VGL/4 dated 16.3.2005.

4.4.2. In OTE cases where, an unregistered firm claiming compliance of technical specifications meets the laid down technical parameters detailed in RFP, before opening the commercial bid of such firm, the approval of the sample and capacity verification by the AHSP/designated inspection agency would be mandatory.

4.4.3 While issuing TE for development order and for LTE, there should not be any mix up in the sources.

Earnest Money Deposit

4.5 Bid Security :

(i) **To safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except those who are registered with the Central Purchase Organisation, National Small Industries Corporation (NSIC) or the concerned Ministry or Department. The bidders should be asked to furnish bid security along with their bids. 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 accordingly by the Ministry or Department and indicated in the bidding documents. The bid security may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the commercial banks in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period.**

(ii) 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.

Tendering Process

4.6 **Preparation of Tender.** Tender Enquiry (TE), also called Request for Proposal (RFP), is the most important document in the procurement process. The TE must be prepared with due care and with complete details of the items or services required, terms and conditions including payment terms, and clear instructions to the bidders. The TE must contain full and clear specifications, scope of requirement and the evaluation criteria, both for technical bids and commercial bids.

4.6.1 **For commercially off the shelf (COTS) stores, where qualitative requirements and technical specifications are clear, single commercial bid system may be followed. Stores where two-bid system is to be followed are enumerated at para 4.12.**

4.6.2 Standards and specification, quoted in bidding documents shall promote broadest competition while assuring the critical performance or other requirements for the goods. Reference to the Brand names, catalogue numbers shall be avoided.

4.7 **Instruction to Bidders.** The broad instructions are as under: -

(a) **Eligibility**. Eligible bidders would be Indian companies registered with DGQA or other registering authorities **like OFB** and to manufacture the tendered items in India. Firm should obtain valid type approval certificate for the tendered item against technical specifications given in the bid documents prior to placement of order.

(b) **Clarification of Bidding Documents**. A prospective bidder requiring any clarification of the bidding documents shall notify to the purchaser in writing and the purchaser will respond in writing to the clarifications sought not later than **14 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) **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.

(d) **Bid Validity** A bid shall remain valid for **90 days in case of single bid RFP & 120 days in case of two-bid system**, unless otherwise specified, from the date of submission of offer. A bid valid for shorter period can be rejected by the purchaser, as being non-responsive. In exceptional circumstance 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. Bidding documents should be made carefully and retendering should be resorted to sparingly.

(e) **Late Bids**. Any bid received by the purchaser in case of competitive bidding, after the deadline for submission of bids shall be rejected and returned unopened to the bidder.

(f) **Modification & Withdrawal of Bids**. The 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 followed by a signed confirmation copy by post 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.

(g) **Clarification of Bids.** During evaluation and comparison of bids, the purchaser may, at its discretion ask the bidder for clarification of its 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 at the initiative of the bidder shall be entertained.

(h) **Agents of supplier.** One agent cannot represent two suppliers or quote on their behalf in a particular tender enquiry. Such quote has to be rejected. CVC (CTE) No. 12-02-6-CTE/Sp-I(1)-2 dated 07 Jan 2003 refers in this regard.

CVC circular dated 21/04/04 regarding consideration of Indian Agents reads as under.

"The Commission has received a complaint alleging that in Government tenders an agent participates by representing a company officially and another bid is submitted as a 'direct offer' from the manufacturer. At times, the agent represents a foreign company in one particular tender and in another tender the said foreign company participates directly and the agent represents another foreign company. There is a possibility of cartelisation in such cases and thus award of contract at higher prices.

2. The issue has been deliberated in the Commission. In order to maintain the sanctity of tendering system, it is advised that the purchases should preferably be made directly from the manufacturers. Either the Indian Agent on behalf of the foreign principal or the foreign principal directly could bid in a tender but not both. Further, in cases where an agent participates in a tender on behalf of one manufacturer, he should not be allowed to quote on behalf of another manufacturer along with the first manufacturer in a subsequent / parallel tender for the same item."

(j) **Preliminary Examination.** Purchaser shall evaluate the bid to determine whether they are complete, whether any computational error have been made, whether required sureties have been furnished, whether the documents have been properly signed and whether the bids are generally in order.

(k) If there is a discrepancy between unit price and total price, the unit price shall prevail. If there is discrepancy between words and figures, the amount in words shall prevail. If the supplier does

not accept the correction of the errors, its bid will be rejected and its bid security may be forfeited.

(l) Prior to detailed evaluation, the purchaser will determine the substantial responsiveness of each bid to the bid documents. A substantially responsive bid is one, which conforms to all terms and conditions of the bid documents without material deviations. Deviations from or objections or reservations to critical provision like Bid Security, Warranty and Guarantee, Applicable Law, Taxes and Duties will be deemed to be a material deviation.

(m) **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 levies & taxes i.e., ST and ED, CDE, Packing & Forwarding, Freight and Insurance etc., as indicated in the price schedule of Bid documents but exclusive of Octroi/Entry Tax which will be paid extra as per actual, wherever applicable.

(n) **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.

(o) **Right to vary quantities.** The purchaser reserves the right to increase or decrease **upto 50%** of the quantity specified in the schedule of requirements without any change in the unit price or other terms and conditions within the agreed delivery schedule.

(p) In exceptional situation where requirement is of an emergent nature and it is necessary to ensure continued supply from the existing vendors, the purchaser reserves the right to place repeat order **upto 50% of the quantities within a period of 6 months from the date of successful completion** of purchase order at the same rates and terms subject to the condition that there is no downward trend in prices.

4.8 **Format of RFP** The suggested format for RFP/TE for indigenous procurement of stores and spares as well as replacement equipment is placed at **Appendix 'B'**. The RFP would follow general principles promulgated in DPP - 2006 except the provisions relating to Field trials,

G.S. evaluation, Technical oversight committee. DPP – 2006 is available at www.mod.nic.in.

4.9 Dispatch/Transmission of Tenders. It is important that adequate care is taken to dispatch/transmit Tender Notice in such a manner to ensure that the firms get them in time. Normally, tender notices should be sent by registered post. In case of PAC or STE, these may be sent by secure FAX in addition to dispatch by mail. Even in case of advertised or open tendering, Tender Notice must be sent by post to the past successful suppliers and likely suppliers registered with the department.

4.10 Publicity. OTE and global Tenders are required to be published in the newspapers and ITJ, Calcutta. OTE should also be put on the MOD web site, the web site of the respective department, where available so as to ensure that all firms capable of supplying the items/service come to know about the TE. In cases of procurement of highly sensitive nature having national security implications, the tender documents are not be put on the web site. In such cases decision must be taken at the level of CMD or Head of the department, recording specific reasons for not putting an open tender on web site. In this regard, CVC No. 98/ORD/1, office order No. 44/7/04 dated 05 Jul 2004 is placed at **Appendix 'C'**.

4.10.1 Ministry of Finance vide their OM dated 14 Jul 2004 has enjoined upon all Govt. departments to

(a) Publish all NITs (Notice Inviting Tenders), as case of open tenders on their websites and also on website of NIC.

(b) Put copy of S.O. exceeding Rs. 5 lakhs on website to facilitate information sharing on similar purchase. Copy of OM dated 14 Jul 2004 is placed at **Appendix 'D'**. This should be done in the defence context for 'non-lethal items' / security non sensitive items only.

Composition of TEC

4.11 TEC, wherever formed should invariably have a user rep, rep of designated inspection agency, rep from procurement agency and CFA rep apart from the Chairman. Finance rep need not be associated in TEC.

Two Bid System

4.12 There are cases of procurement where it becomes essential to seek both technical bids and commercial bids for proper evaluation of offers. Two-bid system of tendering should be followed for plant and machinery equipment, complex items like IT and communication systems and in turn key projects

where qualitative requirements (QRs), technical specifications can not be clearly firmed-up ab initio as they are not clearly known and which would involve Techno-Commercial evaluation. **IT equipments can be procured by availing of DGS&D rate contracts** for which suitable inspection/ testing will need to be carried out by the customer or **registered vendors of DGS&D can be selected for limited tenders** and **thereafter competitive bidding system followed**

4.12.1 The RFP should lay down user requirements in a comprehensive, structured and concrete manner and should be broad based and express the user requirements in terms of functional characteristics. It's formulation must not prejudice the technical choices by being narrow and tailor-made.

4.12.2 The performance parameters should be verifiable and classified as :-

- (a) Essential parameters providing for minimum essential military requirements.
- (b) Fulfillment of essential parameters would be the basis for further consideration by TEC (Technical Evaluation Committee).

4.12.3 **Waival & RFP:-** Waival/amendments of parameters (QRs) can be done by respective Service HQrs before issue of RFPs. Once QRs have been finalized, the sources of procurement shall be ascertained and short-listed out of OEMs, authorized vendors etc. The RFP should contain four parts, viz, first part elaborating general requirement of the equipment, nos. required, time frame for deliveries, ESP, training warranty and guarantee conditions etc., Second part to delineate essential and desirable parameters, the third part to outline the commercial aspects namely the payment terms, performance guarantee, Warranty guarantee and standard contract terms and the fourth part to define the criteria for evaluation and acceptance in terms of technical and commercial contents.

4.12.4 There should be no waiver of parameters after the issue of RFP as there would be legitimate allegation of denial of opportunity by firms who could have met the diluted essential parameters had these been tendered abinitio. This is particularly relevant with single vendor/resultant single vendor where waiver to essential parameters is given after issue of RFP and receipt of tenders.

4.12.5 **TEC:-** A broad based TEC including representatives of user service, maintenance agency and SQ as deemed necessary will prepare a compliance statement bringing out the extent of variations and differences, if any, in the technical characteristics of equipment offered by various vendors with reference to QRs and compliance or otherwise to essential parameters. The TEC shall invite those vendors who meet essential parameters for technical presentation /clarification. The Finance Member need not be a member of the TEC. The TEC report should be approved by the respective CFA for approving the procurement. The TEC report will be in the format as given at **Appendix 'E'**. The following aspects should be kept in mind by 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 to be given to any vendor to upgrade his project to make it QR compliant.
- (d) Original commercial quotes must remain firm & fixed and no loading/unloading in price be permitted during TEC's discussion with vendor.

4.12.6 Those offers which meet the essential parameters and recommended by the TEC and duly approved by CFA, would be considered by the Price Negotiation Committee who in turn will evolve methods for benchmarking of price and holding internal meetings to finalise approach for conducting negotiations with L₁ vendors.

4.12.7 In case of procurement (whether from indigenous or from foreign source) involving two-bid system, it may not be practicable to incorporate all possible details in the technical spec(s), thereby requiring elaborations/clarifications during technical discussion. This may necessitate submission of revised commercial bids consequent upon discussion during TEC/CNC.

4.12.8 If the original price bids have not been opened, it would be advisable to give equal opportunity to all technically acceptable vendors to give their revised commercial bids in a sealed cover. The CNC would take into account the revised commercial bids to arrive at L₁.

4.12.9 Before taking such a decision for calling revised commercial bids where original price bids have not been opened, approval of CFA would be invariably taken. The Supreme Court, in its judgment, in FCI Vs Kamadhenu Cattle Feed Industry (1993) had also endorsed the approach to give equal opportunity to all qualified vendors.

4.12.10 CVC has suggested that technical specifications should be firmed up in a prebid conference in two-bid tender and it would be "desirable not to invite fresh commercial bids after opening of technical bids".

Tender Opening

4.13 In case of two-bid system, only technical bids are opened first. In such cases, the tender opening officer/committee should sign on the sealed envelopes containing commercial bids and obtain initial of the trade representatives, if present. Thereafter, these sealed envelopes are to be placed

in a bigger envelope and sealed duly signed by the tender opening officer/committee and trade representatives.

4.13.1 In order to facilitate the bidders to submit their bids in time and with assurance of receipt by the department, a tender box is to be placed in an easily accessible but secured place clearly indicating the name of the department and the term 'Tender Box'. On the pre-published tender opening date, the box is to be opened by the tender opening official, preferably a committee of at least two officials, at the time and place already promulgated. The firm's authorised representatives are invited and permitted to attend the tender opening.

4.13.2 In cases where the tenders are required to be submitted by hand, it may be ensured that the names and designation of atleast two officers are mentioned in the bid documents. The information about these officers should also be displayed at the entrance reception of the premises where tenders are to be deposited so as to ensure convenient approach for the bidders.

(CVC OFF Order No.41/06/04 dated 08

Jun 04)

4.13.3 The tender opening officer/committee, should open the envelopes in presence of the trade representatives, serially number each bid and initial with date on each page of the tender. The prices and important terms and conditions should be encircled and initialed in red ink and any alterations in tenders made by the firm should be initialed legibly to make it perfectly clear that such alterations were present on the tender at the time of tender opening. The tender opening officer/committee should read out the name of the firm, EMD, if any, and the prices, taxes, duties quoted by the firm.

Tender Evaluation

4.14 **Technical Evaluation.** Whenever there is a two bid system of tendering followed, technical evaluation of the bid becomes a vital step not only to ascertain conformity of the technical bid with the technical specifications of the tender, but also to bring all bidders on a level playing field in respect of qualitative requirement. Technical evaluation is normally carried out by a technical evaluation committee (TEC) and IFA need not be associated at this stage. TEC report, once finalised would be sent to CFA for acceptance.

4.15 **Commercial Evaluation.** Evaluation of commercial bids is the core activity in any purchase decision. If the correct evaluation of quoted rates, freight, insurance, taxes, duties and other expenses involved is not carried out as per criteria incorporated in the RFP, purchase decision

may become deficient and faulty. While detailed guidelines on establishing reasonability of prices and ranking of bids are also discussed in Chapter 13, some factors which need to be taken into account are:-

(a) **Duties and Taxes.** All taxes and duties to be paid in connection with the procurement of an item need to be considered including those for which exemption certificates are issued.

(b) **Delivery Period.** Delivery Period and delivery compliance are important variables for evaluation of bids.

(c) **All Inclusive Cost on Delivery.** The ultimate cost to the state on delivery to the consignee's premise should be the deciding factor for ranking of bids.

Amendment and Extension of Tender Opening Period

4.16 Whenever, amendment to the tender enquiry becomes necessary either due to change in required quantity or specification or as a result of clarification to the query of the supplier, such amendments must be intimated to all vendors to whom the TE was sent. Time allowed for submission of tender would be 3 weeks (minimum) for LTE, 4 weeks (minimum) for OTE, 6 weeks for GTE with a maximum period of 3 months.

Any extension of Tender opening period beyond this would require approval of next level CFA.

Such extension and amendment of tender documents must be published in Indian Trade general/National Dailies/Departmental Web sites.

Resultant Single Vendor Situation

4.17. If at TEC stage only one vendor is found complying to all the SQR parameters, then the RFP would be retracted with the approval of CFA and a fresh RFP issued by suitably reformulating SQRs.

4.17.1 The SHQs would institute suitable MIS for procurement cases exceeding **Rs one crore**, where such resultant single tenders have resulted with a view to relooking at QRs and ways & means to increase

vender base & response. A consolidated quarterly report in this regard would be rendered to the MoD / MoD(Fin).

Re-tendering

4.18 **Re-tendering** – Re-tendering may be considered by the TPC/CFA with utmost caution, under the following circumstances: -

- (a) Offer do not confirm to essential specification.
- (c) Wherever there are major changes in specification and quantity, which may have considerable impact on the price.
- (c) Prices quoted are unreasonably high with reference to assessed price or there is evidence of a sudden slump in prices.
- (d) There may be cases when the lack of competition is due to restrictive specification, which do not permit many vendors to participate. The CFA must consider if there are reasons for review of specification of the item to facilitate wider competition. Re-tendering will be done only after approval of IFA and CFA in all cases.

4.19 In case L₁ Tenderer withdraws his offer, re-tendering should be resorted to as per CVC instruction.

CHAPTER V

APPROVAL PROCESS

CFA- Competent Financial Authority

5.1 **Individual CFA** -A number of authorities at various levels have been vested with financial powers and they act as the CFA in their official capacity subject to the financial limit and prescribed conditions. The individuals, who are CFA, can sanction and approve expenditure with or without concurrence of IFA as prescribed in regulation. A CFA may, at his own discretion or if so stipulated, can appoint an advisory or Price Negotiation Committee (CNC) to assist him in decision-making. However, his decision will be final and at his own responsibility and accountability.

5.2 **Committee CFA** In some cases, the financial powers are not vested in an individual but in a committee which becomes a CFA. Normally, the composition of the committee is also stipulated in Govt. regulations and the finance member is invariably a part of the committee CFA. Such committee CFA holds their own CNC and takes a collective decision. Each member is responsible and accountable for the quality of decision made.

5.2.1 **Disagreement.** In case of disagreement with the IFA, the CFA can over rule the IFA and send a report to the next higher CFA as well as the IFA/CDA giving intimation along with reasons for over ruling the financial advice. In such a situation, it would be open to the IFA to take up with the higher IFA and CFA or drop it.

Sanction and Indent Approval

5.3 A sanction is a written authority from the CFA authorising the expenditure. A sanction invariably indicates the reference to authority under which expenditure is being authorised, the financial implication, the item for which the expenditure is approved and the budget code head. Whenever the final expenditure exceeds the sanctioned amount, additional financial sanction of the respective CFA, subject to limit of delegated powers, is to be obtained.

Acceptance of Necessity.

5.4 **AON in case of scaled items would actually amount to vetting of quantities, assessment of physical requirement of various resources with respect to targets fixed and budget availability. Where there is no**

difference of opinion regarding procurement of scaled items, RFP could be vetted simultaneously.

5.4.1 In case of Non scaled and New items, existing process of obtaining AON will continue. (DPB ID dated 05.11.2004).

5.4.2 In case of AON of scaled items where inventories are maintained through automated systems and IFAs have been provided terminal on the same, vetting by IFA will be restricted to quantity vetting only and the same will be done on the automated systems based on data available in such automated systems within five working days for the normal cases and two working days for urgent/ operational cases; otherwise the case can be processed for CFA approval.

Where inventories are not maintained through automated system, vetting of quantity will be done for scaled items by IFAs within seven working days.

5.4.3 For orders to be placed on OFB for revenue items, Statement Of Case will be processed for quantity vetting. Thereafter in such cases approval of CFA will be sought and indents placed on OFB. Further, where the item (s) are in the product range of OFB, special dispensation would have to be taken before floating RFP to non-DGOF sources.

Technical Negotiation

5.5 There are cases when there is a felt need for technical evaluation of offers or some clarification necessary about the technical parameters of the item/equipment before considering order placement. In such cases, two bid system is followed and quotations are invited as separate technical and commercial bids. Initially, only technical bids are opened and a duly appointed Technical Negotiation Committee carries out, technical evaluation. The TNC is not authorised to discuss commercial aspect of the case. IFA need not be associated in TNC.

5.5.1 The main objective of the TNC is to prepare technical matrix showing how the technical parameters of bids received compare with against the parameters tendered out. RFP must provide for essential and desirable parameters. If the offers confirm to essential parameters they should be accepted. The recommendations of TNC should be put up to the CFA for approval.

Price Negotiation

5.6 Price negotiation is normally required to ensure that the interest of the state is fully protected and the price paid is reasonable. Such negotiations are invariably conducted by a duly appointed Commercial Negotiation Committee (CNC) including a finance member unless the negotiation is carried out by the committee CFA itself. CNC is invariably conducted in case of single tender situations including PAC cases, or when price is considered high with reference

to assessed reasonable price. CNC should determine L1 and put up their recommendations to the CFA for approval. 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.

5.7 **Composition of CNC.** Apart from the Chairman, there should be a rep. of user, Finance, Designated inspection agency, Maintenance Agency and the CFA where applicable. CFA can co-opt any other member like a costing expert in case of high value single vendor offers.

5.8 **Price Reasonableness** The basic objective of the CNC is to establish reasonableness of price being paid by the Govt. This is a complex task and many factors need to be considered. Detailed guidelines are contained in Chapter 13 of this manual. 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 intricacies involved, whether of current production or otherwise, maintenance requirements, spares and warrantee etc. need to be considered while examining price reasonableness.

Role of CFA in Purchase Decision

5.9 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 elements of the CFA process is the need to ensure level playing field to all bidders by proper ranking of their offers so that the decision making process is totally transparent. The financial implication should be considered as the all-inclusive cost to the state on delivery to the designated consignee. Conditional offers and those with specifications not in conformity with the tendered specifications(Essential QRs) should not be considered.

5.9.1 While taking the purchase decision, the CFA needs to establish whether or not proper procedures have been followed at various stages of procurement, purchase policies of the Govt. 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 written form.

Apportionment of Quantity

5.10 If L₁ does not have the capacity to supply within the delivery period as per RFP, after loading L1 fully as per its capacity and past delivery,

order can be placed on L₂, L₃..... for the balance quantity at L₁'s rate.

Repeat Order

5.11 Repeat orders against a previous order may be considered for approval by the respective CFA in urgent cases subject to the following stipulation: -

- (a) Items ordered have been delivered successfully.
- (b) Original order did not cover urgent/emergent demand.
- (c) It is not placed to split requirement to avoid sanction of the next CFA.
- (d) There is no downward trend in price as ascertained through market intelligence.
- (e) The firm is prepared to hold the same prices terms and condition including delivery schedule as per service requirement.
- (f) The requirement is for stores of identical nature/specification, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence should not be precluded from purview of repeat order.
- (g) It is placed within 6 months from the date of supply against previous order and only once.
- (h) Repeat order quantity is to be normally restricted to a maximum of 50% of last order quantity, both in case of indigenous procurement and import orders.
- (j) The original order placed should be on the basis of lowest (negotiated) price and was not on delivery preference.
- (k) Power of CFA would be reckoned keeping in view original Qty plus repeat Qty.
- [l] This provision could be exercised in case of PAC/Single Vendor OEM case. However, **where multiple vendors are available, necessary care should be taken in exercising the option clause.**
- (m) **In case S.O/contract where option clause has been availed of, it may not be desirable to place further repeat orders.**

(DPB ID dated 18.10.04)

Accountability

5.12 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 the objective to optimize resources being used. The designated CFA and all members of committee CFA are accountable for all decisions taken by them while approving any measure involving Govt. funds. This accountability is unconditional and absolute.

Role of IFA

5.13 The defence managers, particularly the military leaders may not possess adequate expertise in financial matters. The IFA is therefore an important advisor to the CFA with expertise in financial matters as well as about rules and regulations. The IFA must participate in the decision making process as a team member and be accountable for optimal use of resources allocated and achievement of organisational targets / goals.

Recording of Minutes

5.14 The CFA and IFA must ensure that there is proper documentation at each stage viz AON, TEC and CNC and discussion leading to finalisation of contract clauses and prices be properly recorded providing detailed justification for taking decision and accepting deviations from standard terms.

5.15 **At Indenting Stage.** The IFA is supposed to vet the quantity indented/ projected for procurement as at para 5.4 above, so as to ensure timely provisioning. In order to ensure that is no infructuous provisioning, the IFA must have access to all inputs required to assess the basis of the projection of indented quantity. 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. **However, such vetting must be completed expeditiously within the stipulated timeframe so as to obviate delays in meeting the operational/production and maintenance requirement.**

5.16 **Tendering Stage.** Vendor selection and tendering methodology are vital activities in the procurement process. The IFA, should be consulted in case of STE and LTE. In case the list of approved vendors have been forwarded by the AHSP then IFA need not be consulted at this stage. Vetting of TE will be required where there are deviations from standard terms.

5.16A Both RFP vetting of STE/ LTE enquiry could be processed simultaneously through IFA.

5.17 **Procurement Stage.** IFA plays an important role in advising the CFA, either as a member of the committee CFA or as an advisor to the designated CFA, regarding the propriety of procedures and practices followed, ranking of bids, determination of L1, fixation of reasonable price (Bench marking) and assessment of price reasonableness as well as in conduct of effective negotiations, where considered necessary to ensure both financial probity and value for money.

5.18 **Post Contract Management.** Post contract activities, particularly amendment to the contract or the terms and conditions thereof need to be handled with a lot of care and after proper analysis of implications. The IFA is to be consulted in post contract amendments having financial implications. Concurrence of IFA should be obtained if such DP extension is proposed without imposing LD. However, amendments and post contractual activities as per the terms and conditions of the contract may be approved by the CFA and concurrence of IFA would not be needed unless there are deviations and financial implications.

5.19 **Time Frame.** It is imperative that the procurement process is fully responsive to the need of the defence services and department and facilitates expeditious procurement so that requirements are met on time. To this end, it is essential that all scrutiny and vetting are undertaken expeditiously and advice rendered within a specified time frame. Ministry of Finance task Force constituted on revision of procurement Norms has recommended (11/2003) that there should be clear time frame for each process and stage of procurement.

5.20 The time frame as placed at **Appendix 'A'** and **'A1'** is suggested for all activities in the procurement process to ensure that the bids are finalised within validity period. Two time frames are being provided, one for normal commercial offers and another involving two-bids. In case, time frames can't be adhered to in specific cases, extension to validity of bids should invariably be asked for.

CHAPTER VI

CONTRACT

Law

6.1. The statutory provisions governing purchase transactions are:-

- (a) Indian Contract Act 1872.
- (b) Indian Sale of Goods Act 1930.
- (c) Arbitration and Conciliation Act 1996.

6.1.1 Govt. contracts, including those for defence procurement, are governed by the same law, which are applicable to private contracts. An agreement is called a contract enforceable by law when the following conditions are satisfied. A defect affecting any of these conditions renders a contract unenforceable.

- (a) **Competency of the Parties.** Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into a contract. Minors, persons of unsound mind and those declared insolvent cannot enter into contracts.
- (b) **Freedom of Consent of both Parties.** The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.
- (c) **Lawfulness of Consideration.** 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.

6.1.2 Categories of persons or bodies capable of entering into legal contract include individuals, partnership concerns, limited companies, state agencies and corporations.

6.2 **Parties to Contract.** The parties to contract are the purchaser and the contractor named in the schedule of contract.

Signing of Contract

6.3 All contracts concluded by the departments of the central Govt. are in the name and behalf of the President of India. However, the contract, after due approval of the CFA, may be signed by a staff officer, duly authorised by the CFA in writing. The specimen signature of such staff officer is to be sent to all concerned including the paying and inspection authority. As for the contractor, the person signing the offer or conveying the acceptance of the contract is deemed to have been authorised by the supplier unless otherwise stated.

Acceptance of Contract

6.4 Any contract, when not signed by both parties, namely the purchaser and the supplier, is deemed to come in to force with the acceptance of the tender as per mutually agreed terms and conditions contained in the TE and the firm's offer. However, the firm should check the order copy and convey their 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.

6.4.1 **Contract Effective Date** The contract effective date is to be invariably indicated in each contract as per agreed terms and conditions. The effective date will be the date on which the last of the conditions, as applicable, is complied with, viz :-

- (a) Date of signing of contract.
- (b) Furnishing of performance Bond in the form of PBG by the seller
- (c) Obtaining 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 contract.
- (d) Receipt of Bank Guarantee for advance payment
- (e) Date of Issue of End User Certificate. The supplies shall provide the End User Certificate within 30 days of signing of the contract.

Types of Contract

6.5 Govt. 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. Though the provisions contained in the manual may not be applicable to the contracts for works and project in totality, these will normally apply to all other types of revenue contracts. The general categories of contract could be:-

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

Amendment to Contract

6.6 Amendment to a contract already concluded may become essential in certain situations when either side requests for such a change and the same is acceptable to either side :-

- (a) For enhancement in contract rates financial concurrence of IFA has to be invariably obtained except in cases where the contract provides for price variation clauses or the change is due to variation in ED/Custom Duties.
- (b) Financial Advisor should be consulted for vetting of price variation clauses/exchange rate variation clauses.

6.6.1 In case of MOD contracts, approval of concerned JS in consultation with Def (Fin) would be necessary for amendment to contract under his delegated powers.

Termination of Contract

6.7 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 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 the supplier is not in a position to either rectify the defects or offer items conforming to the contracted quality standards.

(f) Any special circumstances, which must be recorded to justify the cancellation or termination of a contract.

6.8 Transparency, competition, fairness and elimination of arbitrariness in the procurement process :

All government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. Some of the measures for ensuring the above are as follows:-

(i) 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 bidding document should contain, inter alia;

(a) 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.;

(b) eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc which may required to be met by the successful bidder;

(c) the procedure as well as date, time and place for sending the bids;

(d) date, time and place of opening of the bid;

(e) terms of delivery;

(f) special terms affecting performance, if any.

(ii) 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.

(iii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document.

(iv) The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.

(v) The bidders should be given reasonable time to send their bids.

(vi) The bids should be opened in public and authorised representatives of the bidders should be permitted to attend the bid opening.

(vii) 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. Efforts should also be made to use standard specifications which are widely known to the industry.

(viii) Pre-bid conference : In case of turn-key contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment, a suitable provision is to be kept in the bidding documents for a 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 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.

(ix) Criteria for determining responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for

awarding the contract to the responsive lowest bidder should be clearly indicated in the bidding documents.

(x) Bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; no new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids. Determination of a bid's responsiveness should

be based on the contents of the bid itself without recourse to extrinsic evidence.

(xi) Bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids.

(xii) Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation against an ad-hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.

(xiii) In the rate contract system, where a number of firms are brought on rate contract for the same item, negotiation as well as counter offering of rates are permitted with the bidders in view and for this purpose special permission has been given to the Directorate General of Supplies and Disposals (DGS&D).

(xiv) Contract should ordinarily be awarded to the lowest evaluated bidder whose bid has been found to be responsive and who is eligible and qualified to perform the contract satisfactorily as per the terms and conditions incorporated in the corresponding bidding document. However, where the lowest acceptable bidder against ad-hoc requirement is not in a position to supply the full quantity required, the remaining quantity, as far as possible, be ordered from the next higher responsive bidder at the rates offered by the lowest responsive bidder.

(xv) The name of the successful bidder awarded the contract should be mentioned in the Ministries or Departments notice board or bulletin or website.

6.9. Efficiency, Economy and Accountability in Public Procurement System : Public procurement procedure is also to ensure efficiency, economy and accountability in the system. To achieve the same, the following keys areas should be addressed :-

(i) To reduce delay, appropriate time frame for each stage of procurement should be prescribed by the Ministry or Department. Such a time frame will also make the concerned purchase officials more alert.

(ii) To minimise the time needed for decision making and placement of contract, every Ministry / Department, with the approval of the competent authority, may delegate, wherever necessary, appropriate purchasing powers to the lower functionaries.

(iii) The Ministries or Departments should ensure placement of contract within the original validity of the bids. Extension of bid validity must be discouraged and resorted to only in exceptional circumstances.

(iv) The Central Purchase Organisation (e.g. DGS&D) should bring into the rate ontract system more and more common user items which are frequently needed

in bulk by various Central Government departments. The Central Purchase Organisation (e.g. DGS&D) should also ensure that the rate contracts remain available without any break.

6.10. **Project Monitoring:** Where ever revenue spending is in the nature of a project with diverse elements like civil works, manpower induction, testing/evaluation, erection and commissioning warranting synchronized action, formal structure must be put in place to review major physical & financial milestones with reference to PERT chart with a view to avoiding time and cost overruns.

CHAPTER VII

CONDITIONS OF CONTRACT

Conditions of Contract

7.1. Contract is a legal document and must be governed by certain terms and conditions to protect the interest of both parties. It is important that each purchase officer is not only thoroughly familiar with each of the conditions of 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 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.

Standard Conditions of Contract

7.2.1 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 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 publicised on the Defence web site also. 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 between the parties. The draft standard conditions of contract is placed at **Appendix 'F'**. The draft SCOC is exhaustive. The relevant clauses as applicable should be included in all contracts.

7.2.2 Similarly while placing Supply Order on the Firms/PSUs, these general conditions should in spirit also be applicable. Acceptance of Supply Order by the Firms/PSUs is essential to make the same as legally valid document.

Special Conditions of Contract

7. 3. Special conditions of contract are supplementary conditions applicable to the specific tender and contract. Such conditions become essential particularly in cases of contract for supply of services or even equipment. 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 mentioned in the Tender Enquiry as well as in the contract.

Security Deposit /Performance Bank Guarantee (PBG)

7.4. Performance Security deposit payable to the purchaser is furnished by the supplier, in the form of Bank Guarantee (BG) issued by a scheduled bank in the prescribed format, within 30 days from the date of contract. This 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. Preferably, performance security is payable by the supplier at the rate of **5%** of the contract value. PBG should remain valid for a period of 60 days beyond the date of completion of contract including warranty. The BG is returned to the supplier on successful completion of all his obligations under the contract. In case the execution of the contract is delayed beyond the contracted period and the purchaser, with or without LD, grants extension to delivery period, the supplier must get the BG revalidated if not valid already. **SSI units registered with NSIC/DGS & D are exempt from paying Security deposit.**

Delivery

7.5. Timely delivery as per DP stipulation in 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 stores are considered to have been delivered only when these are handed over to the consignee after due inspection by the designated inspection agency. Most contracts stipulate door delivery at the consignee's end by road. In some cases, the stores are also despatched 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.**

7.5.1 On receipt at the consignee's premise, 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.

7.5.2 When the supplies do not materialise by the stipulated contract delivery date, the purchaser has the option of

- (a) Extending delivery date.
- (b) Re-fixing delivery date.

(c) Cancel the contract and repurchase non-supplied qty.

7.5.3 For deciding on these options the Purchase Officer 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 competent Purchase Officer is convinced that supplier would come forward during extended DP. Detailed instructions are contained at chapter 12 of DGS &D Manual 1998.

Liquidated Damages (LD)

7.6 Compensation of loss on account of late delivery **where loss is pre-estimated and mutually agreed to** is termed as the Liquidated damage (LD). The guidelines for levying LD for delayed supplies as given in GOI Letter No. 2(5)/2000/D(Supply-II) dated 05th Nov 2004 is placed at **Appendix 'G'**

7.6.1 Law, allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [Mala Baux Vs. UOI (1970)]. 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 a given situation may be less than the sum stipulated.
- (c) What is reasonable sum depends on fact.
- (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 L/D 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.

7.6.2 Consequential damage is imposed over and above LD in case of time critical Turn Key Projects.

7.7 **Quantum of LD.** As a general rule, if the contractor fails to deliver the stores or any installment thereof within the DP or at any time repudiates the contract before expiry of such period, the CFA without

prejudice to the right of the purchaser to recover damages for breach of contract may recover from the contractor as agreed L/D including admin expenses and not by of penalty a sum equivalent to **0.5%** of the prices of any stores which the contractor has failed to deliver within the period agreed for delivery in the contract, for **each week or part thereof** during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period. The total damages shall not exceed **value of 5% of undelivered goods. The LD cannot exceed the amount stipulated in the contract.** [NC Sanyal Vs. Calcutta Stock Exchange (1971)]

7.8 **Deleted**

7.9 **Waiver of LD.** There could be cases when the delay in delivery was due to reasons not within the control of the supplier or when the supplier cannot be held responsible for the delay in delivery. In such cases, the CFA may consider waiving off the LD with the concurrence of IFA. However, in such cases, adequate reasons must be recorded to justify such a waiver of LD.

In **cases where the original contract was approved by Joint Secretary** or higher authority, **DP may be regularized either by waiving L/D with the approval of concerned Joint Secretary in consultation with Def (Finance).**

Payment

7.10 **Payment Terms.** 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 part payment. Such requests can be considered by the CFA for acceptance on merit of individual cases.

7.11 **Advance Payment.** Normally no advance should be offered in the TE. However, if it is decided to provide advance payment, the %age should be incorporated upfront in RFP& could be upto the %age laid down in Rule 159(1) of GFR-2005 with Bank Guarantee. Advance %age exceeding 15% would require approval of FA(DS) & Defence Secretary.

There could be contract with stage payments on achievement of milestones. These should be clearly notified upfront in RFP with the approval of CFA & IFA.

Further as per CVC Guidelines, mobilisation advance should be interest bearing. However, in MoD contracts, due to operational requirement, urgency

etc., it may not be possible to obtain such terms from the supplier. In such cases, necessary record of circumstances and facts may be kept to that effect.

7.12 **Paying Authority.** The CDA is the paying authority for most contracts by the defence department. Normally, the designated office of the CDA, including IFAs, preferably co-located with the central purchase organization release the payment. **Payment should be made within 21 working days in respect of bills supported by requisite auditable documents.** Consolidated observations, if any should be forwarded within 10 working days by paying authority to the CFA.

7.12.1 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 can be made through ECS/EFT 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 is at Annexure II A.

Option Clause

7.13 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 has been incorporated in the original contract with the supplier. Option quantity during extended DP is limited to 50% of balance quantity after original Delivery Period.

7.13.1 Option clause can be exercised with the approval of CFA under whose powers total value of supplies of original contract plus 50% option clause falls. This option is normally exercised only when there is no downward trend in prices as ascertained through market intelligence. CVC in their letter-dated 3.06.2004 have also reiterated the need to look at the downward trend before exercising option clause.

7.13.2 In case of single vendor OEM, option clause should be normally operated up to 50% subject to there being no downward trend. However, in multi vendor contracts, great care should be exercised before operating option clause up to 50%.

Risk and Expense Purchase

7.14 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 at the expense of the supplier, the purchaser must satisfy himself that the supplier has failed to deliver and he has been given

adequate and proper notice. Whenever, risk purchase is resorted to, the supplier is liable to pay the additional amount spent by the Govt., if any as compared to the contracted amount. Factors like method of recovering such amount should also be considered while taking a decision to invoke risk purchase.

7.14.1 Risk purchase at the cost and expense of the supplier may not be always a practical proposition as it may not be feasible to enforce recovery without legal action. This clause is rarely invoked in case of import contract 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 remote possibility of procuring the same item from an alternative source, it will be essential that instead of having risk and cost clause in such contract, the contract should have performance guarantee clause to cover any such default. **(DPB ID dated 19.10.04).**

Force Majeure

7.15 Present orders of the Govt. stipulate that force majeure clause should not be included in the TE or the contract. When a supplier insists on including force majeure clause, this should be included only in the Govt. approved format placed at **Appendix 'H'**.

Arbitration

7.16 There may arise a situation when there is a dispute between the purchaser and the supplier, which could not be resolved through mutual discussions. In such circumstances, the parties may agree for arbitration. MOD/CFA's 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. **In respect of Services HQs, OFB and DRDO HQrs, they have power for appointing Arbitrators within their delegated financial powers.** A standard Arbitration clause has been placed at **Appendix 'J'**

7.16.1 There may be situations when either party may approach a court of law for appointing an independent arbitrator. In case of import contract, the arbitration is normally in the international court of law. Purchase officers must consult the legal advisor and Govt. counsel in all cases of arbitration.

7.16.2 **CVC has advised that** “. Parties approaching court of law for appointment of an independent Arbitrator should be discouraged as far as possible by taking corrective action. Arbitration in respect of import contracts through International Court of Law should be an exception rather than a rule”

CHAPTER VIII

RATE CONTRACT

General

8.1. The basic objective of 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 department. 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 department 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 efficient transaction both for the purchaser and supplier.

8.2. **Definition.** A Rate Contract (RC) is an agreement between the purchaser and the supplier to supply the stores/items at specified prices during the period of the contract. RC is in the nature of a standing offer and neither any quantity nor any anticipated drawal are guaranteed. The supplier is bound to supply any quantity at a specified rate during the currency of the RC. As the RC is a standing offer, either party can revoke it at any time after giving a reasonable notice and opportunity.

8.3. **Price Agreement.** While procuring equipment or a vehicle at the time of introduction into service, it may be expedient to enter into a Price Agreement/fixed Price Quotation with the OEM. The PA/FPQ can be finalized after due negotiation and market survey. Such PA/FPQ will be normally valid for three years and further extended suitably with next higher CFA's Sanction.

8.4. **Types of Items Suitable for RC** The type of items which should be considered for RC are:-

- (a) Items required by several users on recurring basis and having clear specification including type approval by the DGQA/AHSP.
- (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.

8.4.1 The vendor would need to certify that he is not selling to any other party at a lower rate and a “**fall clause**” is invariably included as per DGS&D provisions for RC.

Authorities Competent to Conclude RC

8.5. Rate Contract or price agreement for supply of stores, military hardware, equipment and spares should be concluded by the Central Procurement agencies in various wings of the MOD. However, items specifically required for repair and refit of defence equipment and platforms like ships and aircraft, the repair agencies may enter into RC while ASC or Base Victualling Yards in the Navy may enter into RC for supply of victuals. The respective Vice Chiefs of the Services or the HOD of the department should specify the level of CFAs for conclusion of RC for various types of items required for their department.

8.5.1 The price agreement or long term product support, however, should be concluded at the level of service headquarters or the central HQ of the department. Long term product support for major projects or equipment being procured under capital head or through the MOD will be concluded by the MOD.

8.5.2 All Rate Contracts and price agreements should be processed through the committee CFA or the TPC 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.

8.6 **Period of RC.** The CFA for concluding rate contracts for various periods are as indicated below:-

- (a) RC should be concluded for a period of three years with firm & fixed prices by central procurement agency subject to application of fall clause. Value of anticipated drawal during the period of contract should be taken into account while determining the level of CFA for conclusion of RC.
- (b) As far as possible termination period of RC should be so fixed as to ensure that budgetary levies would not affect the price and frustrate the contracts.

- (c) Any extension or conclusion of RC beyond a period of **three years** would need approval of MoD.
- (d) **The RC should contain a provision for short closure to cater for situations of a fall in price during the currency of the RC.**
- (e) ***For such items where three year rate contract is sought to be entered into and the aggregate value of such intended purchase for a three year time frame fall within the purview of a higher CFA, it would be incumbent to obtain in principle approval of higher CFA before entering into such three year contract.***

Process

8.7 **Estimate/Indent/Requisition.** A rate Contract can be concluded based on estimated annual requirements of various users. The contract concluding authority must scrutinise 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.

8.8 **Selection of Firms.** RC should be normally concluded only with registered firms based on capacity assessment by designated inspection 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 capacity and financial capabilities. Past performance of a firm will be a major consideration while awarding a Rate Contract. The following aspects should be kept in mind: -

- (a) No new RC should be placed with firms having backlog, which is likely to continue for major portion of the year.
- (b) Performance of the contractor for the last 3 years should be taken into consideration.
- (c) If the contractor does not have current RC, performance against earlier two immediate rate contracts should be considered.
- (d) If the RC holder is a defaulter in furnishing drawal report, this should be looked into, if the defaulter is bidding.
- (e) The minimum **performance level / performance criteria should be specified in the bid documents**

8.9 **Price Negotiation.** While concluding RC, it is preferable to conduct price negotiations by the CNC in order to obtain best value for money and also to clarify all aspects of the RC to avoid ambiguity and dispute at a later stage.

Conclusion of Parallel RC

8.10 In order to obviate situation when purchase has to be made in the normal manner during the currency of the RC due to failure of the RC holder or due to Demand for an item exceeds quantity offered by one vendor 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. The CFA, based on the merit of each case, can decide the number of firms to be awarded RC for an item so that DDOs will have a wider choice. Efforts should be made to conclude parallel RC with firms located in different part of the country to cater for users over wider geographical spread. Parallel RC can be concluded with marginal price difference say up to 5%. In such cases approval of next higher CFA is to be taken.

8.11 **Signing of RC.** 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 CFA or an officer authorised to sign financial documents on his behalf.

Termination and Revocation of RC

8.12 Deleted

8.13 **Termination and Revocation of RC.** As per the provisions, 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/DDO. Being just a standing offer, merely 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.

Payment

8.14 **Payment Term.** Standard Payment term as indicated below should be incorporated in all Rate Contracts:-

- (a) **Upto 98%** on receipt of stores at consignee's premises against dispatch document, provisional receipt and copy number 1 of Inspection Note. However, in case it becomes essential to dispatch stores by train, **95% payment** can be released against proof of dispatch, i.e., copy of the RR and inspection note.
- (f) **2%** on accounting of stores by the consignee.

(c) Payment should be effected by the paying authority within **21 working days** from the date of receipt of bill, if the supporting documents meet paying authority requirement. Consolidated observations, if any should be forwarded within 10 working days by paying authority to the CFA.

8.15 **Paying authority.** The concerned CDA will be the paying authority. However, the paying office may include all offices of the CDA including those co-located in the premises of the CFA concluding rate contract.

CHAPTER IX

REVENUE PROCUREMENT OF STORES FROM FOREIGN COUNTRIES

Introduction

9.1. Import of spares and equipment by Defence Organisations and Service Headquarters under revenue budget, constitutes a sizeable portion of the overall Defence expenditure. Armed Forces have been acquiring latest State of art equipment and Weapon Systems from foreign countries. To ensure their serviceability at all times, it is essential that the 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 in the procurement process.

Indents

9.2. **Scrutiny of Indents** The process of procurement of stores commences only on receipt of indents duly approved and authenticated by the competent authority. As per normal rules each Indent should be accompanied by the following in form of documents/records/inputs or endorsement in 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 approval of the indent.

- (f) A certificate for necessary foreign exchange allocation
- (g) A certificate of necessary import clearance.
- (h) Proprietary Article Certificate (PAC) given in the prescribed format where applicable.
- (j) Priority of the indent whether, normal or urgent.

9.2.1 It is important that the 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 indentors 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 debitable.
- (h) Consignee depot.
- (j) Desired Delivery Schedule.
- (k) Normally, items of similar or allied nature should be indented in one indent.

Vendor Selection

9.3 A careful selection of the authorized and registered vendors is to be made for the range of spares on the Schedule of Requirement based on guidelines. Widening of the foreign vendor base is a multi-disciplinary and techno-commercial exercise. Registration of foreign OEM's and authorized vendors / stockists is to be undertaken as per laid down guidelines with the help of our Defence Attaché and Commercial Counselors in our Embassies / High Commissions abroad.

9.3.1 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 PSU's 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 departments/wings are to be kept in mind and complied with.

Method of Tendering

9.4 The mode of tendering will be decided with regard to factors like, whether the stores / equipment are general purpose or specialized, likely and known sources of supply, expected competition, delivery schedule desired, urgency of requirement, etc.. In foreign procurement, one of the following methods of calling tenders can be adopted.

- (a) Limited tenders
- (b) Global tenders
- (c) PAC tenders
- (d) Single tender without PAC

9.5 **Limited Tender enquiry** - In all cases of foreign procurement, wherein indenter has not furnished a PAC, Limited Tender Enquiry shall be the preferred mode of tendering as procurement is to be done from OEM's or authorized stockists only. LTE should be sent to as many registered/known suppliers as possible, but normally the number of firms should not be less than six unless the available sources are limited and less than six.

9.6 **Global Tenders** - Global tendering is to be resorted to for items of foreign origin, where competition from more than one source from different countries is envisaged. Apart from publishing the tenders in newspapers and journals, copies of the global tender documents will be sent to respective Embassies and High Commissions to seek offers through their liaison. The RFP will also be published on the Defence web site and that of the organisation, which can be downloaded by the prospective bidders for participating in the tender process. In cases of procurement of highly sensitive nature having national security implications, the tender documents are not to be put on the web site. In such cases decision must be taken at the level of CMD or Head of the department, recording specific reasons for not putting an open tender on web site. In this regard, CVC No. 98/ORD/1, office order No. 44/7/04 dated 05 Jul 2004 is placed at **Appendix 'C'**.

9.7 **PAC Tendering** - This mode of tendering will be resorted to when the items to be procured are proprietary of a particular firm. A

proprietary article certificate will be issued by the indenter, establishing the monopoly of the product of a single manufacturer. The PAC certificate will be issued at a fairly senior level, i.e., Head of Department / Director.

9.8 Single tender without PAC - STE will be adopted where different makes of any equipment are in use but it is preferred to procure only one specific make for the sake of standardization or for undertaking trials. The indent is to be certified that only the particular make should preferably be procured giving detailed justification for the same. STE is also resorted to when there is only one known/established source, but the PAC status has not been approved by the CFA. **Specific concurrence of IFA and sanction of CFA under the delegated powers are to be taken in all STE case.**

9.9 Two Bid System - In specific cases, a two-bid system, i.e., technical and commercial tender enquiry may be resorted to. Two bid system should be followed where technical specifications are to be ascertained or are not known which involve techno-commercial evaluation viz, plant and machinery, IT and communication systems etc. Detailed instructions on the two-bid system are as given at Chapter - 4 para 12 to 15.

Request for Proposals (RFP)

9.10 The RFP is a very important document and should be a true and complete reflection of the indent. A standard format of RFP / tender enquiry is placed at **Appendix 'K'**. The goods required, bidding procedures and contract terms are prescribed in the RFP. In addition, the following aspects need to be highlighted in the RFP :-

- (a) Details of items required in a form, which each supplier can understand.
- (b) Date and time of opening of the tenders giving suitable period
- (c) Desired period of validity of offers
- (d) Technical specifications
- (e) Inspection clauses
- (f) Special conditions of contract

- (g) Quality assurance requirements
- (h) Source of supply in case of vendors / stockists
- (j) Mode and terms of delivery
- (k) Mode and terms of payment and the paying authority
- (l) Evaluation parameters
- (m) Performance guarantee, if applicable
- (n) Arbitration Clause
- (o) Liquidated damages clause
- (p) Bank Guarantee for advance payments
- (q) Installation, commissioning and AMC, if applicable.

9.10.1 The RFP for imports could be either on CIF or FOB basis and is to be decided before floating RFP. The mode of transportation should also be invariably indicated.

General Guidelines on RFP/Tenders.

9.11 **Clarification of Tender documents** - A prospective bidder requiring any clarification of the tender documents should notify the purchase department in writing, which should respond to all such requests received no later than 15 days prior to the deadline for submission of quotations. Written copies to the clarifications will be sent to all prospective bidders who have received RFP's.

9.12 **Amendment of Tender Documents** - At any time prior to the deadline for submission of quotations, the purchaser may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the tender documents by amendment. All bidders shall be notified of the amendment in writing and will be binding on them. Taking into account the amendment issued, purchaser at his discretion can also extend the deadline for submission of quotations.

9.13 **Period of validity of offers** - Realistic validity period of the quotations shall be specified in the tender enquiry. The period shall be fixed based on the nature and quantity of the stores and the post tender formalities. In case of foreign procurement, a period of 90 days to 180 days should be prescribed.

9.14 **Deadline for submission of quotations** - Reasonable time should be allowed to the vendors to submit the quotations. Normally, six to eight weeks will be allowed to foreign vendors for submission of offers. In case of urgent procurements, this may be reduced to four weeks or less.

9.15 **Modification and withdrawal of quotations** - The bidder may modify or withdraw its quotation after submission, provided that written notice of modification or withdrawal is received by the purchaser prior to the deadline prescribed for submission of quotations. No quote can be modified subsequent to the deadline for submission of tenders. No quote can be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of quote validity specified by the bidder in the quotation.

9.16 **Issue of Tender Enquiry** - The tender enquiries can be sent by Registered post. In addition they can be sent by fax or E-Mail also, which should be followed with a copy by registered post. RFP's will not be given to Indian agents of foreign firms. However, if any foreign firm has its branch office in India, tender enquiries can be given to them. Meticulous records of mode of issue / dispatch of RFP's should be maintained. The salient features of Govt. policy on Indian agents of foreign firms and Agency commission is placed at **Appendix 'L'**

9.17 **Procurements governed by General Contracts** - In case of procurements under long term General contracts/Main agreements between Govts., provisions of the contract / agreement will prevail in respect of format of RFP, quotations, general terms and conditions, time of submission of quotations, LD Clause, etc.

9.18 **Receipt and opening of Quotations** - Quotations in a sealed condition are to be received in a tender box, which is locked, sealed and placed at a secured and convenient place to facilitate the tenderers to drop their quotations. The tender box shall have provision of two locks, the keys of which shall be held in the personal custody of two different officers of the tender opening committee. In cases where the tenders are required to be submitted by hand, it may be ensured that the names and designation of at least two officers are mentioned in the bid documents. The information about these officers should also be displayed at the entrance reception of the premises where tenders are to be deposited so as to ensure convenient approach for the bidders.

9.18.1 The tender opening committee shall consist of a minimum of three officers. Finance Representative is not required in this committee. Quotations received by courier / post shall be dropped in the tender box without opening and record of the same shall be maintained. Offers in

open condition or by fax shall not be considered excepting those pertaining to single tender enquiry, PAC procurement.

9.18.2 The tender opening committee will open all quotations in the presence of bidders representatives who choose to attend the tender opening. The bidders representatives shall sign a register/tender opening sheet evidencing their attendance. No quote shall be rejected at tender opening, except for the late quotations, which shall be returned unopened to the bidders. Withdrawn quotations will be returned unopened to the bidders.

9.18.3 In case of two-bid system wherein separate technical and commercial bids are invited, only the technical bids are to be opened first and referred to the Technical committee. Commercial bids of only technically acceptable quotes are to be opened subsequently.

9.19 **Late Quotations** - Any quotation received after the deadline for submission of the tenders prescribed by the purchaser will be rejected and returned unopened to the bidder. Exception to this principle can be made when the offer is against Single tender enquiry or Proprietary purchase or from OEM.

Evaluation of Quotations

9.20 **Preliminary examination of quotes** - The purchase cell will examine the quotations to determine whether they are complete in all respects, and check for any computational errors, submission of required sureties, source of supply, etc., Arithmetical errors will be rectified on the following basis. 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 shall prevail and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words shall prevail.

9.20.1 The purchase cell may waive any minor informality or non-conformity in a bid, which does not constitute a material deviation, provided such a waiver, does not prejudice or affect the relative ranking of any bidder. Deviation from or objections or reservations to critical provisions such those concerning performance warranty, Force majeure, Applicable Law, Liquidated Damage, non disclosure of source of supply in case of stockist / vendor, quality assurance aspects, etc., will be deemed to be a material deviation. The responsiveness of the quotation shall be determined based on conformity to the terms and conditions of RFP.

9.21 **Resultant Single Vendor Situation** - Provisions contained in paragraph 4.17, Chapter IV will be applicable.

9.22 **Comparative Statement of Tenders** - On receipt of all accepted tenders, the purchase cell is to collate them in the form of Comparative Statement of Tenders (CST). The CST will be exhaustive and is to include all details given in the quotations. Deviation from the tender documents is to be brought out in the CST. LPP wherever available should be indicated for a fair comparison of the offered prices. CST will be vetted by the IFA with regard to original quotations, indents and other supporting documents. The purchase officer will sign the CST.

9.23 **Reasonability of Offered Cost:** The reasonability of the offered cost shall basically be determined based on comparison with the sanctioned indent cost / last purchase price. Apart from this basic premise, there are other considerations for ascertaining the reasonability of offered prices, which are covered in detail at **Chapter XIII**.

CFA Process

9.24 **Constitution of TPC / CNC** - The Constitution of Tender Purchase Committee (TPC) / Commercial Negotiation Committee (CNC) will be based on the concept of standing TPC's for all purchases including proprietary items as per the financial limits laid down by MOD / MOD (Fin) as applicable for various delegated powers under Financial Regulations, amended from time to time. The TPC will also include IFA as the finance member. Additional members can be co-opted with approval of CFA on case-to-case basis.

9.24.1 The evaluation of the Technical offers will be made by Technical Evaluation Committee (TEC) specifically formed and shall be a different entity from the TPC. The TEC recommendations will be put up to TPC/CNC for consideration.

9.24.2 Negotiations with the L-1 firm can be considered where the offers received are at wide variance from the estimated cost or it is ascertained that the quoted prices are un-reasonable. In such cases, only the L-1 firm is to be invited for a price negotiation meeting. The proposal for a counter offer / CNC meeting should have the approval of TPC/CFA.

9.25 **Conduct of CNC's** - Negotiation with the lowest techno commercially acceptable vendor where considered essential by TPC may be conducted with approval of CFA in following cases: -

- (a) When there is inadequate competition in LTE.

- (b) Wide variations between quotes of L-1 & L-2.
- (c) Wide variations between estimated cost, LPP and tendered cost.
- (d) In case of proprietary items, procured on single tender, where reasonability of rates cannot be justified.
- (e) Where all vendors quote one make but different prices and terms and conditions etc.
- (f) Any other factor, which has a bearing on financial terms and conditions directly or indirectly, and the TPC/CFA deems it necessary to conduct negotiations.

9.25.1 In case of foreign firms, which do not have their regional offices in India, it may not be possible to come for CNC meetings except for high value items. In such cases, TPC/CFA may obtain the best-revised offer with all terms clarified from the lowest bidder through fax before finalizing the price.

9.25.2 CNC recommendation is to be clear and unambiguous. A counter offer may be made to the L1 firm only by the CNC. In case the CNC/CFA is unable to conclude the negotiations satisfactorily, it may refer the case to the next higher authority for conducting negotiations. The minutes of all TPC/CNC meetings will be meticulously maintained and signed by all members.

Expenditure Angle Sanction

9.26 **Acceptance of Cost over Estimates** - When it is proposed to accept an offer higher than the sanctioned indent price which may be based on last purchase price or assessed price, the empowered CFA may accept such an offer within delegated powers provided that the increased amount is within his delegated powers and after recording reasons. Whenever the increased amount exceeds the financial powers of the CFA, approval of next higher CFA, within his delegated powers, is essential.

9.27 **Acceptance of offer other than L-1** - In case when the lowest acceptable tender is rejected for any reason by the TPC/CNC, the same must be recorded in writing.

9.28 **Determination of L-1 on Entire Package** - In Revenue procurement of the import cases, RFPs are generally issued item-wise and contract awarded to the lowest acceptable bidder on item-wise basis.

In case, it is decided to club these item wise requirements and float a combined RFP to avail of economy of scale etc, L1 will be considered on the cash outflow for entire package. **After L1 is determined it would be**

necessary to initiate discussion with L1 bidder for items in which rates quoted by him are higher than those quoted by other vendors. In such case, 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 match lowest bid for item(s) which happens to be high value item (items), possibility of concluding fresh contract for such item(s) should be considered keeping in view operational requirement etc. (DPB discussion dated 19.10.2004).

9.29 **Purchase Decision** The CFA/Committee CFA must consider all aspects of the case including reasonability of offered prices, quoted terms and conditions, technical evaluation report etc. It has to be ensured that proper procedure & policies have been followed at various stages of procurement for arriving at the decision of L-1 firm. The financial implication should be considered as the all-inclusive cost to the state on delivery to the designated consignee. Purchase decisions should be taken through a formal order in written form.

9.30 **Repeat Orders** - Repeat order against a previous order may be considered for approval by the CFA in cases subject to the following stipulations:-

- (a) Items ordered against the previous order have been delivered successfully.
- (b) Original order not to cover urgent/ emergent demand.
- (c) It is not placed to split the requirement to avoid sanction of next higher CFA.
- (d) There is no downward trend in price of the item, and a **clear certificate should be extended to that effect.**
- (e) The supplier's willingness to accept the repeat order on the same cost and terms and condition as per the original order is to be obtained.
- (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.**
- (g) The repeat order is to be placed within 6 months from the date of supply against the previous quote and only once.

(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.

(j) The original order was placed on the basis of lowest price negotiated and accepted by TPC, and was not on delivery or other preference.

(k) This provision could be exercised in case of PAC/Single vendor OEM case. However, care should be taken before exercising this provision in multi-vendor situation.

(l) In case S.O/contract where option clause has been availed of, it may not be desirable to place further repeat orders. (DPB ID dated 19.10.04)

9.30.1 **Signing of Contract/SO** - Once the CFA approval has been accorded, the draft contract, duly vetted by TPC & IFA is to be finalised with the firm at the earliest. The Contract/SO is to be signed by an officer duly authorized by the CFA to do so. The contract /supply order is to be signed in each page by the firms authorised representative and duly acknowledged as accepted.

9.31 **Apportionment of Quantity** If L₁ does not have the capacity to supply within the delivery period as per RFP, after loading L₁ fully as per its capacity and past delivery, order can be placed on L₂, L₃..... for the balance quantity at L₁'s rate.

9.32 **Amendment to Contract** - All amendments to contracts with financial implication (direct or indirect) including short closing, and delivery period extensions are to be invariably approved by the CFA, in consultation with IFA. Amendments affecting delivery period will not be made as a matter of routine. Each case for extension of delivery period shall be with imposition of Liquidated Damages and other penalties as per contract, other than cases where TPC has taken a conscious decision for waiving the LD on account of justified reasons for delay.

9.33 **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. These variations in supplies may be accepted with the approval of TPC, subject to the value of such excess/short supplies should not exceed 5%

of the original value of the contract. CFA will be determined by value of original order plus excess/short supply.

9.34 **Re-tendering** – Re-tendering may be considered by the TPC/CFA with utmost caution, under the following circumstances: -

- (a) Offer does not confirm to essential specification.
- (b) Wherever there are major changes in specification and quantity, which may have considerable impact on the price.
- (c) Prices quoted are unreasonably high with reference to assessed cost or there is evidence of a sudden slump in prices.
- (d) There may be cases when the lack of competition is due to restrictive specification, which do not permit many vendors to participate. The CFA must consider if there are reasons for review of specification of the item to facilitate wider competition. Re-tendering will be done only after approval of IFA and CFA in all cases.

9.35 **Standard Conditions of Contract – Foreign Procurement**- The Standard conditions of contract will apply in all contracts made by the Organisations Of Ministry of Defence and Service Headquarters except to the extent that any clause thereof has been modified in any particular contract. The details of conditions of contract are covered at **Chapter X**. Few of the aspects which requires special attention are as given in the succeeding paragraphs.

9.36 **Performance bank guarantee** - Whenever considered appropriate in import cases especially of high value with long gestation period, performance security deposit in the form of bank guarantee is to be taken from the supplier. The bank guarantee is to be issued by a scheduled bank located in India or an First Class International bank of repute located abroad, acceptable to the purchaser in the prescribed format, within 30 days from the date of contract. This deposit is meant to compensate the purchaser any loss suffered due to failure of the supplier to complete his obligation as per the contract. The PBG amount preferably should be 5% of the value of the contract, if there is a Risk and Purchase clause in the Contract. However, where R & C is unenforceable because of single vendor and remote possibility of recovering from an alternative source, the PGB should be for 10% to act as a financial cover in the event of failure of the firm to perform /recession. **Apart from PBG, there should be warranty Guarantee. If the supplier intends to give Warranty-cum-Performance Guarantees,**

it should be acceptable. Also provisions of para 12.21 would need to be referred to in respect of PBG.

9.37 **Quality Standards** - The goods supplied under the contract shall confirm to the standards mentioned in the technical specifications and when no applicable standard is mentioned, to the authoritative standard appropriate to the goods country of origin and such standards shall be the latest issued by the concerned institution. All the items should be supplied and accepted along with OEM certifications only.

9.38 **Claims** - The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty. The time period generally acceptable for notifying the claim is as follows: -

(a) **For quantitative discrepancy** - Within 90 days from the date of delivery of the consignment in case of delivery by Air and within 120 days from date of delivery in case of delivery by Sea.

(b) **For qualitative discrepancy** - This warranty shall remain valid for 12 months after the goods or any portion there of as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for 18 months after the date of shipment from the place of loading, whichever period concludes earlier.

9.39 **Risk & Expense Clause** - In case of foreign contracts, risk and expense clause is generally not applicable. The other remedies available to the purchaser are as follows: -

(a) Deduct the quantitative cost of discrepancy from any of the outstanding payments of the supplier.

(b) Avoid issue of further RFP's to the firm till resolution of the discrepancy.

(c) Bring up the issue of discrepancy in all meetings with the representative of supplier.

(d) Provide for adequate Bank Guarantee to cover such risks.

(e) Finally approach the Govt. of the supplier's country through MoD for resolving the DR, if needed.

9.40 **Payment Terms** - The normal terms of payment to foreign vendors are 100% payment through irrevocable letters of credit or Direct Bank Transfer. The paying authority is CDA. For contracts below USD

50,000.00, DBT payment terms should be insisted upon, at the time of concluding the contract. All LC's will be opened through CDA in State Bank of India or any other Public Sector Bank. Confirmed LC's should not be opened as it undermines the credibility of our nationalised banks. Banking instruments have been covered in detail at **chapter XII**

9.41 **Advance Payments** - Normally no advance should be offered in the TE. However, if it is decided to provide advance payment, the %age should be incorporated upfront in RFP& could be upto the %age laid down in Rule 159(1) of GFR-2005 with Bank Guarantee. Advance %age exceeding 15% would require approval of FA(DS) & Defence Secretary.

In case of Indigenous procurements Performance Bank Guarantee of Public Sector Banks approved by MoD viz SBI, BOB, Canara Bank & BOI would be required and of a first class bank of International repute in case of Imports.

9.42 **Delivery Schedule** - The prescribed delivery schedule should be firm and not open-ended. The delivery schedule should be counted from the date of signing of contract by both the parties and should include a reasonable time 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 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

9.43 **Option Clause** - Against an outstanding indent for which acceptance of necessity has been approved by CFA, it may be advantageous to the purchaser to have an option clause in the main contract if agreed to by the supplier that will allow exercising of option clause i.e., 50% of original contracted quantity in accordance with the

terms and conditions of contract. This option clause may be exercised on approval of CFA, within whose powers total value of original supplies plus value of 50% of option clause falls, in consultation with IFA during currency of contract. It should be ensured that there is no downward trend in the market prices, no fruitful result will accrue by floating fresh RFP's and items are urgently required. **This clause could be exercised in single vendor OEM cases. However, wherever multiple vendors are available necessary care should be taken in exercising the option clause.**

9.44 **Foreign Arbitration** - The Arbitration and conciliation Act 1996 has provision for international commercial arbitration which will be applicable if one of the parties has its central management and control from any foreign country. The salient features of this law are :-

- (a) The parties can choose either Indian or Foreign Law governing arbitration.
- (b) To minimize interference of courts in stalling arbitration proceedings.
- (c) Arbitrator can be changed by mutual consent without approaching court.
- (d) Vesting of enhanced powers to arbitrator.
- (e) Clearly defining obligations of the arbitrator.
- (f) Arbitrators award to be enforceable as if it were a decree of court.

9.44.1 The Ministry of Law and Company affairs have advised that Arbitration Clause should specify that all our contracts have to be interpreted in accordance with the laws of the Union of India and arbitration proceedings shall be conducted in India under this act.

9.45 **Urgent procurement through Indian Embassies abroad**-The purchase of spares/components from sources abroad against urgent requirements can be done by the departments of MOD and service HQs through the Indian Embassies. On acceptance of necessity an urgent indent will be forwarded to the concerned embassy for procurement under the financial powers of the concerned commercial Attaché/AA/MA/NA etc. The concerned attaché will register the indent and obtain quotes. He will obtain the expenditure angle sanction in consultation with the councillor coord or any other officer with technical/procurement/financial background designated by the Ambassador for this purpose. In case the quotes received by the committee are higher than 5% from the sanctioned indented cost and the

vendor is not reducing the cost, the case will be referred to the concerned service HQ/ Depts. of MOD for seeking expenditure angle approval.

9.46 **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. When both buyer and the seller specify the delivery as being according to Incoterms, there need be no dispute arising from that aspect of transaction. The Incoterms are described at **Appendix 'M'**.

CHAPTER -X

STANDARD CONDITIONS OF CONTRACT - FOREIGN PROCUREMENT

Introduction

10.1. 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 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 publicised on the Defence web site also. 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 between the parties.

10.1.1 The stores shall conform in all respect with the description, specifications, drawing patterns and other standards set out in the contract

Prices

10.2 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.

Terms of Payment

10.3 The payment will be arranged through LC/ Direct Bank Transfer from Reserve Bank of India/State bank of India/any other Public Sector bank to the Bank of Foreign Supplier. 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 is liable to pay under the agreed terms of contract. Advance payments should be avoided as far as possible. In case insisted upon by the firms, then upto 15% advance payment can be made against appropriate Bank guarantee or a Sovereign Guarantee or any authorised guarantee. As vendors often prefer payment in DBT, each Deptt under MoD may fix suitable financial limits for such DBT payments.

10.3.1. 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 specified days on receipt of notification of readiness from

the firm. The Letter of Credit is to be valid for 90 days from the date of its opening, on extendable basis by mutual consent of both seller and buyer. The LC will be opened three months prior to the expiry of delivery period only. In case of extension, both LC and DP should be extended.

Terms of Delivery

10.4 Time shall be the essence of the contract.

- (a) Delivery of Goods shall be affected within specified days from the date of signing the contract.
- (b) The date of delivery shall be the date of 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 authorised 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 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 nominated 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 complete and the contract price payable to the seller only when the full conditions of the contracts have been completed.
- (g) The Goods are delivered by the Sellers and accepted by the Buyers:

On quantity - according to the number of cases and weight shown in the shipping documents.

On quality - according to quality stated in logbooks and passports.

(h) The contract is valid since the date of its signing, till the fulfillment of all obligations under the Contract by both parties.

Inspection

10.5 Under normal circumstances, the stores ordered will be accepted on the guaranty warranty of the supplier. In such instances where the contracts specify actual inspection, the Purchaser will arrange the inspection.

(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, tools, material and labour at no extra cost, to carry out the specified inspection. When independent tests and analysis, in addition to those made by the inspector on the seller's or sub-seller's premises, are considered necessary, the seller shall provide 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 articles, whether completed or in the course of production, are rejected by the inspector, they shall be marked or segregated in such manner satisfactory to the inspector as to ensure their subsequent rejection as rejected work.

(d) The purchaser shall not be responsible for payment for any rejected supplies or any costs of inspection thereof.

(e) The seller shall at his own expenses and within the time of delivery for delivery 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 approval will be final.

(g) In addition to the provisions mentioned above. The seller shall also get the stores inspected by its Quality Assurance Department and furnish a certificate that stores conform to the specifications laid down in the contract.

(h) The Purchaser reserves the right to inspect the stores on arrival in India and discrepancy or defects found shall be reported to the seller within 15 months, who shall rectify the same within 90 days.

Receipt and Despatch

10.6 If special packing is specified in the contract, the stores shall be packed to withstand normal conditions of shipment specified in the contract and short term storage in transit and in the country of destination.

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

Warranty and Claims

10.7 All stores to be supplied shall be free from all defects and faults in material workmanship and manufacture. They shall be of highest grade and 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 the ultimate consignee in India not finding the stores in accordance with the order the seller will replace them free of cost inclusive of all freight and handling charges. Such replacement will be done within 90 days of the claim report raised by the purchaser. These standard conditions will also apply in respect of replaced stores. This warranty shall remain valid till fifteen months after delivery or twelve months after their arrival at the ultimate destination in India whichever is earlier.

10.7.1 The Warranty shall be applicable for use and storage of stores in Indian Climatic Conditions.

10.7.2 Technical life of the unit to be delivered for replacement will not be less than the remaining technical life of the unit in fault.

Liquidated Damages

10.8 In the event of the Seller's Failure to deliver the goods by the date specified in the Contract the Buyer may deduct from the Seller as liquidated damages the sum of 0.5 % of the contract price of the undelivered goods for delay of each week or part of week and the Seller shall submit the documents after deduction of the liquidated damages subject to Maximum of 5% of the contract price of the undelivered goods. But if the delay shall have arisen from any cause, which the seller will promptly notify the Buyer and the Buyer may admit as reasonable ground for further time, no liquidated damages will be leviable during the additional time thus agreed.

Force Majeure

10.9 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.

10.9.1. 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.

10.9.2 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.

10.9.3 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.

10.9.4 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.

Termination Of Contract

10.10 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

(a) If the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser.

(b) If the Supplier fails to perform any other obligation(s) under the Contract.

(a) If the supplier becomes Bankrupt or other wise insolvent..

(d) If the Supplier, in the judgment of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprived the Borrower of the benefits of free and open competition.

Arbitration

10.11 All disputes or differences arising out of or in connection with the present contract, including the ones connected with the validity of the present Contract or any part thereof, shall be settled by bilateral discussions.

10.11.1 Any dispute, disagreement of 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 amicable, 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.

10.11.2 Within sixty (60) days of the receipt of the said Notice, SELLER shall nominate one arbitrator in writing and BUYER shall nominate one arbitrator.

10.11.3 The third arbitrator, who shall not be a citizen or domicile or of the Country either of the parties or of any other Country unacceptable to any of the parties shall be nominated of the parties within (90) days of the receipt of the notice mentioned above, failing which the third arbitrator may be nominated by the President of International Chamber of Commerce, Paris, at request of either party but the said nomination would after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned. The arbitrator nominated under this Clause shall not act as an umpire.

10.11.4 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.

10.11.5 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 only.

10.11.6 The decision of the majority of the arbitrator shall be final and binding on the parties to this contract. Each party shall bear its own cost of preparing and presenting its case. The Seller and the Buyer shall share the cost of arbitration including the fees and expenses of the third arbitrator equally.

10.11.7 In the event of 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 retiring arbitrator.

10.11.8 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 failing vacant, then the other party shall be entitled after due notice of at least 30 days to request the President of the International Chamber of Commerce to nominate another arbitrator as above.

10.11.9 If the place of the third arbitrator falls vacant, his substitute shall be nominated according to the provisions herein above stipulated.

10.11.10 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.

Penalty for Use of Undue Influence

10.12 The Seller undertakes that he has not given offered or promised to give directly or indirectly any gift, consideration, toward commission fees, brokerage or inducement to any person in service of the Buyer or other wise in procuring the Contract or forbearing to do or for having done or forborne to do 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.

10.12.1 Favor or disfavor to any person in relation to the Contract or any other Contract with the Government, any breach of the aforesaid undertaking by the Seller or any one employed by him or action on his behalf (whether with or without knowledge of the Seller) or the commission of any offence by the Seller or anyone employed by him or action on his behalf as defined in Chapter LX of the Indian Penal Code. 1860 or the Prevention of Corruption Act 1947 or any other Act enacted for the prevention of corruption shall entitle the Customer 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 Customer or his nominee to the effect that a breach of the undertaking has been committed shall be final and binding on the seller.

10.12.2 Giving or offering of any gift bribe or inducement or any attempt to any such act on behalf of the Seller towards any officer employed of the Customer or to any other person in a position to influence the decision of the Customer directly or indirectly or any attempt to influence any officer employee of the Customer for showing any favor in relation to this or any other contract shall render the Seller to such liability penalty, as the Customer may deem proper, including but not limited to termination of the contract, imposition of penal damage, forfeiture of the Bank guarantee and refund of the amounts paid by the Customer.

Access to Books of Accounts

10.13 In case if it is found to the satisfaction of the Customer 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 Customer shall provide necessary information inspection of the relevant document/information.

10.13.1 Integrity Pact :- This is to be signed by the Buyer and Seller for purchases exceeding Rs.100 crore as per format placed as Appendix R.

Patents And Other Industrial Property Rights

10.14 The prices stated in the contract shall be deemed to include all amounts payable for the use of patents copy right, registered charges, trade marks and any other industrial property rights.

10.14.1 The seller shall indemnify the purchaser 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 seller to complete the supplies irrespective of the fact of infringement of any or all of the rights mentioned in para 34 above.

Government Regulations

10.15 The seller shall be responsible for obtaining and maintaining export licenses, permits as also for complying with all the laws, orders, regulations or other instructions issued by the Govt. in the country of manufacture supply.

10.15.1 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.

Customs Duty Drawback

10.16 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.

Nondisclosure Of Contractual Documents-Information

10.17 Except with the consent in writing of the purchaser, 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 in the carrying out of the contract.

10.17.1 Any disclosure to any person permitted under above clause shall be made in confidence and shall extend only so far as may be necessary for the purposes of contract.

10.17.2 Except with the consent in writing of the purchaser, the seller shall not make use of any information supplied by the purchaser 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.

Training

10.18 The seller shall if in special cases required by the purchaser, provide facilities for the practical training of trainees from India and or their active employment on the manufacturing processes of the stores.

Law

10.19 The contract will be governed by and construed in accordance with the laws of India. "All the rights and liabilities embodied in the contract except those stipulated hereinafter shall be determined by referring to Arbitration of the Nominee of the Secretary of Ministry of Defence of the Government of India under the laws of India."

CHAPTER -XI

REPAIR CONTRACTS :FOREIGN PROCUREMENT

Introduction

11.1. The contracts for repair of equipment Ex-abroad will be formulated and processed in the same manner as the contracts for procurement. However the repair contracts are different from procurement contracts as they have unique indents, RFPs, and contracts with additional information on repairs incorporated.

11.2. **Preparation of Indents**: The repair indent should clearly specify type of equipment, Qty, type of repair, history of previous major repair, name of manufacturer, Total Technical Life and assessed cost of the repair. The amount can be assessed or obtained through a non-obligatory budgetary quote from the manufacturer.

11.3. **Selection of Vender**: The repair should be carried out by original equipment manufacturer only. In case manufacturer does not have an export license, quote should be invited from other registered firms who have an agreement with the OEM **or approved by OEM. The foreign supplier has to be made accountable for the performance of his equipments. There should be suitable PBG and Warranty Guarantee provision in the contract.**

11.4. **Request For Proposal** :- The RFP will necessarily include the following:-

- (a) Description/Part No. of item for repair.
- (b) Quantity
- (c) Date of production
- (d) Name of manufacturer
- (e) Period of usage.
- (f) Number of major repairs and types already carried out.
- (g) List of work required

(h) Schedule for delivery of equipment for repair and completion of task.

(j) Any additional data/material like photographs etc indicating type of malfunction of the defective equipment.

CONDITIONS OF REPAIR CONTRACT

Terms Of Delivery

11.5. The customer shall deliver the goods for repair to the designated destination in the contract within 30 days of signing of the Contract.

11.5.1 The equipment must be dispatched for the repair in satisfactory condition liable to repair, fully equipped with the details and removable units.

11.5.2 Together with the "EQUIPMENT" the "CUSTOMER" will send the technical documentation (Certificates, Logbooks), which should contain the total usage time, the usage time after repair, the number of repairs, the reason for dispatching of the equipment for repair, and also information about the schedule servicing. Documents should have records on operating time and maintenance checks executed on the GOODS.

11.5.3 The "CUSTOMER" will not dispatch for repair incomplete or damaged equipment, which require additional repair above the approved volume.

11.5.4 If during the process of repair it is found, that the equipment is incomplete, damaged or not liable for repair, the "SELLER" (if possible) will install missing parts of the equipment or will change parts of the equipment not liable for repair in consultation with the "CUSTOMER".

11.5.5 If available, the BUYER will provide the spares for replacement along with the equipment.

11.5.6 The "CUSTOMER" will pay additional cost to the "SELLER" for the new/changed spare parts (units, sub modules, PCB etc). The cost of such parts will be stipulated by the Additional Agreement, which should be signed by the "CUSTOMER" within 2 month after the date of handing over. If there will be no possibility to install missing parts, the "SELLER" will inform the "CUSTOMER" about this within 30 days from determination of the technical condition of the equipment but not later than 60 days after receipt of the equipment for repair.

11.5.7 The date of delivery of the equipment for repair is considered the date of delivery-acceptance report signed by representatives of the “SELLER” and “CUSTOMER”.

11.5.8 The date of delivery of the equipment after repair is considered the date of delivery-acceptance report signed by representatives of the “SELLER” and “CUSTOMER”.

11.5.9 The SELLER shall deliver the GOODS to the BUYER within three (3) months from date of opening of Letter of Credit. The delivery will be effected on CIP/CIF Indian Airport/Seaport only.

Terms Of Payments

11.6 The payment for repair of the equipment shall be effected by “CUSTOMER” by opening 100% irrevocable divisible Letter of Credit or by Direct Bank Transfer in favour of “SELLER” for the actual repair cost.
Milestone payments as per supply order, if agreed to can be made.

11.6.1 The Letter of Credit will be opened within specified days from the date of receipt of equipment for repair either in part or in full.

Quality And Quantity Of Goods

11.7 The GOODS shall be considered delivered by the SELLER and accepted by the BUYER with regard to the quantity and completeness of set – in accordance to the quantity and completeness of set specified in the corresponding shipping documents.

Claims

11.8 The BUYER has the right to claim on the SELLER for:

(a) Quality of the GOODS – in case its nonconformity to the quality specified in the BUYER’s Specifications for overhaul and storage of the GOODS;

(b) Quantity of the GOODS – in case of nonconformity to those specified in the packing list (shortage inside packing) on condition that the GOODS arrived at the place of destination in undamaged packing or in case the responsibility of the Carrier is not perceived under the existing circumstances.

11.8.1 The claims for quality and quantity of the GOODS can be lodged (in case of proven fault of the SELLER) not later than ninety (90)

or one twenty (120) calendar days as per deliveries by Air or Sea respectively, from the date of receipt of goods by the ultimate consignee.

11.8.2 The claim shall specify the quantity and description of the defective GOODS, subject of and reason for the claim.

Guarantees

11.9 Technical life period of the GOODS will be stated in passports, logbooks and other technical documents submitted by the SELLER to the BUYER.

11.9.1 All the breakdowns and deficiencies which may occur within the warranty period without a fault of the BUYER shall be eliminated within 90 days, all the expenses being paid by the SELLER.

11.9.2 Warranty Guarantee **of repaired / replaced parts should be specified** in repair contract.

CHAPTER XII

BANKING INSTRUMENT

General

12.1. Import is regulated by the Directorate General of Foreign Trade (DGFT) under Ministry of Commerce and Industry, Department of Commerce, Government of India. Authorised dealers, while undertaking import transaction, should ensure that the imports into India are in conformity with the Export Import Policy in force 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.

12.1.1 Importer should follow normal banking procedures and adhere to the provisions of Uniform Customs and Practices for Documentary Credits (UCPDC) while opening Letters of Credit for import into India.

Letter Of Credit (LC)

12.2 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. A LC can be established in any of the 27 Public Sector banks besides SBI. Ministry of Finance, Banking Division ID No. 19/1/2002-BOA dated 24-6-2002 is placed at **Appendix 'N'** in this regard.

Reasons for using LC

12.3 In international trade, buyer and seller being located in different countries may not know each other well. The two countries will have different legal systems, currencies, trade and exchange regulations. Due to this fact both the Buyer and Seller, need some conditions to be fulfilled, to suit their requirements, before releasing the payments and goods respectively. The buyer and seller want the following :-

- (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) Buyer would want:-
 - (i) To pay for the goods only after they are shipped by the seller.
 - (ii) An assurance that seller will ship the goods ordered for and deliver them in time.

12.4 **Basic forms of LsC** - Basic forms of LsC as applicable to Defence Departments are enumerated below:-

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

12.5 **Revocable Letter Of Credit:** A revocable letter of credit is one which may be amended or cancelled by the issuing bank at any moment without prior notice to the beneficiary. Therefore such a type of letter of credit does not give complete sense of security to the beneficiary. However when the revocable letter of credit is made available at a branch of a bank concerned, the notice of amendment or cancellation is effective only upon receipt of such notice. If such a bank has undertaken liability (i.e. Paid, negotiated or accepted) against documents, which appear on the face of it to be in conformity with the terms and conditions of the credit before notice of amendment/cancellation, then the issuing Bank is bound to reimburse such a bank. If the letter of credit is silent as to whether it is revocable or irrevocable, the credit is deemed as IRREVOCABLE.

12.6 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. That 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 definite protection.

12.7 Confirmed Letter Of Credit: A confirmed letter of credit is one when 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 as it undermines the credibility of our Nationalised Banks.

12.8 Revolving Letter Of Credit: In such 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 for a long duration. It can be cumulative or non-cumulative in nature. It avoids opening letter of credit for each and every consignment.

12.8.1 The above LsC can be divisible, non-divisible. Divisible LsC are opened when more than one Beneficiary is allowed and payment has to be made as per consignment.

Procedure for Opening LC

12.9 The procedure for opening of an LC would generally include steps as given below: -

(a) Step-1: Receipt of PBG and Readiness of Goods. Contract concluding Dte/MoD receives readiness of goods for shipment as per contractual terms from the supplier.

(b) Step-2: The Contract concluding authority / Dte seeks FFE release from the appropriate authority. The IFA is to note the FFE and budget outgo and the approval of CFA is obtained.

(c) Step-3: On release of FFE the contract concluding authority forwards the case for opening of LC to PCDA who after proper scrutiny of all details for correctness, authorises the bank to open LC. The bank establishes the LC and intimates the PCDA and the contract concluding authority.

12.10 **Payment through letter of credit** - The letter of credit mechanism works as follows: -

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

Essential Elements of LC

12.11 Following essential elements are to be clearly stipulated while opening LC:-

- (a) Type of LC
- (b) Name and address of applicant and beneficiary
- (c) Amount of credit and currency
- (d) Validity of LC
- (e) Latest shipment date (delivery date as per contract)
- (f) Basis of delivery (FOB/FCA/CIP/CIF)
- (g) Contract No. and date
- (h) Shipment from To

- (j) Consignee and ultimate Consignee
- (k) Part shipment allowed/not allowed
- (l) Documents required to be produced by the beneficiary for release of payment from LC
- (m) LD Clause
- (n) Any other special instructions.

Documents to be Provided by the Seller

12.12 Paid shipping documents are provided to the Bank by the Supplier as proof of dispatching goods as per contractual terms so that the supplier gets his payment from LC. The Bank forwards these documents to the Buyer for getting the goods/stores released from Port/Airport. Documents include: -

- (a) Clean on Board Airway Bill/Bill of Lading
- (b) Original Invoice
- (c) Packing List
- (d) Certificate of Origin from Seller's Chamber of Commerce
- (e) Certificate of Quality and current manufacture from OEM
- (f) Dangerous Cargo Certificate, if any.
- (g) Insurance Policy of 110% if CIF/CIP contract.
- (h) Certificate of Conformity & Acceptance test at PDI, signed by Buyer's and Seller's QA Deptt.
- (j) Phyto-sanitary/Fumigation Certificate.
- (k) Performance Bond/Warranty Certificate
- (l) Authenticated signature of the supplier or his authorised rep should be available with the bank and verified by them before releasing LC payment.

The above details should form part of the contract.

Extension of LC

12.13 Following points should be checked before initiating the case for extension of LC by Contract concluding Directorate/MoD:-

- (a) Extension of delivery date in the contract and corresponding amendment in LC for latest date of shipment.
- (b) Performance Bank Guarantee (PBG) extension.
- (c) Onus of charges for LC extension.

12.13.1 IFA clearance and CFA approval should be obtained prior to extension of LC.

Direct Bank Transfer

12.14 A transferable credit is a credit under which the Beneficiary may request the bank authorised to pay, incur a deferred payment undertaking, accept or negotiate or in the case of a freely negotiable credit, the bank specifically authorised 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 following:-

- (a) Clean on Board Airway Bill/Bill of Lading
- (b) Original Invoice
- (c) Packing List
- (d) Certificate of Origin from Seller's Chamber of Commerce
- (e) Certificate of Quality and current manufacture from OEM
- (f) Dangerous Cargo Certificate, if any.
- (g) Insurance Policy of 110% if CIF/CIP contract.
- (h) Certificate of Conformity & Acceptance test at PDI, signed by Buyer's and Seller's QA Deptt.
- (j) Phyto-sanitary/Fumigation Certificate.
- (k) Performance Bond/Warranty Certificate
- (l) Confirmation from the supplier that one set of documents have been sent to port consignee immediately after dispatch of the store"

The above details should form part of the contract.

12.14.1 After obtaining the above documents, the concerned Dte. authorises PCDA for Direct Bank Transfer. PCDA in turn authorises the Buyer's bank to make direct transfer of funds to Seller's bank account.

Advantages

12.15 Following advantages accrue in comparison to payments through LsC:-

- (a) Payment released only after receipt of goods.
- (b) Payment to be made only after full satisfaction to the quality, quantity etc.
- (c) Cost-effective-inexpensive compared to LsC.

For contracts below USD 50,000.00, DBT payment terms should be insisted upon, at the time of concluding the contract.

12.16 **Specified time limit and Delivery Schedule** The normal delivery schedule for spares procurement in case of LC and DBT payment terms should be 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.

In case the spares under procurement are in large quantity or their technical production cycle is long as specified by the seller in the RFP, then the LC shall be opened for more than one quarter as agreed by the TPC/CNC.

- (b) **DBT Payments** :- Preferably within three months of signing of the contract

Performance Bank Guarantee (PBG)

12.17 A written undertaking through the bank to perform the promise/terms and conditions of the contract and to ensure the discharge of liability of supplier in case of his default. Format of performance bond guarantee is placed at **Appendix 'O'**.

Essential elements of PBG

12.18 Essential elements of PBG are :-

- (a) Amount.
- (b) Address of Beneficiary, Applicant and Bank.
- (c) Validity date.
- (d) Contract Number and Date.
- (e) Bank should release the amount without any demur on receipt of a written order from beneficiary.

Salient Features of Guarantees

12.19 Salient features of Guarantees are given below:-

- (a) Guarantees are absolute in character and independent of underlying contract.
- (b) Obligation to pay not to perform.
- (c) Un-conditional and without demur payment against valid claim.
- (d) For specified amount and period.
- (e) Issued against matching counter-guarantee from the applicant.

Invocation of Guarantees

12.20 Guarantees can only be invoked after fulfilling the following conditions:-

- (a) Should reach issuing Bank on or before expiry date.

- (b) Should be in strict conformity with Guarantee terms.
- (c) Issuing Bank not to enquire into merits of claimer or take views on dispute between applicant and beneficiary.
- (d) On compliance of terms of guarantee, payments effected immediately and unconditionally.

12.21 Confirmation of PBG. Advice of SBI should be taken as to whether the foreign bank providing Bank Guarantee for advance is a first class bank of international repute before taking a decision whether such PBG should be further confirmed by SBI, BOB, Canara Bank and BOI.

CHAPTER XIII

EVALUATION OF QUOTATIONS AND PRICE REASONABILITY

Introduction

13.1 In any purchase decision, the core issues to be decided by the CFA are whether the offered items meet the essential tender requirements, prices being charged are reasonable and the procedures followed are proper, fair and transparent. In this regard, provisions in General Financial Rules, 1963 (GFR) are as follows: -

“The responsibility and accountability of every authority delegated with financial powers to procure any item or service on Govt. account is total and indivisible. Government expects that the authority concerned will have public interest upper most in its mind while making procurement decision. This responsibility is not discharged merely by selection of cheapest offer but must conform to the following yardsticks of financial propriety: -

- (a) Whether the offers have been invited in accordance with the governing rules and after following fair and reasonable procedures in prevailing circumstances.
- (b) Whether the authority is satisfied that the selected offer will adequately meet the requirement for which it is being procured.
- (c) Whether the price of the offer is reasonable and consistent with the quality required.
- (d) Above all, whether accepted offer is the most appropriate one taking all relevant factors into account and keeping with the standards of financial propriety.

(Min of Fin OM No. F 23 (10).E.11(A)/86 dated 29.06.89)

13.2 Provisions relating to economy in procurement of stores estimated cost for purchase of stores in the GFR is reproduced below: -

- (a) **Rule 103** “Purchases shall be made in most economic manner in accordance with the definite requirements of the public service.”

(b) **Rule 105(1)** All indents sent out shall state clearly and accurately the grant number and the head of account to which the cost of stores is debitable, the amount of appropriation provided and an estimate of cost of each item.

13.2.1 In many cases CVC had observed that the estimated rates were worked out in an unprofessional and perfunctory manner. CVC further observed that estimated rates are vital element in establishing the reasonableness of prices and therefore, should be worked out in realistic and objective manner on the basis of prevailing market rates, last purchased price, economic indices for raw material / labour, other inputs costs, and assessment based on intrinsic value etc.

Evaluation of Quote

13.3 The first step in arriving at the decision regarding reasonability of price or otherwise is to know the exact cost of the proposal. In order to do this, all valid quotes have to be ranked as per the criteria indicated in the RFP. 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 while ranking quotes.

13.3.1. In case of foreign supplier, the basic cost (CIF) quoted by him should be the basis for the purpose of comparison of various tenders. In case of indigenous suppliers, ED on fully formed equipment be offloaded. ST and other local levies would be ignored in case of indigenous suppliers and Defence PSUs / OFs. The payment conditions / terms should be similar for domestic private supplier, defence PSUs / OFs and the foreign suppliers.

13.4 **Preliminary Examination of Quotes**. The purchase cell/officer should examine the quotations to determine whether they are complete in all respects, and check for any computational errors will be rectified on the following basis:-

- (a) 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 shall prevail and the total price shall be corrected.
- (b) If there is a discrepancy between words and figures, the amount in words shall prevail.

13.5 **Comparative Statement of Tenders**. On receipt of all accepted tenders, the purchase cell is to collate them in the form of Comparative Statement of Tenders (CST). The CST will be exhaustive and is to include all details given in the quotations. Deviation from the tender documents is to be brought out in the CST. LPP, wherever available, should be indicated for a fair comparison of the offered prices. CST will be vetted by the IFA/IFA's representative with regard to original quotations, indents and other supporting documents. The IFA representative and purchase officer will sign the CST.

Determination of lowest acceptable offer would be done by the CNC only. What would be done on the file is the preparation of comparative statement and checking of calculations as well as the premises on which the comparative statement of tenders has been prepared. However, it would be the CNC only which will determine the lowest acceptable offer (L₁ vendor).

13.5.1 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.

In case of procurement of new equipment, on single vendor / resultant single vendor basis, CNC should establish a benchmark and reasonableness of price in an internal meeting before opening the commercial offer. Once the commercial offers are opened and the price of the vendor is found to be within the benchmark fixed, in the internal meeting, there should be no need to carry out any further price negotiations. The RFP, in such multi vendor cases, should clearly lay down that no negotiations would be carried with L₁ vendor except in exceptional circumstances where valid logical reasons exist.

Aspects of advance and stage payments (where applicable) should also be indicated upfront in the RFP so that it facilitates selection of L₁ vendor

13.6 **Bench Marking** Before scheduled negotiation (wherever considered necessary) it would be advisable to work out estimated reasonable rate. In case of single tender cases, a technical team should make an assessment of estimated cost based on available information. The approach to be taken for assessing reasonability in different contingencies is given below.

Reasonableness of prices in Competitive Tendering

13.7 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 pricing. Database maintained on cost based on concluded contracts, price of the product available through market should also be used to assess reasonableness of the price offered.

- (a) Evaluation of tenders is made on the basis of the ultimate cost of 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 reasonability 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 wage rates etc.

(d) 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 after factoring in changes in price indices published by the Government sources.

(e) The reasonability 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 as per format placed at **Appendix 'P'** to the extent possible. A Book examination clause should be invariably provided in the RFQ.

Last Purchase Price

13.8 LPP is one of the relevant factors in deciding the 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 taken as a real scale for comparison. However, such LPP could be used as an input for assessing the rates.

(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 scales for comparing prices.

(d) Price variation clause, if any, and the final cost paid by the Govt. in respect of last purchase to which LPP pertains 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 extraneous factors like re-starting production lines due to obsolescence may also have to be considered.

13.9 **Lack of competition.** Exists in the following situation:-

(a) The number of acceptable offers is less than three.

(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 a number of acceptable offers never exceeds two.

(DGS &D)

13.9.1 In the case of single tender not covered under para 13.9 above, analysis of the costs and price structure may be done to ensure that the price quoted is reasonable with reasonable profit margin. In this regard GFR rule 102 (1) and para 9 of the annexure containing instructions for purchase of stores is reproduced below: -

“Where the lines of manufacture are the monopoly of a single firm or a group of firms, or where a significant increase over the purchase price, not explained by a corresponding increase in price of raw material or of labour charges, is being asked for, the reasonableness of the offer is determined with reference to the actual cost of production plus a reasonable margin of profit. In such cases, the indigenous manufacturer should be asked to accept the order on actual cost plus a reasonable fixed margin of profit, with quoted price being the ceiling subject to adjustment after necessary cost check. Prior consent of the competent financial authority should be obtained by the purchases offer before entering into a contract relating to uncertain conditions, wages, and cost of raw materials. Wherever possible, the right to examine firm’s books should also be reserved, except where details

furnished by the firm provide an adequate check and are satisfactory in all respects.”

Adaptation of Discounted Cash Flow Technique (DCF)

13.10 The Discounted Cash Flow is defined as “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”

(Glossary of Management Accounting Terms published by the institute of Cost and Works Accountants of India.)

13.10.1 The DCF procedure is to reduce both cash inflow and outflows into net present values (NPV) through the DCF methods, which would be more scientific and reliable. The use of Net Present Value (NPV) analysis in Cost and Price Analysis is based on the concept of time value of money. The 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 flow/inflows and the average cost of capital i.e., cost of borrowing becomes an important constituent in evaluation process. The NPV of a stream of cash flows is described as follows: -

$$NPV = C_1 \frac{1}{1+r} + C_2 \frac{1}{(1+r)^2} + C_3 + \dots \text{ Or}$$

$$NPV = \sum \frac{C_n}{(1+r)^t}$$

In the formula

C is the expected payoff at a period mentioned by the subscript n.

r is the rate of interest.

t is the period after which the payment is done.

n is payment schedule as per the payment terms and conditions.

13.10.2 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 10 to 11 years is part of the contract for evaluating for L1 status.

13.10.3 Ministry of Finance has also clarified that determination of L1 by merely adding arithmetic values spread over 12 to 13 years (2 years warranty and 10 to 11 year AMC) would be an incorrect procedure for determining L1 and the correct procedure would be reduced cash out flows into present values through the DCF technique for which the discount rate to be adopted should form part of the RFP.

13.11 **Discounting Rate.** The cost of borrowing to the Government is the relevant discounting rate for the purpose of evaluation. The Ministry of Finance and Company Affairs prescribes the lending rates of the loans to be charged by the Central Government from State Governments, Public Sector Undertakings and Financial Institutions etc. At present this rate is 9%.

13.11.1 In the RFP, where DCF method is to be used, a clause may be incorporated in the RFP as follows: -

“The buyer reserves the right to evaluate the offers received by using Discounted Cash Flow method at a discounting rate of _____%”.

13.11.2 In case cash flow involves more than one currency, the same to be brought to a common denomination, say Rupees by adopting exchange rate as on the date of the opening of price bids. “Excel” or any standard spreadsheet has the features for carrying out this exercise.

13.11.3 Ministry of Finance & Company Affairs letter dated 11 Nov 2002 placed as **Appendix ‘Q’** also clarifies the position on DCF.

Price Variation Clauses/Price Adjustment

13.12 Normally contract should be entered into on firm price basis. Nevertheless in the fluctuating market conditions, supplier often quotes variable prices, particularly when contract period exceed 18 months. DGS&D Manual has provided Standardised Price Variation Clauses. These clauses should be indicated in the RFP. A sample clause is indicated below:-

$$P_1 = P_0 (a + b L_1 / L_0 + c M_1 / M_0) - P_0$$

Where P_1 = Adjustment amount payable to the contractor
 P_0 = Contract Price (Base Price)
 a = Fixed element representing Profit & Overloads in contract price
 b = Estimated % of labour component
 c = Estimated % of Material component
 L_0 & L_1 = Labour indicates applicable to appropriate Industry on the base date & date of adjustment respectively.
 M_0 & M_1 = Material indicates for raw material on base date & date of adjustment.

The sum of the three coefficients a , b & c shall be (1)

13.13 **Conditions Applicable to Price Adjustment**

- (a) Base dates shall be due dates of opening of Tenders
- (b) Date of adjustment shall be midpoint of Manufacture.
- (c) Price adjustment will be applied only if the resulting increase or decrease is more than 2% of contract price
- (d) No price increase is allowed beyond original DP unless the delay is attributable to the buyer
- (e) Total adjustment will be a maximum of 10% of contract price
- (f) No price adjustment shall be payable on the portion of contract price paid to the contractor as an advance payment. The Price Variation Clause and its implication should be got vetted by IFA
- (g) Base price of raw materials should be that of a canalizing agency, wherever available for the purpose of price variation clause

Exchange Rate Variation (ERV)

13.14 In case delivery period exceeding one year from the date of contract involving import (foreign exchange), ERV clause is to be provided. The offer should indicate import content. In case DP is re-fixed / extended, ERV will not be admissible if this is due to default of 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 would be contract date and variation on the base date can be given upto the midpoint manufacture unless firm has already indicated the time

schedule within which material will be exported by the firm. Other conditions as above for price adjustment would be applicable.

13.15 Documentation for Claiming 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

13.16 Single Tender/Noncompetitive Contracts - Indigenous Procurement:

Where after the analysis of technical bids only one party remains competing for a contract for supply of a product or service or where one vendor has been nominated including Defence Public Sector Undertakings, such a case becomes a non-competitive contract or a single vendor/tender contract. The cost and the price offered by the vendor in such cases, particularly when, in the recent past reasonable quantities of such items have not been procured which will facilitate any comparison, needs to be scrutinized to assess that the price offered is reasonable and economical. To assess the reasonable price the following steps could be considered for the projects supplied in the past indigenously or by an Indian vendor.

- (a) In case of products, which have been supplied in the past, the actual cost of production of the completed contract or supplies may be obtained in addition to the price quotation. The current Cost of Production may be assessed keeping in view the actual cost of production duly updated to current rates.
- (b) The break up of the material cost into the imported and indigenous material. In case of imported material, break down of Foreign Exchange content, foreign currencies involved, exchange rate adopted and other costs to be obtained. In respect of Direct Material, various types of material used, their spec(s), unit rates and usage factor and credit for scrap arising should be assessed by a Technical Team and rates vetted by IFA/IFA rep.
- (c) The man hour rate (MHR) rate and Total Standard Man Hours (SMH) should be assessed.

(d) Cost Break up should be obtained as per format placed at **Appendix 'P'**

(e) Balance sheets and profit and loss accounts during the last three years should be analysed, wherever made available.

(f) In case where advance or progressive payments are required to be paid, the advantage of advance in terms of lower cost of production should be considered.

(g) Where the order is for larger quantity, the benefit of economy of scale due to higher capacity utilisation and reduction of overheads particularly fixed overheads should be taken into account.

(h) There should be clear linkage between price negotiated and quantum of advance.

Web Sites

(j) 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 and | 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 web site | www.finmin.nic.in should be assessed as also CVC's site | www.cvc.nic.in.

(h) The price should normally be on 'Firm Price' basis. When contracts are concluded with provisions for variation in price, the formula on which price variation is based should be clearly spelt out indicating the base price of the raw material, labour, overheads and duties etc., on which price variation is to be allowed. Price variation should be considered up to the schedule date of delivery. Escalations beyond scheduled dates may be considered when the delay in execution of contract is attributed to the buyer.

(j) RFP, should invariably contain a 'Book Examination Clause' for high value single vendor cases. Costing expert should be associated in the CNC for cost assessment etc. **Adviser (Cost) MOD can be consulted beyond Rs. 20 Crore (Single vendor cases) who could be made a part of CNC to render advices on cost examination as is the case with the capital acquisition cases as per DPP 2002 (version 6/2003).**

13.16.1 The format in which data is to be sought from single vendor is placed at **Appendix 'P'**. Validation of total SMH figures could be a time consuming affair.

These are indicative guidelines and should not hold up finalisation of CNC negotiations. (DPB decision dated 19.10.2004.)

13.17 **Single Tender / Noncompetitive Contracts - Foreign Procurement:** Apart from the parameters enumerated at Para 13.16 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) Compare with 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.

(c) DRDO and Production Agencies should be involved in assessing the reasonability of prices in such cases of high value.

(d) 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.

13.18 **Data Base on Cost & Prices:** Each service HQrs. OFB and DRDO should have **costing expert as part of the Directorate of Financial Planning** which 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. In case of OFB & DRDO HQrs the Addl FA, costing expert would function under the Fin/OFB respectively.

13.18.1 For **price indices**, internet facility should be accessed by officers dealing with purchases/associated with CNC from important sites as enumerated at para 13.16(g) above. The Directorate of Financial planning should subscribe to important publications like RBI Monthly Bulletin, CMIE'S monthly report, Economic Times/Financial Express, MMR etc.

13.18.2 Expert agencies should be approached for **market intelligence** forecasting trends and best practices. Public Sector Banks, particularly SBI, should be consulted before firming up major payments involving LC, Performance Bank Guarantee, reputation of foreign banks etc.

13.18.3 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.

13.18.4 **Even when only one bid is submitted, it may be considered valid if the bid is satisfactorily advertised and price quoted is reasonable in comparison to market value and assessed price.**

13.18.5 **The SHQs must put in place a system for data sharing and data networking, both within the Service and on an Inter-Services basis in order to widen the procurement sources and obviate differential price being paid for the same item within the Service and on an Inter-Services basis.**

13.18.6 Assessing of reasonability may be 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 a price and taking procurement decision.

CHAPTER XIV

CVC GUIDELINES

General

14.1. The Central Vigilance Commission Ordinance 1998 empowers CVC to 'exercise superintendence over the vigilance administration of various Ministries of the Central Govt. or corporations established by or under any Central act, Govt. companies, societies and local authorities owned or controlled by that Govt.' The CVC have been working towards system improvements to encourage transparency and the culture of honesty. In order to achieve this objective, the CVC have issued a number of letters containing instructions and guidelines. All procurement agencies must disseminate these guidelines to all concerned so as to ensure compliance at all levels.

14.1.1 Greater transparency in administration in general and procurement in particular is essential to instill the confidence in the staff as well as those who deal with the department. In order to obviate corruption or unethical practices, every department should constitute their own vigilance section. An effective internal communication system should be put in place so as to freely disseminate instructions, orders and guidelines amongst the staff. Also, in order to sensitise the staff and the public, each organisation should prominently display anti corruption notice.

Purchase Manual

14.2 The cardinal principle of any public buying is to procure the materials/services of the specified quality, at the most competitive prices, and in a fair, just and transparent manner. In order to achieve this, it is essential to have uniform and well documented policy guidelines in the organisation so that this vital activity is executed in a well coordinated manner with the least time and cost over-runs. A purchase manual containing the detailed purchase procedures, guidelines and proper delegation of powers needs to be formulated in each department so that there is systematic and uniform approach in the decision making.

Provisioning

14.3 Provisioning is the basis for any purchase. Excessive provisioning without taking into consideration the important aspects like available stock, outstanding dues/supplies, past consumption pattern and the average life of the equipment/item etc. results in infructuous expenditure both in term of procurement cost and the inventory carrying cost. The projection and provisioning must be judicious and justified depending on various factors including usage pattern. One time purchase for project or capital equipment/spares should be properly justified taking into account the obsolescence factor, etc.

14.4 **Estimated Rates**. Estimated rates are often worked out in an ad-hoc, unprofessional and perfunctory manner, at times by extrapolating the price of the lowest capacity equipment or by applying a uniform yearly compounded escalation over the prices of similar equipment purchased few years ago. As estimated rate is a vital element in establishing the reasonableness of prices, it is important that the same is worked out in a realistic and objective manner on the basis of prevailing market rates, last purchase prices, economic indices for the raw material/labour, other input costs and assessment bases on intrinsic value of the item etc.

Tendering

14.5. Tendering is the most important activity in the procurement process and hence must be a transparent and effective system. Following CVC guidelines need to be followed in this regard:-

- (a) **Mode of Tendering**. As per CVC guidelines, Global/Open and advertised Tendering are the preferred mode for inviting quotes. Whenever such a mode is selected, tender is to be advertised in at least two national news papers besides publishing in the IJT and the web site of the department. In addition, Tender Notices are also to be sent to all registered vendors for that category of items by registered post. Where limited tendering becomes essential for reasons of urgency or the nature of the items, selection of registered vendors to whom Tender is to be sent should be based on clear logic duly recorded. Purchase on PAC and STE basis should be made with detailed justification in its support and with the approval of the CFA. In all cases, a proper record of dispatch of tender enquiry must be kept by the purchase agency.

(b) **Period to Quote.** It is essential that adequate time is given to the vendors to prepare the quote and submit the same in time. Normally, at least 4-6 weeks should be given in case of advertised tendering, 3-4 weeks in case of LTE and even in urgent cases, 7-10 days should be given for submitting the quote and in such cases, Tender Notice may be sent through faster means like FAX, etc.

(c) **Bid Document.** The bid document being the most vital, it must be prepared with due care and all details of the requirement, specifications, date, time and place for tender opening, terms and conditions of contract including clauses like earnest money, delivery schedule, payment terms, performance /warranty Bank guarantee, pre-dispatch inspection, arbitration, LD/penalty for delayed supplies and risk purchase etc. must be incorporated. In order to ensure equitable evaluation of bids, all factors relating to the evaluation criteria like payment terms, delivery period, performance Bank Guarantee, etc. having financial implication need to be specified in unambiguous terms in the tender document. These clauses need to be clearly stipulated so as to safeguard the interest of the Govt. and for evaluation of bids on equitable and fair basis and in a transparent manner. Warranty clause should provide for action to be taken by purchaser in case the seller does not rectify/replace the goods within time period specified in the contract. Option clause must mention that it will be exercised subject to there being no downward trend in prices.

(d) **Postponement of Tender Opening.** Whenever postponement of tender opening becomes necessary due to change in specification sufficient time and notice should be given to all vendors so as to give equal opportunity to all bidders and to maintain sanctity of tendering system. Opening of bids must be in the presence of firm's rep who wish to attend.

Purchase Policy

14.6 Govt. instructions on reservation of items and price preference to the SSI and the purchase preference to the PSUs as per the guidelines circulated by Department of Public Enterprises should be incorporated in the bid document. The ban on negotiation with other than L1 firm does not prohibit compliance with Govt. policy for purchase preference to the PSU. It is laid down that where the quoted prices of the PSU or Joint Venture with PSEs with a minimum value added content of over 20% by the latter, subject to purchase in excess of Rs. 5 crore, is within 10% of the lowest price, other things being equal, purchase preference would be granted to the PSU at the lowest acceptable price.

14.6.1 No conditional discounts should be considered while evaluating bids. However, all cost likely to be incurred by the Govt. on delivery of stores to the consignee, including exemptions granted should be loaded to arrive at the equitable ranking of bids. Whenever, L1 firm is not in a position to supply the full quantity as per tender, the quantity order may be distributed in such a manner that the purchase is done in a fair, transparent and equitable manner. Post tender negotiations would be only with the L1 firm or in case of PAC or STE tendering.

14.7 **Reasonableness of Prices** - Purchase decisions must be based on a careful analysis of the prices offered and after establishing the price reasonableness in relation to the estimated rates, LPP, or the prevailing market rates, economic indices of raw materials/labour, input cost and intrinsic value of the item.

Advance Payment & Bank Guarantees

14.8. As per CVC guidelines, payment of mobilisation advance should be only in case of select works and that the advance should be interest bearing so that the contractor does not draw undue benefit. Such advance payment should be made only if expressly stated in the NIT Bid Documents indicating the amount and rate of interest and against a valid unconditional Bank guarantee of equivalent amount.

14.8.1 The effective date of contract should not be linked with either the date of receipt of advance payment or the date of receipt of the BG for advance payment without specifying the exact date for such a receipt as such a clause is detrimental to the interest of the Govt. Timely action for revalidation/ encashment of the BG should also be ensured as applicable to safeguard the interest of state. Reasonable amount of performance guarantee valid up to warranty period should be taken to ensure due performance of the contract. There should be a provision in the contract for adjustment of advance progressively even as the bills are cleared for payment.

Post Contract Management

14.9 **Contract Amendment**. After conclusion of the contract, any relaxation in the contract terms / conditions should be severely discouraged. However, in exceptional cases where the modification/amendments are considered to be absolutely essential, the same should be allowed only after taking into account the financial implications for the same.

14.10 **Contract Monitoring**. It is essential that all contracts are closely monitored and all follow up actions should be taken promptly. Delivery compliance including offering the stores for inspection in time should be monitored and timely expeditor sent, where required. Delivery Period extension should be granted only on bonafide request and not in a routine and casual manner. In case of delay in supply of item, the LD, to the extent possible, should be recovered. Also, if the delay is attributed to the supplier, the LC amendment charges should be borne by the supplier.

14.10.1 There is a need to discipline the suppliers so that non performers could be weeded out and the suppliers which can be relied upon with consistent performance, in terms of quality and delivery schedule are encouraged.

14.11 **CVC website** For updates on CVC guidelines/instructions, www.cvc.nic.in should be accessed.

14.12 Inter Govt Agreement (IGA) In certain cases a State of art equipment may be available with only one country. Procurement of such equipment may be necessitated due to urgent operational requirements. Such procurements will be done based on an Inter Governmental Agreement after clearance from CFA.

14.13 Any deviation from the prescribed procedure of DPM 2005, will be processed by PSO, with respective Addl FAs for approval of FA(DS) & Defence Secretary. Cases depending on merit would be processed for approval of RM.

APPENDICES

APPENDIX "A"
Refer Chap 2 Para 14

TIME FRAME FOR ACQUISITION
[SINGLE COMMERCIAL BIDS]

<u>RECEIPT OF INDENT</u>		
1.	Vetting, Registration of Indent and	1 Week
2.	Vendor Selection and preparation of TE.	1 Week
3.	IFA Concurrence, CFA approval and floating of LTE/STE	2 Weeks
<u>PROCUREMENT ACTION</u>		
1	Time allowed for submission of offers in a single bid system (Commercial bid only)	3 Weeks (LTE) 4 Weeks (OTE) 6 Weeks (GTE)
2.	Opening of Commercial offers, preparation of CST, Tech Vetting, etc.,	2 Weeks
3.	Proposal for Procurement / Counter Offer / Scheduling of PNC with IFA concurrence, and CFA approval.	2 Weeks
4	Brief for PNC, notice for PNC and PNC meetings	4 Weeks
5.	PNC minutes and signature	1 Week
6.	IFA concurrence and CFA Approval of Purchase Proposal	2 Weeks
7	Preparation of SO and Despatch of SO	1 Week
	Total	19 - 22 Weeks

APPENDIX "A1"
Refer Chap 2 Para 14

TIME FRAME FOR ACQUISITION
[TWO BIDS]

<u>RECEIPT OF INDENT</u>		
1.	Vetting and Registration of Indent	1 Week
2.	Vendor selection and preparation of TE	1 Week
3.	IFA Concurrence, CFA approval and floating of LTE/STE	2 Week
<u>PROCUREMENT ACTION</u>		
1	Time allowed for submission of offers in a Two bid system (Commercial bid and tech bid)	3 Weeks (LTE) 4 Weeks (OTE) 6 Weeks (GTE)
2.	Opening of Tech Bids and Technical Evaluation by TEC.	3 Weeks
3.	Opening of Commercial offers,	2 Weeks
4.	Preparation of CST and Proposal	1 Week
5.	Proposal for Procurement / Counter Offer / Scheduling of PNC with IFA concurrence, and CFA approval.	2 Weeks
6.	Brief for PNC, notice for PNC and PNC meetings	4 Weeks
7.	PNC minutes and signature	1 Week
8.	IFA concurrence and CFA Approval of Purchase Proposal	2 Weeks
9.	Preparation of SO and Despatch of SO	1 Week
	Total	23 - 26 Weeks

RFP/Tender Enquiry

INVITATION OF QUOTATIONS FOR SUPPLY OF
(_____) INDIAN FIRMS

1. Quotations in sealed cover are invited for supply of _____ spares listed in enclosed Schedule of Requirement (SOR).

General information about the tender :-

- (a) Tender reference No. _____
- (b) Last date and time for receipt of tenders _____
- (c) Time and date for opening of tenders _____
- (d) Place of opening of tenders _____
- (e) Address for Communication _____

Quotation shall remain valid till _____

Submission /Opening of Tenders

3. PLEASE SUPERVISE OUR FER REF NO. AND DATE OF TENDER OPENING ON SEALED COVER. FAILURE TO DO SO WILL RENDER YOU OFFER INVALID.

4. Sealed quotations addressed to _____ should be dropped in tender box marked as :

"TENDER BOX NO: _____"

and kept neat the reception office at _____ or to be sent by registered post so as to reach this office by due date and time. No responsibility will be taken for postal delay or non-delivery/non-receipt of tender documents.

PLEASE NOTE, IF THE SEALED OFFERS ARE DROPPED IN THE WRONG BOX, THEY WILL BE RENDERED INVALID

5. Sealed quotations will be opened by a committee on due date and time. Your authorised representative from the Company can attend the tender opening. If due to any exigency the due date for opening of tenders is declared as closed holiday, in such cases the tenders will be opened on next working day at the same time or any other day/time as intimated by the Buyer.

6. Your sealed quotations both (Technical & Commercial in case two bid are required) should reach to this office latest by (Time) hrs on (date). The technical Bid would be opened by a committee on (time) hrs on (date). The date of opening of Commercial Bid will be intimated after acceptance of technical Bids.

7. Tenders sent by FAX will not be considered. Tenders found in sealed box will only be considered **To avoid any complications with regard to Late Receipt/Non Receipt of Tenders, it may please be noted that responsibility rests with the tenderer to ensure that tenders reach this HQ before due date. Late quotes will be rejected out rightly.**

8. In case your firm is not willing to quote due to any reasons, your regret should be faxed well before the due date⁴ failing which your firm can be de-listed from vendor list.

9. Commercial offers will be opened only of those firms, whose Technical Offers have been found suitable after technical evaluation. The commercial Offer must be firm and valid for at least 90-120 days from the date of submission of offer.

10. The Commercial Offer will be opened by a Committee and if firm desires, may depute their representative, duly authorised in writing, to be present at the time of opening of tenders. Further negotiations will be made only with the lowest bidder (L1) as determined by the committee. The date, time and venue fixed for this purpose will be intimated separately after the Technical evaluations are completed.

Delivery Schedule :-

11. Within 90 to 180 days of signing of the contract as applicable. (this can be changed based on nature of item, urgency and the quantum of items tendered so as to give reasonable DP).

12. 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.

13. Preference shall be given to those offer supplying within the prescribed delivery schedule, which shall be the essence of the contract **Liquidated Damages** @ 0.5% per week subject to a maximum of 5 % of the undelivered stores will be recovered in case of delay in delivery beyond the accepted delivery period as per SCOC.

Commercial Aspects

14. Prices must be quoted on F.O.R. Destination basis by road inclusive of Packing, Forwarding, Freight charges, Transit Insurance and any other charges as applicable. The consignee for the contract is _____.

15. Taxes & Levies. Details of Excise Duty, if any, is to be indicated. Exemption Certificate for Octroi, Custom Duty, Excise and form 'D' for admitting CST @ 4% will be provided if specified & applicable. FE content, if any, is to be indicated separately, for which Custom Duty Exemption certificate is required.

16. Performance Guarantee. The vendor shall furnish a **Performance Guarantee** by way **of Bank Guarantee** for a sum **equal to 5% of the contract value** within 30 days of receipt of confirmed order. Bank Guarantee should be valid up to warranty of stores.

17. Quality Assurance. After the contract is negotiated, the firm would be required to provide the Standard Acceptance Test Procedure (ATP). Inspecting Authority reserve the right to modify the ATP when necessary item would be accepted subject to evaluation and clearance by the Inspecting Authority. Firm would be required to provide all test facilities at OEM premises for acceptance and inspection by DQA. The details in this regard will be coordinated during the negotiation of contract. The item should be of latest manufacture conforming to the current production standard having 100% defined life at the time of delivery. Warranty should be minimum 12/18 months from the date of supply.

Evaluation Criteria

18. The broad guidelines for evaluation of offers will be as follows: -

(a) Only those offers shall be evaluated which are found to be fulfilling all the eligibility and qualifying requirements of the tender, both technically and commercially.

(b) The Lowest 'Acceptable' tender shall be considered further for placement of Contract/Supply Order after complete clarification and price negotiations as applicable.

(c) Delivery within stipulated months of signing of contract shall be accepted. However, preference will be for shorter delivery period and loading will be done as per the prevailing rules.

Option Clause

19 The contract shall have an Option Clause, wherein the buyer can exercise an option to procure an additional 50% of the original contacted quantity in accordance with the same terms & conditions of the present contract. This shall 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.

Repeat Order Clause

20. The contract shall 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 successful completion of this contract, cost, terms & conditions remaining the same. Request confirm acceptance of this clause. It will be entirely the discretion of buyer to place the repeat order or not.

21. Standard Conditions of Contract (SCOC). Firm shall be required accept our Standard Conditions of Contract. Copy of the same is enclosed. In addition standard clauses regarding agents/agency commission, penalty for use of undue influence, access to books of accounts, arbitration and laws would be incorporated in the contract. The copy of SCOC can be forwarded on request.

22. Payment Terms. 95% Payment against Inspection note, Proof of despatch, Duly supported by Xerox copy of Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignees along with user's certificate of complete Installation and successful commissioning.

23. Placement of Order. The Purchase Order will be placed on successful conclusion of negotiations on L1 firm.

24. This RFP is being issued with no financial commitment and purchaser reserves the right to change or vary any part thereof at any stage. Purchaser also reserves the right to withdraw the RFP should it be so necessary at any stage.

25. Please acknowledge receipt.

Thanking you,

Yours faithfully,

SCHEDULE OF REQUIREMENT WITH TECHNICAL DETAILS

Salient Points to be indicated

1. Type of item/description of stores.
2. Quantity required
3. Specifications /drawings as applicable
4. Technical details alongwith technical parameters.
5. Requirement of training/on job training.
6. Requirement of installation, Commissioning
7. Requirement of FATs, HATs and SATs.
8. Requirement of technical documentation.
9. Type of future assistance on completion of warranty.
10. Ultimate Consignee and requirement of pre-site/equipment inspection.

SCHEDULE -A-
TO
TENDER NO _____

Date & Time to reach this office:	
Time and date of opening of tenders	
Validity of Tender required till	

1. DETAILS OF ITEMS OFFERED

Sl No	Description	DOQ	Qty	Price in Indian Rupees*

*Unit price should be exclusive of all Government duties, Govt. Duties/taxes etc should be specified giving the current rate applicable.

2. PLEASE SPECIFY THE FOLLOWING :-

(ALL COLUMNS ARE TO BE FILLED OTHERWISE THE OFFER IS LIABLE TO BE REJECTED)

S NO	DETAILS	TO BE FILLED BY THE FIRM
1.	Discount, if offered (Answer in YES /NO)	
	Indicate the amount of discount	
2.	Is Excise duty extra? (Answer in YES /NO)	
	If Excise Duty is extra, indicate the extent/current rate of Excise duty leviable for item.	
	Surcharges on Excise duty	
3.	Is Sales Tax extra? (Answer in YES /NO)	
	If Sales Tax is extra, indicate the rate against the Concessional Form.	

4.	Is Customs Duty Exemption Certificate (CDE) required? (Answer in YES /NO) IF CDE IS REQUIRED INDICATE AND ENCLOSE THE NOTIFICATION UNDER WHICH CDE CAN BE ISSUED.	
	If CDE is required indicate CI F value of stores to be imported.	
	If CDE is required indicate the Customs Duty payable.	
5.	Is your company exempted from payment of Sales Tax and Excise Duty ? (Answer in Yes /NO)	
6.	Any other duty / levy	
7.	Details of EMD (if applicable)	
8.	Acceptance of Performance Bank Guarantee on confirmation of order	
<p>Note: the tenderers are required to spell out the rates of Customs duty, Excise duty, sales tax, in unambiguous terms, otherwise their offers will be loaded with the maximum rates of duties and taxes for the purpose of comparison of prices.</p> <p>Tenderers should furnish details about the deviation, if any, from the tender specification failing which the Offer will be treated as incomplete. <u>FOR OBTAINING/DETAILS OF SPEC. /DRG, *** MAY BE CONTACTED DIRECTLY</u></p>		

1. Preference to the tenders quoting FIRM & FIXED rates may be given if their offer is found to be meeting all technical QRs.
2. Firms offering variable prices should give details of escalation formula, which should, however, avoid WAGE ESCALATION.
3. DELIVERY REQUIRED :
4. TERMS OF DELIVERY : FOR Destination.
5. CONSIGNEE :
6. INSPECTION AUTHORITY :
9. AGENT INSPECTION AUTHORITY :
10. INSPECTION OFFICER :

No. 98/ORD/1
Central Vigilance Commission

Satarkta Bhawan, Block
'A'

GPO Complex, INA
New Delhi – 110023
Dated the 5th Jul
2004

Office Order No.44/7/04

Subject: Improving Vigilance Administration: Increasing Transparency in Procurement/sale etc. – Use of website regarding.

The Central Vigilance Commission has issued a directive on the above subject vide its Order No. 98/ORD/1 dated 18th Dec 2003 making it mandatory to use web-site in all cases where open tender system is resorted to. These instructions have been further extended vide Office Order No. 10/2/04 dated 11.2.2003 to tenders of the PSUs and other Govt. organizations dealing with defence and national security related subjects have sought clarification on the following issue:

Issue : Items and Works, which are of sensitive nature from the point of view of national security.

It has been pointed out that in some cases the tender documents and specifications given therein are of highly sensitive nature and putting such information on the website can have national security implications or is not in the national interest.

Clarification: It needs to be clarified that instructions of the Commission are with regard to open tenders only where organizations are already giving advertisements in newspapers thus it is presumed procurement or works are not of secret nature. However if still CMD/CEO of a PSU or head of an Ordnance factory or head of a sensitive organization in Defence, Atomic Energy or Space sectors or the concerned administrative ministries are of the opinion that it will not be feasible to put detailed tender documents on the website keeping in view their sensitive nature from national security point of view or from the point of view of national interest, they may take the decision not to put those documents or even the tender notice on website. But in all such cases the decision must be taken at the level of CMD or head of a PSU, head of an ordnance factory and in other government organizations at a

level to be decided by the concerned administrative ministry. The specific reasons for not putting an open tender on web-site should be recorded in the concerned file.

Sd/-

(Balwinder
Singh)
Addl.
Secretary

Appendix 'D'
Refers to Chapter 4 Para
10.1

NO. 8/3/E.II(A)/2002
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE
E.II(A) BRANCH

.....

New Delhi, the 14 Jul 2004.

OFFICE MEMORANDUM

Subject: Task Force on Revision of Procurement Norms.

The undersigned is directed to refer to this Department's OM dated 08.10.2003 of even No. on the subject cited above informing all the Ministries/Departments regarding the constitution of the Task Force under the Chairmanship of then Additional Secretary of this Department for reviewing the existing provisions relating to procurement of stores /services constrained in General Financial Rules, DFPRs and in various Departmental manuals vis-à-vis the international procurement laws, World Bank's Country Procurement Assessment Report for India and the practices being followed by the other Govt./ international agencies. The Task Force was asked to make suitable recommendations for recommendations for revision of the existing norms to ensure greater transparency, competition, fairness and elimination of discretion in procurement of goods and services by Govt. after taking into account best international practices. A reference paper for consideration of the Task Force was also circulated to all Financial Advisers of Ministries/Departments, for their views/ comments.

2. The Task Force after detailed deliberations in various meetings and after consulting the Financial Advisers working in different Ministries has since submitted its final Report. One of the major recommendations of the Task Force with regard to ensuring greater transparency in Government procurement is that the Notice Inviting Tenders floated by Government Departments should be given wide publicity through

appropriate notification and advertisement for bringing the same to the knowledge of all the prospective bidders. Accordingly, all Government Departments are advised to:

- (a) Publish the Notice Inviting Tenders, in case of Open Tenders on their websites and also on main website of NIC.
 - (b) NIC should make necessary arrangements to facilitate such publicity of the tenders on the websites of those Ministries, who are utilizing the services of NIC for maintenance of their websites.
 - (c) Ministries/Departments who have outsourced this work to external agencies should ensure the publicity of such tenders on their website through these agencies.
 - (d) NIC are further advised to ensure necessary hyper linking of the websites of various Ministries on publication of tender, for easy centralized access by the users.
 - (e) Also in order to achieve the objective of elimination of discretion in Govt. procurement, it is necessary to facilitate information sharing and, therefore, all Ministries/Departments are advised to put up henceforth on their website a copy of their supply order for each procurement involving financial implications of more than Rs. 5 lakhs, which would be accessible to any other Department intending to make similar purchase.
3. All Ministries/ Departments and NIC are advised to take necessary action for compliance of the above instructions at the earliest but not later than 15.09.2004, under intimation to this Department.

Sdxxxx
(Rubina Ali)
Under
Secretary

To

- (i) Financial Advisers of all Ministries/Deptt.
- (ii) NIC

Appendix 'E'
Refer to Chap 4 para 12.5

FORMAT OF TEC REPORT

Para of tender enquiry specifications	Specification of Machine Offered	Compliance of TE specification whether Yes or No	In case Non-compliance Deviation from T/E specification to be indicated in unambiguous terms
1	2	3	4

Appendix 'F'
Refer to Chap 7 para 2

**Agreement Between The Government of the Republic of India Ministry of Defence
and (Name of the company) for (Name of Eqpt)**

**Contract No.
(No. of the Contract)**

**I
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CONTRACT NO.(_____)

DATED (_____)

PREAMBLE

This contract is made on this day, the (date) day of (Month & Year) in New Delhi, between the President of India represented by the Joint Secretary and Acquisition Manager (Land Systems), Ministry of Defence, Govt of India, South Block, New Delhi, hereinafter referred to as the Buyer (which terms unless excluded by the context, shall be deemed to include his successor in office) on one part, and M/s (name of the company with address) duly represented by-----, and incorporated under the laws of _____, having its registered office at _____, (which terms unless expressly indicated by the context shall be deemed to include its successors and its assignee), hereinafter referred to as the "Seller" on the other part.

AS, The BUYER agrees to buy and the SELLER agrees to sell the goods described in **Annexure-I** of this contract and in accordance with the terms and conditions of this CONTRACT.

AND WHERE AS the SELLER assures the BUYER that the BUYER has the full and unfettered right to have the supplies manufactured in India through a nominated agency and supply it to the BUYER,

It is hereby agreed and declared by and between the parties hereof:-

ARTICLE 1 **SCOPE OF CONTRACT**

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 goods, quantity, unit price, and total value as specified in **Annexure-I** of the present contract.

ARTICLE 2 **EFFECTIVE DATE**

This contract shall come into effect on the date of signature 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 contract.

The obligations to be fulfilled by both the Buyer and the Seller to make the contract operational should be clearly specified as follows :-

SELLER

The seller should furnish the following documents to the buyer :-

- (i) **Advance Bank Guarantee; and**
- (ii) **Performance Bank Guarantee; and**
- (iii) **Export License from the Buyer's Government.**

BUYER

On receipt of the above documents, the buyer shall release the advance payment within 30 days of the same.

The buyer shall also provide End User's Certificate to the seller within 30 days of signing of the contract.

ARTICLE 3
ADVANCE BANK GUARANTEE

3.1. An Advance Guarantee Bond will be issued in the form of a bank guarantee by (.....SELLER'S BANK.....) through an internationally recognised first class bank within 30 days of the signing of the contract in favour of Government of India, Ministry of Defence to be confirmed by State Bank of India/Bank of India/Bank of Baroda/Canara Bank equal to ____% of the total value of this contract i.e. for US \$ (in words US Dollars only).

3.2. The specimen of the Advance Guarantee Bond is mentioned in **Annexure-II** to this contract.

3.3. The Advance Guarantee Bond shall be considered open upon receipt by the BUYER's bank.

3.4. The Advance Guarantee Bond shall be proportionately and automatically reduced until full extinction along with and prorate to the value of each delivery as evidenced by the corresponding copy of document proving delivery (Bill of Lading or Air Way Bill, as the case may be) and the invoices of goods/services supplied/provided.

ARTICLE 4
PERFORMANCE BOND

4.1. A Performance Bond will be issued in the form of a bank guarantee by (.....SELLER'S BANK.....) through an **internationally recognised first class bank in favour of Government of India, Ministry of Defence to be confirmed by State Bank** of India/Bank of India/Bank of Baroda/Canara Bank equal to 5% (five percent) of the total value of this contract i.e. for US \$ (in words US Dollars only).

4.2. A specimen of the Performance Bond is at **Annexure-II** to this contract.

4.3. The Performance Bond shall be considered open upon receipt by the **BUYER's** bank.

4.4. In case any claims or any other contract obligations are outstanding, the SELLER will extend the performance bond as asked by the BUYER till such time the SELLER settles all claims and completes all contract obligations.

4.5. The Performance Bond will be subject to encashment by the BUYER, in case, conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the SELLER.

ARTICLE 5 **PAYMENT TERMS**

5.1. The total value of the stores to be delivered according to this Contract amounts to US \$ (In words US Dollars only).

5.2. The payment will be made in free convertible US Dollars.

5.3. Advance Payment. _____% of total value of contract, that is to say USD _____, shall be paid within 30 days from date of receipt of under mentioned documents, whichever is later, through Bank Transfer:-

- (a) Advance Guarantee Bond.
- (b) Commercial invoice for the advance amount with contract number indication (2 original and 4 copies).

5.4. The SELLER shall notify the readiness of goods 30 days prior to delivery of each consignment showing the quantity, nomenclature, unit price and total value of the consignment.

5.5. ____% i.e. US\$ (In words US Dollars only) of the value of each consignment shall be paid by an irrevocable, Letter of Credit with validity of 90 days, opened through State Bank of India, New Delhi with (NAME OF SELLER's BANK & ACCOUNT) in favour of the SELLER. The terms and condition of the Letter of Credit shall be advised to (NAME OF SELLER's BANK & ACCOUNT) by the State Bank Of India by a cable and the period of 90 days shall be reckoned from the date on which such advise is sent.

5.6. The LCs shall be opened as follows:-

- (a) First LC amounting to _____ USD.
- (b) Second LC amounting to _____ USD.
- (c) Third LC amounting to _____ USD.

5.7 The Seller will give a notification to the Buyer about the readiness of goods for despatch 45 days prior to the delivery of the consignment. Consequent on receipt of the above notification, the buyer shall open the

Letter of Credit before expiry of this period of 45 days provided the following documents have been received :-

- (i) Performance Bond for the full value of the contract.**
- (ii) Warranty Bond for the full value of the contract.**

As regards the validity of LC, DPP 2006 has prescribed 90 days. However, the period should not be specified and can be fixed on a case to case basis depending upon the delivery schedule which will do away with extension of period in case of longer delivery schedules. A note can be added that since LC charges are fixed on per quarter basis, it may be ensured that LC validity is fixed in multiples of 90, 180, 270 days depending upon the delivery schedule. Revolving Letter of Credit can be opened in case of delivery in multiple consignments and long delivery schedule.

As regards balance payment after JRI, Schedule IV prescribes that the payment will be made by Bank Transfer within 45 days of completion of JRI and acceptance of goods. In some cases recently vendors are insisting on balance payment also through LC. It is suggested that both options viz. LC / Bank Transfer can be provided in Standard Contract to provide flexibility. However, document for LC has to cater for JRI certification. The time period may be kept as 30 days.

Vendors may formulate their commercial offers on the assumption that a maximum of 15% of the contract value would be receivable as advance, which would have to be supported by a Performance Bank Guarantee of Public Sector Banks approved by MoD (viz SBI, BOB, Canara Bank & BOI) in case of Indigenous procurement and of a first class bank of International repute in case of Imports.

5.8. In the event of delay in opening the Letter of Credit, the delivery date will automatically stand extended to that extent.

5.9. All expenses connected with establishment of the Letter of Credit in India will be borne by the BUYER and those outside India will be borne by the SELLER.

5.10. Where the extension of the validity of Letter of Credit is necessitated, the Bank charges for extension shall be borne by the party whose default causes such an extension.

5.11. The payment from the Letter of Credit for equipment, spares, STEs etc, ____ % of the invoice value will be made against presentation of the following documents toSELLER's BANK:-

- (a) SELLER's commercial invoice in sextuplicate, showing the number of the Contract, quantity and Denomination of the Equipment delivered and the amount.
- (b) Full set of Originals "Clean on Board" Bills of Lading/Air way bill.
- (c) Packing List, six copies.

- (d) Certificate of Origin, duly stamped by the Seller's Chamber of Commerce.
- (e) Certificate of Conformity and Acceptance test report at the Pre Despatch Inspection signed by BUYER's and the SELLER's quality Assurance Department. In case BUYER's reps do not attend the PDI, then certificate issued by the BUYER that it does not wish to attend the PDI and Inspection and acceptance certificate issued by the SELLER.
- (f) Certificate of current manufacture.
- (g) Insurance documents for 110% of the cost of consignment in case of CIF or CIP contracts.

5.12. No transshipment of goods is allowed and no part shipment is permitted.

5.13. Three copies of SELLER's Invoices, shipping documents and the specifications will be sent by courier and fax by the SELLER to the BUYER (DDG PPO, Master General of Ordnance Branch, Army Headquarters, DHQ PO, New Delhi - 110 011, India, Fax: 379 3337) within 3 days after the equipment has been shipped.

5.14. Any demurrage charges incurred by the Port Consignee due to late submission/incorrect submission of the shipping documents by the SELLER as per Article above would be borne by the SELLER.

5.15. All payments will be carried out with reference to the number of this contract.

5.16. Balance Payment. The balance payment for ___% value of each consignment shall be paid to the SELLER by Bank Transfer within 45 days of completion of Joint Receipt Inspection (JRI) and Acceptance of goods against presentation of following documents:-

- (a) Copies of invoices (three copies).
- (b) Copy of JRI and acceptance certificate issued by the BUYER.

5.17. Seller's banker address and account number: -

Account No.:
Sort code :
SWIFT Code :

5.18 It will be mandatory for the suppliers/vendors to indicate their bank account numbers and other relevant e-payment details so that payments can be made through ECS/EFT 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 is at Annexure II A.

ARTICLE 6 **SPECIFICATION**

6.1 The SELLER guarantees to meet the specifications as per **Annexure-III A**, the statement of work as per **Annexure-IIIB** and to incorporate the modifications to the existing design configuration to meet the specific requirement of the **Services** as per **Annexure-IV** and modifications/requirements recommended after the confirmatory trials/MET, in the first off production model of (Year) to be supplied to the BUYER. All technical literature and drawing shall be amended as the modifications by the SELLER before supply to the BUYER.

6.2 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 SMTs/STEs/TJs as a result of upgradation/alterations will be provided to the buyer free of cost within () days of affecting such upgradation/alterations.'

ARTICLE 7 **QUALITY**

The quality of the stores delivered according to this 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 Article 4 and shall also include therein modification to the stores suggested by the BUYER. Such modifications will be mutually agreed to. The SELLER confirms that he stores to be supplied under this Contract shall be new ie 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 alongwith the changed part Nos.

ARTICLE 8

PRE DESPATCH INSPECTION (PDI)

8.1. The BUYER representatives will carry out Pre Despatch Inspection (PDI) of the Equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion such PDI, the SELLER and BUYER will issue and sign a Certificate of Conformity as per speciment at **Annexure-V** . The format given is not sacrosanct and may be altered as per requirement of the equipment.

8.2. The SELLER shall intimate the BUYER and DGQA (as per address given in Para 8.7) at least 45 days before the scheduled date of PDI. The time for visa formalities by the SELLER should not be inclusive in this notice. The BUYER will send his authorised Representatives to attend the PDI.

8.3. 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.

8.4. The BUYER reserves the right not to attend the PDI or to request for a delay in the beginning of the PDI with a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his Representatives 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 delay, then liquidated damages, if any, shall not apply. In case the BUYER has informed the SELLER within the period mentioned here-above 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 SELLERs 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 Parties. In case BUYER does not elect to attend the PDI, then the BUYER shall issue intimate the SELLER in writing as per specimen at **Annexure-VI** that it does not wish to attend the PDI.

8.5. 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 SELLER's Country.

8.6. All costs associated with the BUYER's Representative stay in (Name of country), including travel expenses, boarding and lodging accommodation, daily expenses, shall be borne by the BUYER.

8.7. The SELLER shall provide Acceptance Test Procedure to the BUYER's DGQA within one (1) month from this Contract signature at the following address:-
DGQA ()
DHQ PO, New Delhi 110011...FAX No _____

ARTICLE 9 **PACKING AND MARKING**

9.1. 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.

9.2. 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.

9.3. Each spare, SMT, STE 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.

- (a) Part Number :
- (b) Nomenclature :
- (c) Contract annex number :
- (d) Annex serial number :
- (e) Quantity contracted :

9.4. 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.

9.5. The SELLER shall mark each package with indelible paint in the English language as follows:-

EXPORT

Contract No. -----

Consignee -----

Port / airport of destination -----

Ultimate consignee -----

SELLER -----

Package No. a/b -----

Gross/net weight : kg -----

Overall dimensions/volume : cm/cu m -----

The SELLER's marking,

Where : a – Serial No. of package;

b – total number of packages in this consignment.

9.6. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.

9.7. 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.

ARTICLE 10
DELIVERY

10.1 "The delivery of the goods shall be completed within _____ months of the effective date of the contract in accordance with the schedule laid down in Annexure _____"

The Annexure should clearly specify the item, the quantity and the month from the effective date of the contract as follows :-

<u>ED</u>	<u>No.</u>	<u>Equipment / Service</u>	<u>Quantity</u>	<u>Month from</u>
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For large value and complex weapons acquisition programme, a complete programme schedule in the form of a Pert Chart should be attached with the contract.

ARTICLE 11 TRANSPORTATION

TRANSPORTATION (BY SEA-FOB)

11.1. The stores shall be delivered FOB (as per INCOTERMS 2000, or latest version).

11.2. The stores shall be delivered to the BUYER by Indian Ships only. Shipping arrangements will be made by the Shipping Officer, Ministry of Surface Transport, Chartering Wing, Transport Bhavan, Parliament Street, New Delhi-110011 (Telegraphic Address: TRANSHART, NEW DELHI-1, Telex "VAHAN" In 31-61157 OR 31-61158, Phone 2371 9480, Fax 2371 8614) to whom adequate notice of not less than 8 weeks about the readiness of stores for shipment should be given by the SELLER under intimation to the BUYER for finalising the Shipping arrangements.

11.3. The date of issue of the Bill of Lading shall be considered as the date of delivery.

11.4. No part shipment of goods is permitted. Trans-shipment of goods is not permitted.

OR

TRANSPORTATION (BY AIR-FCA)

11.1. The delivery of the goods shall be FCA _____ Airport (as per INCOTERMS 2000 or latest version).

11.1.2 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.

11.1.3. The date of issue of the Air Way Bill shall be considered as the date of delivery.

ARTICLE 12

AIRLIFT

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.

ARTICLE 13

LIQUIDATED DAMAGES

13.1. 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 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 0.5% 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 5% of the delayed stores.

ARTICLE 14

JOINT RECEIPT INSPECTION (JRI) IN INDIA

14.1 The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted out on arrival in India at location to be nominated by BUYER. JRI shall be completed within **120 days (for armt/amm)/ 90 days (for other than armt/amm)** of arrival of good at Port Consignee. JRI will consist of:-

- (a) Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
- (b) Complete functional checking of the Equipment as per specifications in this contract and as per procedures and tests laid down by Indian DGQA. Functional checking of spares shall not be done.
- (c) Check Proof and firing shall be carried out for armament and ammunition, as per procedure and tests laid down by Indian DGQA.

14.2. JRI will be carried out by the BUYER's Representative. The BUYER will invite the SELLER with a minimum fifteen (15) days prior notice to attend the JRI for the delivered goods. The SELLER reserves the right not to attend the JRI. The biodata of the SELLER's Representative will be communicated fifteen (15) days prior to the despatch of goods to the BUYER for obtaining the necessary security clearance in accordance with the rules applicable in the BUYER's country.

14.3. Upon completion of each JRI, JRI proceedings and Acceptance Certificate as per **Annexure 8**, will be signed by both Parties. In case the SELLER's representative is not present then the JRI proceedings and Acceptance Certificate shall be signed by the BUYER's representative only and same shall be binding on the SELLER. Copy of JRI proceedings and Acceptance Certificate shall be despatched to SELLER within 30 days of completion of 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 Article on Claims in this contract. In case of claims, Acceptance Certificate shall be issued by BUYER's representative after all claims raised during JRI are settled.

14.4. If the BUYER does not perform the JRI as per mentioned above for reasons exclusively attributable to him, then the JRI in India shall be deemed performed and the Equipment fully accepted.

ARTICLE 15 **WARRANTY**

15.1. The SELLER warrants that the goods supplied under this contract conform to technical specifications prescribed and shall perform according to the said technical specifications.

15.2. 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 this contract and each component used in the manufacture there of shall be free from all types of defects/failures.

15.3. 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, maximum within 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 user in logbook. Spares required for warranty repairs shall be provided free of cost by 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.

15.4. SELLER hereby 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 20 % of the warranty period.

15.5 SELLER shall associate technical personnel of maintenance agency and QA of BUYER during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.

15.6. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds 20% of the warranty period, the complete equipment shall be replaced free of cost by the SELLER within a stipulated period of 45 days of receipt of the notification from the BUYER duly modified/upgraded through design improvement in all equipment supplied / yet to be supplied and ESP supplied and yet to be supplied. Warranty of the replaced equipment would start from the date of acceptance after JRI by the buyer/date of installation and commissioning.

15.7. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this contract, then SELLER undertakes that the warranty period for the goods/stores shall be extended to that extent.

15.8 The SELLER will guarantee the shelf life of () years under the Indian tropical condition as given below :-

- | | | | |
|-----|-----------------------|---|--|
| (a) | Minimum temperature | - | -40 ⁰ C. |
| (b) | Maximum temperature | - | +55 ⁰ C, plus 1140 w/m square solar radiation equivalent plus 70 ⁰ . |
| (c) | Average Humidity (RH) | - | 65%. |

15.9 For procurement of oils and lubricants the following will be included :-

- (a) The seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the seller himself.
- (b) 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.
- (c) 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 eqpt to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

ARTICLE 16 **WARRANTY BOND**

16.1. A Warranty Bond will be issued in the form of a bank guarantee by (.....SELLER'S BANK.....) through an internationally recognised first class bank

30 days before delivery of first consignment in favour of Government of India, Ministry of Defence to be confirmed by State Bank of India/Bank of India/Bank of Baroda/Canara Bank equal to 5% (five percent) of the total value of this contract i.e. for US \$ (in words US Dollars only).

16.2. The specimen of the Warranty Bond is at **Annexure-II** to this contract.

16.3. The Warranty Bond shall be considered open upon receipt by the BUYER's bank.

16.4. **The Warranty Bond shall remain valid upto ----- months after the JRI and acceptance of last consignment in India.**

16.5. In case any claims or warranty obligations are outstanding, the SELLER will extend the warranty bond as asked by the BUYER till such time the SELLER settles all claims and completes all warranty obligations.

16.6. **The warranty Bond will be subject to encashment by the BUYER, in case, conditions regarding warranty and settlement of claims in the contract are not fulfilled by the SELLER.**

ARTICLE 17 **CLAIMS**

17.1 The claims may be presented either:-

(a) On Quantity of the stores. In case it does not correspond to the quantity shown in the Packing List/Insufficiency in packing or,

(b) On Quality of the stores. In case it does not correspond to the quality mentioned in this contract.

17.2 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 SELLER in the form at **Annexure-VII** (To be provided by MGO (PPO)) to this Contract.

17.3 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 SELLER in the form at **Annexure-VII** to this contract.

17.4 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.

17.5 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.

17.6. Claims may also be settled by deduction of cost of goods under claim from bonds submitted by the SELLER or payment of claim amount by SELLER through demand draft drawn on Indian Bank, in favour of PCDA HQ, New Delhi, payable at New Delhi.

17.7. "The quality claims will be solely raised by the BUYER and without any certification/countersigning by SELLER's representative stationed in India.

ARTICLE 18 **TAXES AND DUTIES**

18.1 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.

ARTICLE 19 **TERMINATION**

19.1 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 for Force Majeure by more than (__months).
- (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 Arbitration Tribunal (Article 21).

ARTICLE 20 **LAW**

20.1 The present Contract shall be considered and made in accordance to the laws of Republic of India.

This contract shall be governed by and interpreted in accordance with the laws of the Republic of India.

ARTICLE 21 **ARBITRATION**

21.1. 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, shall be settled by bilateral discussions.

21.2. Any dispute, disagreement of 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.

21.3 Within sixty (60) days of the receipt of the said Notice, one arbitrator shall be nominated in writing by SELLER and one arbitrator shall be nominated by BUYER.

21.4. The third arbitrator, who shall not be a citizen or domicile or of the country either of the parties or of any other country unacceptable to any of the parties shall be nominated of 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 the Indian Arbitration and Conciliation Act, 1996, or by arbitration or dispute resolution institutions, such as Indian Council of Arbitration, ICADR or by International Chamber of Commerce, Paris as per UNCITRAL provisions, at request of either party but the said nomination would be after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned. The arbitrator nominated under this Clause shall not be regarded nor act as an umpire.

21.5. 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.

21.6. 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 only.

21.7. The decision of the majority of the arbitrator shall be final and binding on the parties to this contract.

21.8. 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](#).

21.9 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 retiring arbitrator.

21.10. 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 failing vacant, then the other party shall be entitled after due notice of at least 30 days to request the [Indian Council of Arbitration, ICADR](#), to nominate another arbitrator as above.

21.11. If the place of the third arbitrator falls vacant, his substitute shall be nominated according to the provisions herein above stipulated.

21.12. 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.

ARTICLE 22 **PENALTY FOR USE OF UNDUE INFLUENCE**

22.1. 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 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. 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, 1947 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.

22.2. 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 favor 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.

ARTICLE 23
AGENTS/AGENCY COMMISSION

23.1 The SELLER confirms and declares to the BUYER that the seller is the original manufacturer of the stores 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 event be liable to refund all payments made by the BUYER in terms of the Contract alongwith 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.

23.2 Access to the 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.

23.3 Integrity Pact

An “Integrity Pact” would be signed between MoD and the bidder for purchases exceeding Rs.100 crores. This is a binding agreement between the agency and bidders for specific contracts in which the agency promises that it will not accept bribes during the procurement process and bidders promise that they will not offer bribes. Under the IP, the bidders for specific services or contracts agree with the procurement agency or office to carry out the procurement in a specified manner. The essential elements of the IP 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 time of tender submission 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 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 behavior and compliance program for the implementation of the code of conduct through out the company.
-
-

23.4 While the “Access to the Books of Accounts” clause would be applicable in all cases, signing of “Integrity Pact” would be mandatory in respect of purchases above Rs.100 crores.

ARTICLE 24

FORCE MAJEURE

- 24.1 Should any force majeure circumstances arise, each of the contracting party shall be excused for the non-fulfillment or for the delayed fulfillment of any of its contractual obligations, if the affected party within (__days) of its occurrence informs in a written form the other party.
- 24.2 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.
- 24.3 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.

ARTICLE 25 **NON DISCLOSURE OF CONTRACT DOCUMENTS**

- 25.1 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.

ARTICLE 26 **NOTICES**

- 26.1 Any notice required or permitted by this contract shall be in written in English language and may be delivered personally or may be sent by FAX, TELEX, Cable or registered pre paid airmail, addressed to the last known address of the party to whom it is sent.

ARTICLE 27 **TRANSFER AND SUB-LETTING**

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

ARTICLE 28
PATENTS AND OTHER INDUSTRIAL PROPERTY RIGHTS

28.1 The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trade marks and payments for any other industrial property rights.

28.2 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, SMTs/STEs, 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.

ARTICLE 29
AMENDMENTS

29.1 No provision of this 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 parties and which expressly states to amend this contract.

ARTICLE 30
PRODUCT SUPPORT

30.1 The SELLER agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, SMTs/STEs 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). 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, at a time, at terms and conditions mutually agreed between the Supplier and the Indian manufacturer.

30.2 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/Indian manufacturer will be undertaken to arrive at an acceptable solution including additional cost, if any.

30.3 Any improvement/modification/upgradation being undertaken by (M/s name of company) on (name of equipment) or their sub suppliers 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.

30.4 The SELLER agrees to provide an Engineering Support Package as specified in Article 34 as modified after confirmatory MET. 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 five years as maintenance contract specified at para 30.1 above or provision of complete ESP to the BUYER viz EME which ever is later, as per terms and conditions mutually agreed between the SELLER and the BUYER.

ARTICLE 31 **TRAINING**

31.1 The SELLER shall provide the following training to the personnel of the BUYER free of charge :

(a) **Operator Training:**

(i) *(Duration)* at OEM'S premises for a maximum of () officers.

(ii) () days per group in India, to a maximum of () personnel in () groups of () each.

(b) **Repair and Maintenance Course .**

(i) **Field Repair/Maint.** (*weeks*) at OEM'S premises for *(composition of the team to be specified)*.

(ii) **Base Repair/Maint.** (*weeks*) at OEM, premises for *(composition of the team to be specified)*.

(c) The seller will provide training to the QA reps of the buyer for () days on various aspects of quality assurance of equipment.

(d) The syllabus of training as above will be decided within --- months of MET by the BUYER and shall meet the needs of repair and maintenance of the complete equipment, SMTs/STEs, test set up, assemblies/sub assemblies as per the existing repair concept of Indian Army as covered under Article 32.

31.2 The training for the first group of operators and users will be organised and conducted so that its termination does not go beyond (*days*) of the scheduled delivery of the first equipment. Training of second group of operator and users will be conducted within () months thereafter. Repair and maintenance course will be conducted within () months of signing of the contract and before expiry of warranty.

ARTICLE 32 **OPTION CLAUSE/TOLERANCE CLAUSE**

32.1 The BUYER shall have the right to place separate order on the SELLER on or before ----- (----- year from the date of this contract) **for the main equipment, spares, facilities or services as per the cost, terms and conditions set**

out in this contract. The price of the system, spares etc shall remain same till ----- year from the effective date of the contract.

ARTICLE 33
BUYER FURNISHED EQUIPMENT (BFE)

33.1 The following equipment will be provided by the BUYER at his own expense:

(a)

(b)

(NAME OF THE EQUIPMENTS TO BE PROVIDED BY THE BUYER ALONGWITH THE MAIN EQUIPMENT)

This provision is in addition to the provisions set forth in Annexure III B (Statement of Work)

ARTICLE 34

ENGINEERING SUPPORT PACKAGE

34.1. **Repair Philosophy.** The Engineering Support Philosophy shall conform to repair philosophy as follows :-

(a) **Field Repairs.** Envisages diagnosis and repair assemblies/PCBs/Modules (called rotables) and discreet components not forming part of these rotables.

(b) **Component Level Repair.** This level of repair envisages diagnosis and repairs of notables as defined at subpara (a) above.

(c) **Base overhaul.** This level of repair defines stripping and rebuilding of equipment in a Base workshop.

34.2 **Accompanied Accessories/User Replaceable Parts/ Expendables.** Accompanied accessories/ User Replaceable Parts/ Expendables as per the list, which will be prepared by the BUYER **within ---- months** of completion of operator and operator trainer training. for the amount specified at **Ser No --- of Annexure I**. The list of items required to be supplied will be taken from **Appendix-A to Annexure-IX** duly incorporating Adequacy Clause (Article 34.7 below refers).

34.3. **Spares.** Spares requirement for carrying out maintenance and repair up to component level will be provided by the SELLER as per the list, which will be prepared by the BUYER within **---month** of completion of MET, **within the amount** specified at **Ser No -- of Annexure I**. The list of spares required to be supplied will be taken from **Appendix-A to Annexure-IX** duly incorporating Adequacy Clause (Article 32.8 below refers).

34.4. **Special Maintenance Tools, Special Test Equipments and Test Jigs (SMT/STE/TJs).** SMT/STE/TJ requirement for carrying out maintenance and repair up to () level of repair will be provided by the SELLER as per the list, which will be prepared by the BUYER within ---- month of completion of MET, **within the amount** specified at **Ser No -- of Annexure-I**. The list of equipment required to be supplied will be taken from **Appendix A to Annexure IX** duly incorporating Adequacy Clause (Article 32.8 below refers).

34.5. **Training.** Training of operators, operator trainers, and maintenance personnel will be carried out as per details given in **Appendix-B to AnnexureVII** at _____ in English Language. The syllabus given at **Appendix-B** will be refined by the SELLER in consultation with the BUYER at the time of MET. The SELLER confirms to the BUYER that the maintenance training will be imparted to the satisfaction of the BUYER and SELLER ensures that the training content and period will be extended so as to impart working proficiency up to () level repairs. All training requirements such as training aids, projection system, complete eqpt with accessories /optionals, technical literature, spares, test eqpt/test set up, charts etc will be catered for by the seller.

34.6. **Technical Literature.**The SELLER shall provide ----- sets of Technical Literature as per the format given in JSS 0251-01 (copy of JSS 0251-01 already handed over to the SELLER). Inadequacy/voids in Technical Literature identified during the Maintenance Evaluation Trials will be rectified by the SELLER at the time of delivery of Technical Literature to the satisfaction of maintenance agency of the Buyer.

34.7. **Maintenance Evaluation Trials (MET).** BUYER will depute within (____) months After Receipt of Order (ARO), a team of (____) personnel to SELLER's country for (*duration*), to conduct a maintainability evaluation (MET) for (*Name of the Eqpt*) at SELLER's premises. SELLER will provide all necessary assistance to carryout MET. In case the MET is to be conducted in the BUYERS premises, all infrastructure should be ready by (duration to be mentioned). The team will study applicability of SMTs/STE/Test jigs, spares and adequacy of technical literature and documentation provided under this Contract. If, as a result of the above mentioned evaluation, BUYER decides to augment its spare parts or STE quantities, BUYER will then exercise the additional order through the provisions of Article 30 (Options Clause). BUYER may also adjust the quantities of spare parts SMTs/STEs/Test jigs provided that the total price of the spare parts ISMTs/STEs/Test jigs listed is not changed and provided also that the adjustment is made not later than (____*months*) after the conduct of the MET evaluation in (*name of the country*) and before the delivery schedules of spare parts/SMTs/STEs/Test jigs stipulated in the contract.

34.8. **Maintenance Evaluation Trials (MET).** (Users handbook, operators manual, ISPL, check proof details, fixtures required for Acceptance Test/check proof, technical specifications, etc). Sepcimen of documents required is attached at **Annexure-XII**. The Seller shall allow stripping/ opening of the equipment during MET. The sellers technical representative(s) who is/are competent to clarify all the issues pertaining to maintenance and repair up to ()level shall be present during the complete duration of MET. Inadequacies in items/inputs, if any, brought out during MET must be rectified and would be presented for re-evaluation by the seller along with the JRI.

34.9. **Adequacy Clause.** The SELLER confirms to the BUYER that the range and depth of Accompanied Accessories/ User Replaceable Parts/ Expendables, Spares and

SMT/STE/TJ given in **Appendix-A** of **Annexure-IX** of this contract are complete and exhaustive for use and carrying out repairs up to () level for the equipment procured under this contract by the BUYER. Any additional items, spares, tools and equipment up to the lowest level needed for use, maintenance and repair will be supplied by the SELLER at mutually agreed prices with in 60 days of receipt of notification from the BUYER for the period specified in Article 25 (PRODUCT SUPPORT). The SELLER also confirms to the BUYER that the overall cost of one set of complete list of spares and parts used to make one functional (Equipment ____) as per the specifications given at **Annexure-III (Technical Specifications)** along with accompanied accessories as per **Annexure-IX** as per the cost given in **Appendix-A** of **Annexure-IX** will not exceed the cost of the equipment as given in Appendix B. The SELLER also confirms that, if two different prices have been given for the same/ similar item in **Appendix-A** to **Annexure-IX**, then the lower price quoted will prevail. In case, the quoted accessories has several items viz Sampling Accessory Kit and add up price of these items is higher than the quoted price of the accessory then the price will be lowered/adjusted proportionately for the items.

35. Testimonial and signature clause: The authorised representative of the Seller should be shown to have been so authorised by the Resolution of the Board of Directors of the Company of the Seller or duly authorised by the Memorandum/Articles of Association of the Company along with supporting documents for the same.

LEGAL ADDRESSES OF THE CONTRACTING PARTIES

1. Judicial addresses of both contracting parties:

SELLER

.....

BUYER:

GOVERNMENT OF INDIA
 MINISTRY OF DEFENCE (MC)
 SOUTH BLOCK
 NEW DELHI -110011
 REPUBLIC OF INDIA

With Copy to:-

DDG PPO
 MGO Br, AHQ
 DHQ PO – 110011
 New Delhi

Fax No. 011-23793337

Annexure I to Contract No. Dated

SCHEDULE OF PRICES & DELIVERIES

No	Denomination of Stores	Qty	Unit Price (US Dollars)	Total Value (US Dollars)	Remarks
1.	Direct Import				
2.	ESP				
3.	Training Package				

ANNEXURE II

To Contract No.

Dated

ADVANCE GUARANTEE/PERFORMANCE WARRANTY BOND

Ministry of Defence,
Government of India
NEW DELHI

Dear Sir,

Whereas you have entered into a contract No. _____ dated _____ (hereinafter referred to as the said Contract) with M/s _____, for supply of goods as per Annexure 1 of the said contract and whereas the Seller has undertaken to produce a bank guarantee for (%) of total Contract value amounting to _____ to secure its obligations to the President of India. We, hereby expressly, irrevocably and unreservedly undertake and guarantee as principal obligors on behalf of the Seller that, in the event that the President of India declares to us that the goods have not been supplied according to the Contractual obligations under the aforementioned contract, we will pay you, on demand and without demur, any sum up to a maximum of _____. Your written demand shall be conclusive evidence to us that such repayment is due under the terms of the said contract. We undertake to effect payment upon receipt of such written demand.

2. We shall not be discharged or released from this undertaking and guarantee by any arrangements, variations made between you and the Seller, indulgence to the Seller by you, or by any alterations in the obligations of the Seller or by any forbearance whether as to payment, time performance or otherwise.

3. In no case shall the amount of this guarantee be increased.

4. This guarantee shall remain valid for months from the date of JRI acceptance of test consignment in India or until all the store, spares and documentation have been supplied according to the contractual obligations under the said contract.

6. Unless a demand or claim under this guarantee is made on us in writing or on before the aforesaid expiry date as provided in the above referred contract or unless this guarantee is extended by us, all your rights under this guarantee shall be forfeited and we shall be discharged from the liabilities hereunder.

7. This guarantee shall be a continuing guarantee and shall not be discharged by and change in the constitution of the Bank or in the constitution of M/s _____.

(In lieu of the bank certificate to be obtained as under, 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)

3. 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 :
Customer

Signature of Invesor /

Certified that the particulars furnished above are correct as per our records.

Bank's Stamp:

(.....)

Date:

SIGNATURE OF THE AUTHORISED /

OFFICIAL

From the Bank

Annexure - III A

To Contract No.

Dated

TECHNICAL SPECIFICATION

All Tech parameters listed in terms of size, weight, performance, operating environment, power, utility life storage shelf life etc, both in terms of essential and desirable levels as applicable to the eqpt.

(The Technical parameters of the equipment being contracted also to be included)

ANNEXURE - III B

To Contract No.

Dated

STATEMENT OF WORK (SOW)

1. **General.**
2. **Abbreviations / Definations.**
3. **Equipment, Materials And Services**

The Seller shall deliver the goods and perform services as following:

3.1 Deliverable Items and Schedule :

3.1.1 Deliverable Items:

3.1.2 Delivery Schedule

Ser No	Quantity	Month (ARO)
--------	----------	-------------

3.2 Modifications to be incorporated in (Name of Eqpt).

3.3 Buyer Furnished Data and Equipment.

4. **Integrated Logistic Support (ILS).**

4.1 The maintenance of the **(Name of Eqpt)** shall be carried out at Field and Base Level by Buyer's personnel after receiving Maintenance Documentation, CBTs Training, Special Test Equipment (STE) and test set up and Spare Parts.

4.2 The ILS package will support the following maintenance tasks:
(All tasks to be listed)

4.2.1 Field

4.2.2 Base/Component Level.

4.3 **Training & Documentation. (All details of trq to be incorporated)**

4.3.1 Field Maintenance Training and Documentation.

No	Description	No of pers	Duration	Month (ARO)	Remarks
----	-------------	------------	----------	-------------	---------

4.3.2 Base Maintenance Training and Documentation.

No	Description	No of pers	Duration	Month (ARO)	Remarks
----	-------------	------------	----------	-------------	---------

4.4 **Special Test Equipment and Test Setup**

4.4.1 For Field Maintenance Test Equipment.

4.4.2 For Base/Component Level Maintenance

No	<i>Description</i>	<i>Qty</i>	<i>Month (ARO)</i>	<i>Remarks</i>
-----------	--------------------	------------	--------------------	----------------

BUYER FURNISHED TEST EQUIPMENT

No	<i>Description</i>	<i>Qty</i>	<i>Month (ARO)</i>	<i>Remarks</i>
-----------	--------------------	------------	--------------------	----------------

Annexure - IV

To Contract No.

Dated

**MODIFICATIONS TO BE INCORPORATED AS PER REQUIREMENTS OF INDIAN
ARMY**

(To be elaborated depending on the modification existing if any with the OEM or modifications required for suiting the buyers Requirement)

CERTIFICATE OF CONFORMITY

Date :

No :

Product Name :

Product No :

Lot No :

Quantity :

Contract No :

Packaging List No :

THIS IS TO CERTIFY THAT THE ABOVE MENTIONED PRODUCT HAVE SUCCESSFULLY PASSED ALL THE ACCEPTANCE TESTS IN ACCORDANCE WITH THE RELEVANT SPECIFICATIONS AND DRAWINGS.

() () ()

() () ()

QUANTITY CLAIM

to the Contract No
dated

CLAIM PROTOCOL NO

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 No
..... Item Srl No 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 and others)
.....
.....
.....

Chairman

Members

Place and date of issue

QUALITY CLAIM

to the Contract No
dated

CLAIM PROTOCOL NO

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

.....
.....
.....

PRICES, QUANTITIES AND DELIVERY SCHEDULE OF EQPT

No	Item	Quantity	Ready for Shipment	Unit Price USD \$	Total Price USD \$
1.	EQPT ____ as per Appendix A along with accessories given at Note 1 below	221 Nos	As per Note 2 below		
2	Cost of Additional Accompanied Accessories, User Replaceable Parts and Expendables	As per Article 32.1	As per Note 2(d) below	As per Annexure B1	
3.	Spares and SMT/STE/TJ	As per Article 32.2 and 32.3	As per Note 2(d) below		
4.	Training as per the syllabus given at Annexure B2	4 and 24 working days for operator & maintenance personnel respectively	As per Note 3 below	-	
5.	Technical Literature	As per Note 4 below	As per Note 2(d) below	-	
TOTAL					

Notes:

1. **Description of Equipment.** Equipment ____ System and the following accessories:-

<u>Part No</u>	<u>Item</u>	<u>Quantity</u>
(a)	943013 Battery	02 Nos
(b)	943700 Manual in English	01
(c)	540006 Phillips Screwdriver #1	01

2. **Delivery Schedule.** Delivery Schedule (to be read in conjunction with Article 5 Delivery and Transportation) to be completed as under:-

(a) First consignment of ---- **Nos** Equipment ____ within--- **weeks** from the effective date of the contract (Article 3 refers) alongwith contracted ESP package viz spares, SMTs/STEs/TJs and technical literature.

(b) Second consignment of --- **Nos** EQPT ____ within --- **weeks** from the effective date of the contract (Article 3 refers).

(c) Third consignment of --- EQPT ____ within ---- weeks from the effective date of the contract (Article 3 refers).

(d) Fourth and last consignment of --- EQPT ____, **and** Additional Accompanied Accessories/ User Replaceable Parts/ Expendables, Spares,

SMT/STE/TJ and Technical Literature within ---- **weeks** from the effective date of the contract (Article 3 refers) and 32.7 refers.

3. **Training.** Training for operators and maintenance personnel will be carried out at ----- in English Language as per the following schedule:-

<u>Strength</u>	<u>Duration</u>	<u>Schedule</u>
Operator Training	--- personnel	-- days Along with JRI of the first consignment i,e after completion of JRI.
Trainer Training	-- personnel	-- days Along with JRI of the first consignment.
(c) Maintenance Personnel (Field level)	-- personnel	-- days Along with JRI of the first consignment.
(d) Maintenance Personnel (Component level)	-- personnel	-- days Within 4 weeks of the receipt of the last consignment of eqpt and additional items.

4. **Technical Literature.** The following technical literature in English language along with three sets of CDs containing complete technical literature, over and above being given with the equipment at Ser No 1 above, will be supplied with the last consignment duly incorporating modifications intimated by the BUYER after completion of MET :-

(a) User Hand Book / Operator Manual - -- sets.

(b) Technical Manual Part I and II - -- sets each.

Part I : To include technical description specification of the equipment and its major assemblies principle of operation, circuit diagrams, drawings, illustration ect.

Part II : To include inspection and maintenance tasks schedule, inspection standard/procedures,fault diagnosis and use of STEs.)

(c) Technical Manual Part III and IV - -- sets each.

Part III : To include procedure for disassembly/assembly of the equipment. Test procedures, specifications, repair of modules/major assemblies, component level repair of PCBs, test set ups calibration of test eqpt/gauges and safety precautions.

Part IV : Part list with drawing reference, Illustrate Spare Part List(ISPL) and list of SMTs, STEs & Test setups .)

(d) Complete Equipment Schedule (TOTE) -- -- Sets

(To include schedule of equipment, its accessories, fast moving spares, tools, expendables and cleaning material provided along with each equipment.)

Sl. No.	Sl. No. of Offer	Part No.	Nomenclature	No. per eqpt	Unit cost in USD \$	Total cost in USD \$	Remarks
			Total				

Note. The SELLER confirms for authenticity, completeness correctness of the data given in this annexure.

Appendix-B to Annexure-IX

TRAINING

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.

Time	Course	Description	Materials
-- hrs		This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations.	Slide Show, User Guide
--hrs		This course allows the student to do practical exercises with an Equipment ___.	User Guide, Equipment ___ unit, Practical outline
-- hr		This time allows the student to ask any questions they have and review for the test.	User Guide, Equipment ___ unit
-- hr	Operator Test	The student takes the certification test.	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 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) ___.

Time	Course	Description	Materials
--hrs		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.	Slide Show, Supervisor Guide
-- hrs		This course allows the student to do practical exercises with an (Equipment) ___.	Supervisor Guide, (Equipment) ___ unit, Practical outline
-- hrs		This course cover the important issues in training other users on the (Equipment) ___.	Trainer Guide, (Equipment) ___ unit
-- hrs		This course allows the students to practice training other users on the (Equipment) ___ under supervision.	Trainer Guide, Slide Show, (Equipment) ___ unit
-- hr	Supervisor Test	The student takes the certification test.	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) ___.

Time	Course	Description	Materials
-- hrs		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.	Slide Show, Supervisor Guide
-- hrs		This course allows the student to do practical exercises with an (Equipment) ____.	Supervisor Guide, (Equipment) ____ unit, Practical outline
		<u>56</u>	
-- hrs		This course covers all the electronics in the (Equipment) ___. A look at all the PCBs in the unit and the procedure of analyzing samples.	Technical Guide, (Equipment) ____ unit
- hrs		This course discusses the troubleshooting techniques used for repairing an (Equipment) ____.	Technical Guide, (Equipment) ____ unit
-- hrs		This course cover the proper procedure in calibrating and (Equipment) ____.	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 ect.

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. Maint philosophy will be discussed and suggested norms for major maintenance tasks will be provided by the SELLER.

MET

1. This is carried with a view to facilitate provisioning of effective engineering support for 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

(i) User Handbook/Operators Manual.

(ii) Design Specifications.

(iii) Technical Manuals

(aa) Part- I. Technical description, specifications, functioning of various systems.

(ab) Part – II. Inspection/Maintenance tasks, repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs) /Special Test Equipment (STEs).

(ac) Part – III. Procedure assembly/disassembly, repair up to component level safety precautions.

(ad) Part – IV. Part list with drawing reference and list of SMTs/STEs Test Bench.

(iv) Manufacturers Recommended List of Spares (MRLS) **with schematic references and part numbers for all the items.**

(v) Illustrated Spare Part List (ISPL).

(vi) Technical Manual on SMT/STE with drawing reference.

(vii) Complete Equipment (TOTE) & carried spares.

(b) One set of Gauges.

(c) One set of complete SMTs/STEs/TJs and Test set up.

(d) Servicing Schedule and condemnation limits.

(e) Permissive Repair Schedule for repairs possible at various levels with available infrastructure.

(f) Packing specification/ instructions.

(g) Any additional information suggested by the OEM such as infrastructure/facilities/Buyer furnished items for use and maintenance/repair of eqpt.

2. 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.

LETTER OF CREDIT

Form of Doc Credit (40A) : Irrevocable/revocable/revolving/confirming.

Doc Credit Number (20) :

Expiry (31D) : Date : 12 months after issuance of
Documentary credit.

Applicant bank (51) : -----

Beneficiary (59) : -----

Amount (32B) : Currency :
Amount :

Max Credit Amount (39B) : No Exceeding

Available with/By (41) : By payment.
Partial Shipments (43P) : Allowed/Not Allowed.
Transshipment (43T) : Not allowed/allowed.
Loading in Charge (44A) :
(Port of Loading).

For Transport to (44B) :-----
(Port of Discharge).

Shipment Period (44D) : -----

Descript of Goods (45A) : -----

Documents Required (46A) : + Signed commercial invoice in six copies.
+ Two copies of original clean on board bills of lading made out to order and endorsed in blank, showing applicant as notify party and marked : Freight payable at destination.
+ Packing list in six copies.
+ Certificate of origin issued by a chamber of commerce.
+ Lot acceptance certificate signed by the seller's and the Buyer's quality assurance representatives or alternatively the seller's quality assurance representative and armscor or the directorate product system support of the south African national defence force.

Additional Cond (46A) : + Telegraphic reimbursement is allowed.
+ This credit will automatically revolve cumulatively on an annual basis as indicated below, and will accordingly be automatically extended upon transmission of a notice to this effect by means of an authenticated telex/swift message from the beneficiary's bank to the issuing bank not later than 15 days prior to the expiry of the relevant validity period.

Stage	Amount	Validity Period
-------	--------	-----------------

--	--	--

- + Maximum utilization under the credit will be
- + Confirmation charges for the letter of credit are for the beneficiaries account.
- +Late Shipment is acceptable.

Details of Charges (71B) : All charges outside India are for beneficiary account.

Presentation Period (48) : Within 21 days after shipment date.

Confirmation (49) : Confirm.

Reimbursing Bank (53) : -----

(78) : + Documents must be forwarded to us by courier in one lot.

+ We hereby engage that payments made under and in compliance with all the terms and conditions of this credit will be duly honoured by us upon presentation of the stipulated documents.
 + Paying bank may claim reimbursement telegraphically from the reimbursing bank for value 3 days after their authenticated telex/swift advice to the issuing bank of any conform drawing presented under this credit.

(57) : -----

(72) : -----

Appendix 'G'
Refers to Chapter 7 Para

6

No.2(5)/2000/D(Supply-II)
GOI, MOD, Deptt. Of Defence Prod. & Supplies
New Delhi, the 05th Nov 2004

OFFICE MEMORANDUM

Subject : Guidelines for levying liquidated Damages for delayed supplies against contracts placed by Supplies Division of the Department of Defence Production..

Consequent upon issue of OM No. 3(4)/2000/D(S-II) dated 07 Jun 2004 which inter-alia provides that the deduction on account of LD may be made which should not exceed 5% of the value of the supply order, it has been decided with the approval of RM that the following guidelines will be adopted in future for levy of LD/token LD.

<u>CONDITION</u>	<u>RULE POSITION</u>
(i) Delay in supplies resulted in monetary loss actual/demonstrable and firms were fully responsible for the delay.	Full LD leviable as calculated in terms of the stipulations of para 12(8) (a) of the general conditions included in schedule 'B' to the supply order which should not exceed 5% of the value of the Supply order, in terms of departmental instructions contained in order No. 3 (4)/2000/D(S-II) dated 03 Jan 2003.
(ii) Delay in supplies resulted in monetary loss actual/demonstrable but the firm was responsible only for part of the delay and remaining part of the delay was beyond its control.	Full LD, for the period for which contractor is responsible for the delay subject to LD not exceeding 5% of the value of the Supply order. In terms of departmental instructions contained in order No. 3(4)/2000/D(S-II) dated 03 Jan 2003.
(iii) Delay in supplies resulted in monetary loss actual/demonstrable and entire delay was due to circumstance beyond the control of the supplier(s)	LD may be waived full.
(iv) Monetary loss actual/demonstrable cannot be certified but inconvenience has been caused.	Token LD equal to 10% of full LD calculated in terms of (i) above.
(v) Monetary Loss actual/demonstrable cannot be certified and no inconvenience has been caused.	LD may be waived fully.

2. LD will be calculated on the basis of total value of the stores including elements of statutory duties and taxes viz., sales tax, customs duty, excise duty etc as indicated in the Supply Order.

3. This OM supercedes the existing orders bearing No. 4(11)/85/D(Supply-II) dated 20.09.85 and 23.11.87 on the subject.

4. This issue with the concurrence of IF (DS) vide their Dy No. 1028/IF/DS/04 dated 12 Oct 2004.

Sd/-
(RK Jain)
Director (Supply-
II)

Force Majeure

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

ARBITRATION

1. All disputes or difference arising out of or in connection with the present contract, including the ones connected with the validity if the present Contract or any part there of shall be settled by bilateral discussions.
2. Any dispute, disagreement of 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 amicable, 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.
3. Within sixty (60) days of the receipt of the said Notice, CONTRACTOR shall nominate one arbitrator in writing and CUSTOMER shall nominate one arbitrator.
4. The third arbitrator, who shall not be a citizen or domicile or of the country either of the parties or of any other country unacceptable to any of the parties shall be nominated of the parties within (90) days of the receipt of the notice mentioned above. Failing which the third arbitrator may be nominated by the President of International Chamber of Commerce, Paris, at request of either party but the said nomination would after consultation with both the parties and shall preclude any clause shall not act as an umpire.
5. The ARBITRATOR Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.
6. The Arbitrator proceeding 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 only.

7. The decision of the majority of the arbitrator shall be final and binding on the parties to this contract.
8. 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 equally by the Seller and Buyer.
9. In the event of vacancy caused in the office of the arbitrators, the party, which nominated such arbitrators, shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.
10. In the event of one of the parties failing to nominate its arbitrator within 60 days as above if any of the parties does not nominate another arbitrator within 60 days in the place of the arbitrator falling vacant, then the other party shall be entitled after due notice of at least 30 days to request the president of the international chamber of commerce to nominate another arbitrator as above.
11. If the place of the third arbitrator falls vacant his substitute shall be nominated according to the provisions herein above stipulated.
12. 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.



STANDARD FORMAT OF RFQ
FOREIGN PROCUREMENT

Tele : _____ Directorate of
Purchase _____
FAX No.- _____ Foreign Purchase

Wing

**QUOTES ARE NOT TO BE SENT THROUGH FAX. BUT
ONLY IN SEALED ENVELOPES.**

To : _____ / _____ / _____ Date : _____
2004

INVITATION OF QUOTATIONS FOR SUPPLY

OF

1. Quotations in sealed cover are invited for supply of _____ spares listed in enclosed Schedule of Requirement (SOR).

2. General information about the tender :-

(a) Tender _____ Reference
No. _____

(b) Last date and Time for receipt of tenders

(c) Time and date for opening of tenders

(d) Place of opening of tenders

(e) Address for communication

(f) Quotation shall remain valid till

3. **PLEASE SUPERSCRIBE OUR REF NO. AND DATE OF TENDER OPENING ON SEALED COVER. Failure to do so will render your offer invalid**

4. Sealed quotations addressed to _____ should be dropped in tender box marked as

“TENDER BOX NO.- ”

and kept near the reception office at _____ or to be sent by registered post so as to reach this office by due date and time. No responsibility will be taken for postal delay or non-delivery / non-receipt of tender documents.

PLEASE NOTE, IF THE SEALED OFFERS ARE DROPPED IN THE WRONG BOX, THEY WILL BE RENDERED INVALID
--

5. Sealed quotations will be opened in public on due date and time. Your authorized representative from the company can attend the tender opening. If due to any exigency the due date for opening of tenders is declared as closed holiday, in such cases the tenders will be opened on next working day at the same time.

6. Additional information to be furnished with the quotations as qualifying requirements :-

(a) Detailed technical specifications are attached along with the SOR. The quotation should comply with these specifications. Statement of deviations and interchangeable exceptions as confirmed by manufacturer may be enclosed with the quotation. (Requirement of spares along with the main equipment should be specified wherever applicable)

(b) In case, the bidder is not the OEM, the agreement certificate with the OEM sourcing the spares is mandatory. **However, where OEMs do not exist minor aggregates and spares can be sourced from authorized vendors subject to quality certification.**

INDIAN AGENTS OF FOREIGN FIRMS / AGENCY COMMISSION

1. It is not the policy of Govt. per se to look for, encourage or engage agents. Wherever it is possible to secure supplies and ensure after-sale-service etc., on reasonable terms without the intercession of agents, there is no need for engaging any such agent. In all others cases, employment of Indian agents by foreign suppliers on a case to case basis shall be regulated by following rules :-

(a) Indian Agents of foreign suppliers (Authorised representative/ Agents / sales or by whatever name called) employed by foreign suppliers for the promotion of their product must be registered with DGS&D which has been designated as the nodal agency for compulsory registration of Indian agents. Under the scheme, DGS & D has been registering Indian agents of foreign manufacturers only and registration of agents of foreign suppliers / agents (other than manufacturers) has not been permitted. This policy of compulsory registration by DGS & D is currently under review by MoD and instead a detailed check list / disclosure norms have been proposed for submission by the foreign supplier employing an Indian agent along with their quotation.

(b) The amount of commission payable would be brought on record and made explicit so as to ensure compliance of tax laws and prevent leakage of foreign exchange. It would ensure that the commissions payable are paid in Indian rupees only, in compliance with the provision of FEMA and the hand book on import/export procedure. The purchase department would ensure at source deduction of income tax as per prevailing rules from the agency commission payable to the vendor in order to avoid tax evasion.

(c) An undertaking would be obtained from the Indian representative/ Indian agent to the effect that agency commission would be accepted in Indian rupees only. Where the agency commission is payable directly by the foreign principals / Original Equipment Manufacturer, such commission shall be received through inward FFE remittance through banking channels and disbursed to the Indian agent in rupees only.

(d) The nature of services to be rendered by Indian agent / Indian representative of OEM / foreign suppliers and the commission payable to Indian agent / Indian representative shall unambiguously be reflected in the supply order / contract. All particulars relating to agency commission should be reported to the Enforcement Directorate.

(e) The under mentioned clauses are to be included in all contracts with foreign suppliers for enforcement of the disclosure provisions and in the event of any breach or default on the part of the supplier to disclose the agency arrangements in India, there would be a penalty of banning business dealings with the firm.

(i) Penalty for the use of undue influence.

(ii) Access to books of accounts.

(f) Where regional offices of foreign firms have been authorized and set up within the country, they will not be treated as agents of the foreign firms and the financial dealings with such regional offices will be restricted to the norms stipulated by the RBI for each specific case. Such regional offices form integral part of the foreign vendors and their functions are totally controlled by their corporate office abroad and are hence not entitled to any agency commission.

(g) Where Indian / regional offices of foreign firms are to provide post sale services, such as installation, setting to work, execution of warranty operations and post-warranty maintenance etc., such stipulation will explicitly be made in the terms and conditions of the supply order / contract. Payment on this account will be made in the Indian rupees, except for the cost of spares / services required from abroad for post-warranty maintenance.

INCOTERMS – 2000

1. In INCOTERMS 2000, 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 Frontier (DAF)**- “Delivered at Frontier” means that the seller delivers when the goods are at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import at the named point and place at the frontier, but before the customs border of the adjoining country. However, if the parties wish, the seller to be responsible for the unloading of goods from the arriving means of transport and bear the risks and costs of unloading, this should be made clear by adding explicit wording to this effect in the contract of sale. This term should not be used irrespective of the mode of transport when goods are to be delivered at a land frontier.

13. **Delivered Ex-Ship (DES)**- “Delivered Ex-Ship” means that the seller fulfils his obligation to deliver when the goods have been made available to the buyer on board the ship un-cleared for import at the named port of destination. The seller has to bear all the costs and risk involved in bringing the goods to the named port of destination before discharging. If the parties wish, the seller to bear the costs and risks of discharging the goods, then the DEQ term should be used. The term can only be used only when the goods are to be delivered by sea or inland water way transport on a vessel in the port of destination.

14. **Delivered Ex-Quay (Duty Paid) (DEQ)**- “Delivered Ex-Quay (Duty Paid)” means that the seller fulfils his obligation to deliver when he has made the goods available to the buyer on the quay (Wharf) at the named port of destination, cleared for importation. The seller has to bear all risks and costs including duties, taxes and other charges of delivering the goods thereto. This term should not be used if the seller is unable directly or indirectly to obtain the import license. If the parties wish the buyer to clear the goods for importation and pay the duty, the words “duty unpaid” should be used instead for “duty paid”.

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. 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. **Consignees'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 2000, 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.

Appendix 'N'
Refers to Chapter 12 Para
2

Government of India
Ministry of Finance
Banking Division
BOA Section

Sub: Opening of letter of Credit and other related transactions through Public Sector Banks.

Ministry of Defence (Finance Division) may please refer to their ID note no. 230(13)96/BII dated 18.03.2002 on the subject above and to say that no specific instructions have been issued by the Banking Division in this regard. However, Ministry of Defence may enter into banking arrangements of any kind including letter of credit with any of the 27 Public Sector Banks.

Sd/-
(MRS. KIRAN S
KHULLAR)
SECTION OFFICER
(BOA)

PERFORMANCE GUARANTEE BOND

To
The President of India
New Delhi

Through
Director (Air-II)
Ministry of Defence
Government of India
New Delhi
India
(Hereinafter the beneficiary)

Dear Sirs.

Whereas you entered into a contract reference No. _____ dated _____ (Hereinafter referred to as "the contract") with M/s _____ as seller for the supply of _____ defined in contracts schedule, (hereinafter referred to as "the goods") and whereas the Seller has undertaken to produce a performance cum warranty bond for amount of Rs _____ being equal to 5% of the total contract value of the goods delivered as specified contract No _____ dated _____ referred to as "contract to secure its obligations to the beneficiary with respect to the goods specified in the invoice.

1. We _____ (Name of the Bank), hereby expressly, irrevocably, and unreservedly undertake and guarantee as principal obligators on behalf of the Seller that in the event that the beneficiary submits a written demand to us stating that the Seller has nor performed according to the terms and conditions of the contract , we will pay you on demand and without demur any sum up to a maximum amount of (5% of the contract value). Any claims must bear the confirmation of your bankers that the signatures thereon are authentic. Your written demand shall be conclusive evidence to us that such written demand. For the avoidance of doubt any documents received by way of facsimile or similar

electronic means is/are not acceptable for any purpose(s) under this guarantee.

2. We shall not be discharged or released from this undertaking and guarantee by any arrangements, variations made between beneficiary and the seller or any forbearance whether as to payment, time performance or otherwise.

3. In no case shall the amount of the guarantee be increased.

4. Unless a demand under this guarantee is received by us in writing on or before the expiry date(unless this guarantee is extended by the seller), all your rights under this guarantee shall be forfeited and we shall be discharged from the liabilities hereunder.

5. This guarantee shall be a continuing guarantee (which means guarantee will also be valid if the bank is in under liquidation or bankruptcy) and shall not be discharged by any change in the constitution of the bank or in the constitution of the Seller.

6. Please return this letter of guarantee immediately after our liability thereafter has ceased to be valid.

7. Our liability under this guarantee will cease to be valid even if the guarantee deed is not returned to us.

8. This guarantee is personal to the beneficiary and not assignable to a third party without our prior written consent.

9. This guarantee shall be governed by Indian Law.

Appendix 'P'
Refer to Chapter 13 para 7(e)

FORMAT OF COST ANALYSIS

Dept / Wing	Break- Up of Fixed Price Quotation (Rs. in Lakhs)		Appendix-I	
			Produce	
			Base Year of Quote	
			Quantity:	
Sl No.	Particulars	Previous Year Rs.	Year of Quote Rs.	Remarks
1	MATERIAL			
1.1	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 (% on (ii) iii) ATF Sub-total-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 to 5)			
7	Warranty Cost (% of 6)			
8.	Total Cost (6+7)			
9.	Profit (% of 8)			
10.	Selling Price (8+9)			

Appendix 'Q'
Refers to Chapter 13 Para
11.3

No.8 (6)/CAB/2002
Ministry of Finance & Company Affairs
Department of Expenditure
Cost Accounts Branch

Lok Nayak Bhawan,
2nd Floor "C" Wing,
New Delhi - 110003
Dated 11th November
2002

OFFICE MEMORANDUM

The undersigned is directed to refer to I.D. No. 2376/DFA (Acq)/2002, dated 9th September 2002 on the subject "Adoption of Discounted Cash Flow (DCF) Technique for Defence Procurement".

In this connection, the paragraph-wise views of this office are as under:-

(a) & (b): Generally the technique of DCF is adopted to evaluate the projects, when the outflow/inflow of cash is over a period of time. In the instant case, the charges for AMC are to be paid over a period of 13 to 14 years. Consequently the total outflow of cash won't be in one year but in installments over a period of time. Hence in such circumstances, it is always advisable to evaluate the project under DCF. As regards the question of whether DCF for determining the lowest tender is being adopted in all cases universally by the DOE, this office is not in a position to respond. DOE may kindly be addressed in this regard.

(c) It can be conveyed to the vendors at the time of inviting the bids itself. However, there is no harm in applying this technique even at the time of evaluation of tenders uniformly in respect of all the bids.

(d) The lending rate prevailing at the time of evaluating the project can be adopted as discounting factor.

(e) Yes, keeping in view the outflow/inflow of cash over a period of time, it is always desirable to apply the discounting factor to arrive at Net Present Value (NPV) for the preparation of Comparative Statement Table (CST) to take a decision.

Ministry of Defence may refer to this office for any clarification/Price fixation or Book examination leading to determination of the cost of production/Fair Selling prices or any other assistance relating to Costing/Financial analysis as and when the need for the same arises.

Sd/-
(RK Paul)
Adviser(Cost)
Tel:
4618913
Fax :
4698179

Shri Bulbul Ghosh
Additional Financial Advisor & JS,
Ministry of Defence,
R.No. 134-A, South Block,
New Delhi-110001

PRE-CONTRACT INTEGRITY PACT

General

1. Whereas the PRESIDENT OF INDIA, represented by Joint Secretary & Acquisition Manager (Land/Air/Maritime Systems), Ministry of Defence, Government of India, hereinafter referred to as the Buyer and the first party, proposes to procure (Name of the Equipment), hereinafter referred to as Defence Stores, and M/s _____, represented by, _____ Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignees), hereinafter referred to as the Bidder/Seller and the second party, is willing to offer/has offered the stores.
2. Whereas the Bidder is a private company/public company/partnership/ registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a Ministry of the Government of India performing its functions on behalf of the President of India.

Objectives

3. Now, therefore, the Buyer and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-
 - 3.1 Enabling the Buyer to obtain the desired defence stores at a competitive price in conformity with the defined specifications of the Services by avoiding the high cost and the distortionary impact of corruption on public procurement, and
 - 3.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

Commitments of the Buyer

4. The Buyer Commits itself to the following:-

- 4.1 The Buyer undertakes that no official of the Buyer, connected directly or indirectly with the contract, will demand, take a promise for or 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, organization 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.
- 4.2 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.
- 4.3 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.
5. In case of 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 the 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

6. The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his 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 commits himself to the following:-

- 6.1 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, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.
- 6.2 The Bidder further undertakes that he has not given, 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.

6.3 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.

6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

6.5 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.

6.6 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.

6.7 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.

6.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

6.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

7. Previous Transgression

7.1 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.

7.2 If the Bidder 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.

8. Earnest Money/Security Deposit

8.1. Every bidder, while submitting commercial bid, shall deposit an amount* *(to be specified in the RFP)* _____ as Earnest Money/Security Deposit, with the buyer through any of the following instruments:-

- (i) Bank Draft or a Pay Order in favour of the PCDA, New Delhi,
- (ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Ministry of Defence, Government of India, represented on behalf of the President of India, 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 for payment.
- (iii) Any other mode or through any other instrument *(to be specified in the RFP)*.

** At present, the amount of EMD/SD is Rs. 1 crore in cases where the cost as estimated by the Buyer is above Rs. 100 crore and up to Rs. 300 crore and Rs.3 crore if above Rs. 300 crore.*

8.2. The Earnest Money/Security Deposit shall be valid up to a period of five years or the complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer, whichever is later. In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the buyer to those bidder(s) whose bid(s) does/do not qualify for negotiation by the Commercial Negotiation Committee (CNC), as constituted by the Buyer, immediately after a recommendation is made by the CNC on the bid(s) after an evaluation.

8.3 In the case of 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.

8.4 The provisions regarding Sanctions for Violation in Integrity Pact include 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 Integrity Pact.

8.5 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.

9. **Company Code of Conduct**

9.1 Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

10. **Sanctions for Violation**

10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one 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 1988 or any other act enacted for the prevention of corruption 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/Security Deposit/Performance Bond 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, 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 defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash 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.

(vii) To debar the Bidder from entering into any bid from 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) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close 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 filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependant upon Government servant.

(x) 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, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.

(xi) 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.

10.2 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purposes of this Pact.

11. Fall Clause

11.1 The Bidder undertakes that he has not supplied/is not supplying the similar 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 and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Ministry/Department of the Government of India 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.

11.2 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

12. Independent Monitors

12.1 The Buyer will appoint Independent Monitors for this Pact, in consultation with the Central Vigilance Commission.

12.2 As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Head of the Acquisition Wing of the Ministry of Defence, Government of India.

13. Examination of Books of Accounts

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Buyer or its agencies shall be entitled to examine the Books of Accounts of the Bidder and the Bidder shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Buyer i.e. New Delhi.

15. 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.

16. **Validity**

16.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the Buyer and the Bidder/Seller, whichever is later.

16.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

17. The Parties hereby sign this Integrity Pact at _____ on _____ .

BUYER

BIDDER

JS&AM (LS/Air/MS),
MINISTRY OF DEFENCE,
GOVERNMENT OF INDIA

CHIEF EXECUTIVE OFFICER

Witness

Witness

1. _____

1. _____

2. _____

2. _____

ABBREVIATIONS

AA	Air Attache
ADG(QA)	Assistant Director General (Quality Assurance)
AHSP	Authority Holding Sealed Particulars
AMC	Annual Maintenance Contract
AOM	Air Officer In-Charge Maintenance
AON	Acceptance of Necessity
ASC	Army Supply Corps
BE	Budget Estimate
BG	Bank Guarantee
BIS	Bureau of Indian Standard
BSNL	Bharat Sanchar Nigam Limited
BT	Bank Transfer
CC(R&D)	Chief Controller (Research Development)
CDA	Controller Defence Accounts
CDEC	Custom Duty Exemption Certificate
CFA	Competent Financial Authority
CFR	Cost And Freight

CGDA	Controller General Defence Accounts
CGE	Central Govt. Expenditure
CICP	Computerised Inventory Control Procedure
CIF	Cost Insurance and Freight
CIP	Carriage and Insurance Paid to
CIS	Confederation of Independent Countries
COM	Chief of Material
CP	Central Purchase
CPT	Carriage Paid To
CPWD	Central Public Works Department
CST	Comparative Statement
CVC	Central Vigilance Commission
DA	Defence Attache
DAF	Delivered At Frontier
DCF	Discounted Cash Flow
DDOs	Direct Demanding Officers
DDP	Department of Defence Production
DDU	Delivery Duty Unpaid
DEQ	Delivered Ex Quay
DES	Delivered Ex-Ship
DFPR	Delegation of Financial Power Regulations
DGFT	Directorate General of Foreign Trade
DGQA	Director General Quality Assurance
DGS&D	Director General Supplies & Disposal
DIR(MM)	Director (Material Management)
DP	Delivery Period
DPM	Defence Procurement Manual
DPP	Defence Procurement Procedure
DRDO	Defence Research Development Organisation
EMD	Earnest Money Deposit
EXW	Ex Works
FA	Financial Advisor
FA(DS)	Financial Advisor (Defence Services)
FAS	Free Alongside Ship
FCA	Free Carrier
FOB	Free On Board
FP	Financial Planning
FPQ	Fixed Price Quotation
FR	Financial Regulation
GDP	Gross Domestic Product
GED	General Engineering Department
GFR	General Financial Regulations
GOM	Group of Ministries
GOI	Govt of India

GOST	Gost Specifications (Russian)
GSR	General Service Rules
GTD	General Trade Department
IFA	Integrated Financial Advisor
ILMS	Integrated Logistics Management System
INCOTERM	International Commercial Terms
IS	Indian Standard
IT	Information Technology
ITJ	Indian Trade Journal
JV	Joint Venture
KVIC	Kendriya Village Industrial Commission
L1	Lowest 1
LC	Letter of Credit
LD	Liquidated Damages
LP	Local Purchase
LPP	Last Purchase Price
LTE	Limited Tender Enquiry
MGO	Master General of Ordnance
Milspecs	Military Specification
MHR	Man hour Rate
MOD	Ministry of Defence
MOD/D (MC)	Ministry of Defence/D (Monitoring of Contract)
MOQ	Minimum Order Quantity
MOU	Memorandum of Understanding
MA	Military Attache
NA	Naval Attache
NLC	Naval Logistics Committee
NMS	New Management Strategy
OEM	Original Equipment Manufacturer
OFB	Ordnance Factory Board
OTE	Open Tender Enquiry
PA	Price Agreement
P&MM	Planning & Material Management
PAC	Proprietary Article Certificate
PBG	Performance Bank Guarantee
PBL	Performance Based Logistics
PCDA	Principal Controller Defence Accounts
PNC	Price Negotiation Committee
POV	Professional Officers Valuation
PQ	Procurement Quantity
PSEs	Public Sector Enterprises
PSU	Public Sector Undertaking
QRs	Quantitative Requirements
RC	Rate Contract

RFP	Request For Proposal
ROE	Rosoboron Export
RVZ	Roosvourouzhnie
SA	Supplementary Agreement
SA TO RM	Scientific Advisor To Raksha Mantri
SCOC	Standard Conditions of Contract
SMH	Standard Manhour
SOP	Standard Operating Procedure
SPC	Stores Procurement Committee
SSI	Small Scale Industry
STE	Single Tender Enquiry
TE	Tender Enquiry
TNC	Technical Negotiation Committee
TOT	Transfer Of Technology
TPC	Tender Purchase Committee
UCPDC	Uniform Customs & Practices for Documentary Credits
UNICTRAL	United Nations Commission On International Trade Laws
USSR	Union of Soviet Socialist Republic
VFM	Value For Money