



CHAPTER 3,4 & 8

DPM 2009

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# CHAPTER -3

## SOURCING AND QUALITY



## REGISTRATION

- Detailed procedure for registration by the central procurement agencies.
  - Registration of **manufacturing firms as suppliers** is now given in **Joint Services Guide**
- To be applied, *mutatis mutandis*, to **other suppliers and service providers**
  - Later a separate procedure laid down by DGQA.
- **Mandatory registration** by agencies at the **command headquarters, depots, workshops and naval dockyards, etc**



## REGISTRATION

- Registration at the **unit level**:
  - Not necessary to register the firms at the unit level for **local purchase**.
  - However, the **reputation, capacity and credibility must be ascertained**
- Inter-services and **inter-departmental acceptability of registration**.
  - Instead of clause “specific needs of department “
  - Replaced with clause “for the **same range of products/goods/services** for which the firm is registered”



## ASSESSMENT OF PERFORMANCE

- **Criteria for assessment of performance**
  - Earlier periodicity **one year removed**
  - Assessment methodology as per **JSG**
- **Assessment of tech & fin capability**
  - Earlier clause gave **impression that assesment was required with each tender**
  - Now option to **coopt user given**
  - Addition of **CFA option to ask for IFA advice**
  - **Format** for preparing verification report of vendor capacity



## REMOVAL FROM THE LIST OF THE APPROVED FIRMS

- **Removal from the list**
  - **“Any other valid reason”** for more contingencies
  - Need to give notice highlighted for legal tenability
- **Effect of removal from the list**
  - **Must be communicated to all other registering and procuring agencies**
  - Clarified that removal from the list will cause firm’s **registration to stand cancelled**
- **Three year period restriction removed**
- **Ban on dealings with a firm :the word “blacklisting “ expunged**
- **Methodology as is specified in MOD letter**



# SPECIFICATIONS

- **Industrial specification**
  - Medical store industry specs added in the case of medical stores standard specifications are issued by WHO, FDA, CE etc
- **Common use items:**
  - Like **ad-hoc specifications**, specs should also be broad enough to permit wider participation
  - Subjective statement deleted “**reputed manufacturer**”
- **Waiver of inspection note:**
  - Also included cases in respect of items for which **testing facilities do not exist with AHSP/DGQA**



## SUMMARY OF IMPORTANT CHANGES

- **No registration required for local purchase**
- **JSG is the basic document for registration methodology**
- **Need for registration at command and other levels**



# CHAPTER 4 : TENDERING



## OPEN TENDER ENQUIRY

■ **GLOBAL TENDER ENQUIRY** : Now defined

■ **OPEN TENDER ENQUIRY**

- **Publicity**: Now synchronised with GFR Rule 150(ii)
- **Notice Inviting Tenders (NIT)**
  - **Essential information SPECIFIED.**
- **Direct Dispatch** :also be sent to all suppliers registered “for the particular range of items”
- **Tender documents on the website:**
  - **Instructions to bidder to pay be mentioned.**
- **Time to be given for submission of bids:**
  - **Now: three weeks earlier was four weeks**
  - **Now option for reduced time frame emergent local purchase of supplies, provisions and medicines by use of FAX, e-tendering etc**



## OPEN TENDER ENQUIRY

- **Unregistered firms claiming and meeting compliance of technical specifications laid down in the RFP :**
  - **Before opening the commercial bid **assessment of capability of the firm would be mandatory.****
  - **This will not amount to **automatic registration** of the firm by the Registering Authority.**
  - **For specialized and critical medical equipment/stores,**
    - **Where DGQA and DGS&D are presently not registering the firms on the grounds that SPQR are not formulated by them but by the users,**
    - **Manufacturers of national repute or their authorized agents may be considered, based on financial status and market reputation/past performance of the firm, as at present**



## OPEN TENDER ENQUIRY

- **Global tender enquiry: Now defined**
  - Method given ie copies of the tender enquiry may be sent to the **Indian embassies abroad as well as the foreign embassies in India**
  - The selection of embassies would depend on the possibility of availability of the required goods/services in such countries
  - The tender enquiries may also be sent through the **defence attachés** wherever they are posted in the embassies and high commissions
  - Now in sync with GFR rule 150(iv)



## OPEN TENDER ENQUIRY

- **Publicity: Now synchronised with GFR Rule 150(ii)**
- **Notice Inviting Tenders (NIT)**
  - **Preparation : Essential information mentioned along with scope for adding additional information.**
  - **Direct Dispatch :**
    - **Tender forms may also be sent to all suppliers registered**
    - **Now specified that all suppliers “registered for the particular range of items”**
- **Tender documents on the website:**
  - **Complete tender document should be posted.**
  - **If downloaded document is priced , instructions to bidder to pay should be mentioned.**



## OPEN TENDER ENQUIRY

- **Time to be given for submission of bids:**
  - Earlier minimum time to be allowed for submission of bids was four weeks from the date of publication of the tender notice
  - Now reduced to three weeks
  - Now option for reduced time frame for submission of bids may be adopted in the case of emergent local purchase of supplies, provisions and medicines by use of FAX, e-tendering etc



## LIMITED TENDER ENQUIRY

### LIMITED TENDER ENQUIRY :

- Now also *when only two or three known sources of supply.*
- Special Circumstances:
  - Urgency : Now certified by “ **indenter** ” and earlier ambiguous “ **competent authority** “.
  - Now also when the nature of item to be procured is such that **pre-verification of the competence of the firms and their registration is essential.**
- Time to be given for submission of bids:
  - now as *normally from one to three weeks,* **Earlier was “sufficient time”**
  - **Also for perishable goods or consumables a reduced time frame may be followed.**



## LTE : UNREGISTERED FIRMS CLAIMING COMPLIANCE

- Normally no such occasion should arise .
  - For a two-bid tender
    - Technical bid may be opened and evaluated, where procurement does not involve any trials.
    - If firm is found to be technically compliant, further action as per OTE situation.
    - Provided it does not entail any delay.
    - If is not found to be technically compliant, further cognizance of the tender need not be taken and the firm advised for registration.
  - In a single bid tender
    - The tender may be considered if it does not involve any trials or delay in procurement.





## LTE: SPECIAL CIRCUMSTANCES

- Now included that *Limited Tender Enquiry may also be resorted to also when there are only two or three known sources of supply.*
- Limited Tender Enquiry in **Special Circumstances:**
  - **Urgency** : Now specified that the “ **indenter** ” and not the earlier ambiguous “**competent authority in ministry or department** “ certifies that the demand is urgent.
  - Approval by the CFA added with in consultation with the IFA (where required).
  - New situation added that : the nature of item to be procured is such that **pre-verification of the competence of the firms and their registration is essential.**



## LIMITED TENDER ENQUIRY

### ■ **Publicity and dispatch of tender documents:**

- **Now specified that copies of the bidding document *should* be sent directly by speed post/registered post/ courier/e-mail/fax to firms which are borne on the list of registered suppliers for the goods in question.**
- **Copies of the bidding documents should also be sent by registered post to the firms to whom were initially sent by fax/e-mail.**
- **Web based publicity should be given .**



## LIMITED TENDER ENQUIRY

### ■ Time to be given for submission of bids:

- Time for submission of bids now defined as *normally ranging from one to three weeks*, should be allowed. Earlier was vague “sufficient time”
- *Also allowed that for perishable goods or consumables a reduced time frame may be followed.*



## SINGLE TENDER ENQUIRY

- **Single Tender Enquiry (STE):**
  - In a case of **emergency/urgency**, the required goods are necessarily to be purchased from a particular source.
  - On account of any other **operational or technical requirement**, which should, however, be clearly recorded.
- Now specified that wherever applicable, **the Indentor** should communicate to the Procuring Agency the reasons for recommending STE.
- Also that STE should generally be sent to the **OEM or to a registered firm.**



## PROPRIETARY ARTICLE CERTIFICATE (PAC)

- Propriety Article Certificate (PAC) *may* be issued:
  - For **standardization of machinery**
  - Or ensuring **compatibility of spare parts with the existing equipment,**
  - **Advice of the technical expert, goods and services** have to be obtained from a particular source.
- Specified that the item may be bought from **any dealer, stockist or distributor *on a manufacture certificate***
- **Validity of PAC : for *two years*. Earlier was one year**
- Clarified that the provisions would also apply to
  - **Repairs and servicing of equipment by the *sole dealer/servicing agency, authorized by the OEM***
  - **If main equipment was purchased on PAC.**



## SINGLE BID SYSTEM

■ **Single Bid system:** For stores available commercially off-the-shelf (COTS) and LP items, where qualitative requirements and technical specifications are clear, single commercial bid system may be followed.

- *This system may also be followed for other procurements of **non-complex nature**.*
- ***No sample should** be called for in single bid system at the RFP stage.*
- Above as per **CVC guidelines**



## TWO BID SYSTEM

### Two bid system:

- For purchasing high value and for turnkey projects, etc., which are of a complex and technical nature
- *Now added for items which have indeterminable parameters, such as shade, tone, make-up, etc.,*

Bids should be obtained in **two parts** as follows:

- *Technical bid consisting of all technical details along with commercial terms and conditions*
- *Financial bid indicating item-wise price and all other commercial terms and conditions.*

Method of **submission defined and now in sync with GFR rule 152**

**Cost of Tender documents for OTE now specified**



## LTE & OTE : BID SECURITY

- **Form of Bid Security:**
  - Any “public sector banks or a private sector bank authorized to conduct government business”,
  - Earlier “any commercial bank”
  - As per Form DPM-13
- **Refund of Bid Security of Successful Bidders( earlier unsuccessful bidder only given):**
  - The Bid Security should be returned, without any interest
  - After the receipt of Performance Security from them as called for in the contract.
- **Exemption from Submission of Bid Security: if the value of the tender is Rs two lakh or less.**





## BID SECURITY

- **Forfeiture of the Bid Security. Now specified :**
  - **If the bidder withdraws or amends, impairs or derogates from the tender in any respect within the validity period of his tender.**
  - **No separate order is required for forfeiture of Bid Security which follows on default and should be credited at once to the Government Account.**



## TENDERING PROCESS

- **Expression of Interest.** Now defined :
  - In those cases where specifications of the desired goods or services are not clear
  - Or the sources are not known
  - It is considered desirable to resort to **pre-qualification of suppliers.**
- **Pre-bid conference** may be held with the firms meeting criteria in the notice to **firm up the Qualitative Requirements (QRs)**/specifications before issuing the RFP.
- Preparation of the Request for Proposal/Tender Enquiry( RFP): RFP should be **vetted by integrated finance** (where required).



## TENDERING PROCESS

- **Format** for indigenous RFP is at **appendix “C”**
  - Only minor changes
    - Minor change to text to suit requirement.
    - Deletion of clauses not applicable .
  - Emphasized that no clause be put in supply order that is not in the RFP to prevent unfair denial of opportunity to other suppliers.



## RECIPT OF TENDERS

- Tender Box : Procedure explained
- Delivery of Bids by Hand:
  - The names and designation of at least two officers are mentioned in the bid documents
  - Also be displayed at the entrance



## AMENDMENT TO THE RFP

- **Additional Situations for modification:**
  - Due to change in the required **quantity or specifications.**
  - After receiving the documents, a tenderer may point out some **genuine mistakes.**
- In LTE : be sent to all the **selected suppliers .**
- In OTE : dispatch free to all tender **purchasers**
- Prominently attach to the **unsold tender documents** including on the website.



## AMENDMENT TO THE RFP

- **Extend the time and date** of submission, receipt, validity of tenders and the corresponding EMD/Bid security.
  - When the amendment/modification **changes the requirement significantly**
  - And/or when there is **not much time left** for the tenderers to respond to such amendments, and prepare revised tender
- Amendment may also need fresh publication by the **same procedure** as the original TE.



## EXTENSION OF TENDER OPENING DATE

- Even in those cases where **extension of tender opening date** does not become necessary because of the amendment to the RFP,
  - The **CFA, with integrated finance** (where required), may extend the date of opening of the tender
  - Such extension should **not exceed the total delivery period** envisaged in the RFP.
  - **Any further extension** would require approval of the **next higher CFA**.
  - Such extensions and amendments should be **published** where the original RFP was published.



## EXTENSION OF TENDER OPENING DATE: AFTER DUE DATE OF OPENING

- Date of opening of the tender may be extended within a **reasonable period after the due date** of the opening of tenders
  - In **exceptional circumstances**
  - Reasons to be recorded in writing,
  - With the approval of the **higher CFA and in consultation with the IFA**( where required).





## OPENING OF TENDERS

- **SINGLE BID SYSTEM** : detailed procedure given
- **TWO BID SYSTEM**
  - Detailed procedure given
  - Method of evaluation of tech bids
  - *Composition* TEC
  - TEC report as per Form DPM-24.
  - Guidelines for the TEC



## OPENING OF TENDERS

- **Single Bid System : Detailed procedure given**
- **Two bid system**
  - **The procedure laid down for single bid should be followed *mutatis mutandis***
  - **Only the technical bids should be opened in the first instance.**
  - **Commercial bids of only QR-compliant tenderers be opened only after evaluation of the technical bids and approval of the TEC report by the CFA.**
  - **The commercial bids of other tenderers, who are not found to comply with the QRs as above, will be returned sealed and unopened to the tenderers.**



## EVALUATION OF TECHNICAL BIDS

### Opening of Technical Bids:

- initially only the technical bids are to be opened.

### Evaluation of Technical Bids:

- After opening of the technical bids, technical evaluation is to be carried by a Technical Evaluation Committee (TEC).

### *Composition* TEC

- Should invariably have representatives of the user, designated inspecting , maintenance , procurement agency and CFA, apart from the Chairman.
- Finance representative need not be associated with the TEC.



## Technical Evaluation Committee (TEC):

### Objective of the TEC:

- Technical matrix showing how the technical parameters of bids received with the RFP parameters.
- If the offers conform to essential parameters they should be accepted.

### Compliance Report

- Bringing out the extent of variations , in the technical characteristics of the equipment wrt QRs and compliance or otherwise with the essential parameters.
- If necessary, may invite those vendors who meet essential parameters for technical presentation/ clarification.



## Technical Evaluation committee

- The TEC report as given at Form DPM-24.
- Aspects should be kept in mind by the TEC:
  - The basic profile/character of technical offer must not be permitted to be changed.
  - Opportunity for revision of minor technical details should be accorded to all vendors.
  - No extra time should be given to any vendor to modify his offer to make it QR compliant.
  - Original commercial quotes must remain firm and fixed and no loading/unloading in price be permitted during TEC discussions
  - No conditional offer should be accepted not in conformity with the specifications mentioned in the RFP.



## Technical Evaluation committee

### ■ Mandate of the TEC

- Is not authorized to discuss commercial aspects of the case.
- However, the TEC should prepare a compliance statement in respect of commercial terms and conditions, such as bid security, warranty, etc., included in the technical bid as per the RFP.



## TECHNICAL EVALUATION COMMITTEE (TEC)

### ■ Association of IFA:

- While technical evaluation is to be carried out by the TEC and **integrated finance need not be associated** at this stage
- CFA may, associating the IFA or his representative in examination of the TEC Report in regard to **compliance with the commercial terms and conditions** before opening of the price bid. TEC report, once finalized, should be sent to CFA for acceptance.



## Technical Evaluation committee

### Approval by the CFA:

- Should be approved by the respective CFA.
- Defence Secretary and Special/Additional Secretary where Raksha Mantri and Defence Secretary respectively are the CFAs.

### QR-compliant Offers:

- Those offers , duly approved by the CFA, should be considered by the Commercial Negotiation Committee (CNC)
- CNC should evolve methods for benchmarking and hold internal meetings to finalize approach for negotiations with the L<sub>1</sub> vendor, if considered necessary by the CFA and IFA (where applicable)





## REVISED COMMERCIAL BIDS IN TWO BID SYSTEM

- Not practicable to incorporate all possible details in the technical specification(s)
- Thereby requiring **elaborations/clarifications** during technical discussion.
- This may consequently **necessitate submission of revised commercial bids.**
- If the **original price bids not opened**, 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 L<sub>1</sub>.**
- **Invariably** before calling for revised commercial bids approval of **CFA and integrated finance**( where applicable) should be taken.



## Evaluation of Commercial Bids

- **Preparation of the Comparative Statement of Tenders (CST) by procuring agency** After opening of the commercial bids (of QR-compliant tenderers in the case of two bid system and after approval of the TEC report by the CFA).
  - The CST should show each element of cost (basic cost, taxes, levies, etc.) separately against each tenderer.
  - CST be prepared soon after opening of the commercial bids and vetted by the IFA( if applicable) .
- **Commercial Evaluation: Detailed guidelines on establishing reasonability of prices and ranking of bids are in Chapter 13.**



## COMMERCIAL NEGOTIATIONS:

- It is **not mandatory to hold commercial negotiations**
  - Not mandatory in each case,
  - Particularly in open and limited tender cases, where
    - The **response has been substantial**
    - And the **L<sub>1</sub> price is found to be very close to the reasonable price,**
    - If such an **assessment had been carried out prior to opening of the commercial bids.**



## COMMERCIAL NEGOTIATIONS:

- **Commercial negotiations conducted in**
  - **Case of single tender situations, including PAC cases,**
  - **Or when price is considered high with reference to assessed reasonable price, irrespective of the nature of tendering.**
- **Such negotiations are invariably by a CNC, which should include a finance member, unless by the committee CFA .**
- **Detailed guidelines are contained in Chapter 13 of this manual.**



## Commercial Negotiations:

■ **Composition of CNC:** Apart from the Chairman, there should be representatives of

- the User,
- Integrated Finance,
- designated Inspecting Agency,
- Maintenance Agency,
- Directorate concerned with post-contract management
- The CFA, wherever applicable.
- CFA may nominate any other member, like a costing expert, in case of high value single vendor offers



## Commercial Negotiations:

### Chairman of the CNC:

- The CNC may be headed by an officer one rank below that of the CFA.
- A Joint Secretary where Raksha Mantri or Defence Secretary is the CFA.
- The CFAs in the Ministry of Defence
  - may also authorize an officer from the Services Headquarters
  - Particularly where on opening of the tenders the cost was found to have exceeded the financial powers of Services Headquarters CFAs.



## Objective of CNC : Price Reasonableness:

- Detailed guidelines are contained in Chapter 13 of this manual.
- Consider factors like :
  - last purchase price (LPP),
  - Movement of price indices
  - Market intelligence regarding cost of the item or similar items,
  - Material composition, cost analysis of raw materials, technological complexities involved, whether the items are of current production or otherwise,
  - Maintenance requirements, requirement of spares and warranty etc



## LACK OF COMPETITION

### ■ lack of competition defined :

- The number of acceptable offers is **less than two**.
- **Ring prices** have been quoted by all tenderers (Cartel formation).
- The product of **only one manufacturer** has been offered by all the tenderers irrespective of the number of quotations.
- Store under purchase is chronically in **short supply against which the number of acceptable offers never exceeds two**.





## RESULTANT SINGLE VENDOR SITUATION

- There are cases when only a **single quote or a single valid acceptable quote** is received even against LTE or OTE.
- This situation may arise in **single bid tendering as well as in two-bid tendering** before or after technical evaluation.
- This results in a single vendor situation **indicating lack of competition.**



## DPM 2005 : RESULTANT SINGLE VENDOR SITUATION

- DPM 2005 : These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable
- As per amplification note 6 of DPP 2002 :
  - When TEC shortlists only one vendor, such cases are not to be treated as single tender case.
  - Clarified that in a two bid system, if the TEC shortlists only one equipment as acceptable it will not be considered as a single vendor.
  - As the techno commercial offers had been received before the opening of bids, the commercial bids were competitive in nature as the vendors would have submitted their price offers in an open competition and would not have been aware of any single vendor getting approved after TEC



## DPM 2005 : RESULTANT SINGLE VENDOR SITUATION

### DPM 2005

- These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable
- As per note 27 of Rule 102(i) of GFR, " Invitation to one firm only" is single tender.
- As per amplification note 6 of DPP 2002, when TEC shortlists only one vendor, such cases are not to be treated as single tender case for getting CFA approval.
- Rule 26 of DFPR clearly stipulates that provisions of DFPR are not applicable to expenditure debitable to defence estimates.
- Accordingly if a single valid quote is received against LTE/OTE/GTE it may not be treated as a single tender contract



## DPM 2005 : RESULTANT SINGLE VENDOR SITUATION

- In amplification of note 6 of DPP it has been clarified that in a two bid system, if the TEC shortlists only one equipment as acceptable it will not be considered as a single vendor. As the techno commercial offers had been received before the opening of bids, the commercial bids were competitive in nature as the vendors would have submitted their price offers in an open competition and would not have been aware of any single vendor getting approved after TEC



## DPM 2005 : RESULTANT SINGLE VENDOR SITUATION

- The following precautionary measures to protect the interest of the state will be considered by the CFA :-
  - One extension of tender opening date should be given before opening the single quote
  - Specific approval of CFA is to be obtained before opening single quote.
  - CFA is to satisfy himself about the method of dispatching TE and consider the possibility of TE either not reaching the vendor or not reaching in time to enable them to quote before approving opening of a single tender
  - In case, a single quote out of the multiple quotes received emerges as the acceptable quote after evaluation, then the reasons for rejection of each quote is to be recorded in detail



## DPM 2006 : RESULTANT SINGLE VENDOR SITUATION

### DPM 2006

- 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
- The SHQs would institute suitable MIS for procurement cases exceeding Rs one crore, where such resulting single tenders have resulted with a view to relooking at QRs and ways & means to increase vendor base & response.
- A consolidated quarterly report in this regard would be rendered to the MOD/MoD(Fin)



## DPM 2009 : RESULTANT SINGLE VENDOR SITUATION

### DPM 2009 : Analyse :-

- Meeting of **necessary RFP requirements:**
  - Such as standard tender enquiry conditions, industry-friendly specifications, wide publicity, sufficient time for formulation of tenders had been taken care in RFP
  - Whether the RFP had been **properly dispatched and duly received** .
- SQR Modification
  - Whether the **SQRs, could be reformulated and made more broad based to generate wider competition particularly in the LTE cases,**..
  - Whether **time and criticality** of requirement permits reformulation of the SQRs.



## RESULTANT SINGLE VENDOR SITUATION

- If examination reveals :
  - Necessary tender requirements complied and RFP properly dispatched & received
  - And SQRs, particularly in the LTE cases, cannot be reformulated or due to time and criticality of requirement reformulation of the SQRs is not feasible
- Proposal may be processed with the approval of the CFA.
- If any doubt about the tendering process or it is feasible for reformulation of SQRs without compromising on operational requirement, the RFP should be retracted and re-issued after rectifying the deficiencies and/or reformulating the SQRs.





## RE-TENDERING

- **RE-TENDERING .Recommended by the CNC**
  - Offer(s) do not conform to QRs and other terms and conditions set out in the RFP.
  - Major changes in specifications and quantity, with impact on the price.
  - Prices quoted are unreasonably high wrt assessed reasonable price
  - Sudden slump in prices after receipt of the bids.
  - lack of competition was due to restrictive specifications.
  - Such situations should be rare as specs should be formulated with care and after pre-bid conference
- **CFA should consider if there is a possibility of reviewing the specifications .**



## RETENDERING ; WITHDRAWAL OF OFFER BY L1

### ■ WITHDRAWAL OF OFFER BY L1

- In case the **lowest tenderer withdraws** his offer, re-tendering should be resorted to
- As per the instructions issued by the **CVC**.
- While retendering RFP may **not be issued to the vendor who had backed out**
- **EMD, if any, of such a firm should be forfeited.**



## RETENDERING : PROCUREMENT OF BARE MINIMUM QUANTITY

- In cases where
  - it is decided to resort to re-tendering due to unreasonableness of the quoted rates
  - But the requirement is urgent/inescapable
  - And re-tendering for the entire quantity is likely to delay the availability of the item(s) jeopardizing the essential operations, maintenance and safety,
- Negotiation may be held with the L<sub>1</sub> bidder for supply of a bare minimum quantity.
- The balance quantity should, however, be procured expeditiously through re-tender, following the normal tendering process.



## SIGNING OF CONTRACT/PLACING OF SUPPLY ORDER

- Signing of Contracts/Placing of Supply Orders: immediately.
- Contract/supply order is as per the approved terms and conditions and rates as finally negotiated and accepted by the CFA.
- Should be vetted by the IFA, wherever required, prior to acceptance of the CFA.
- Copies of the contract/supply order should be sent to all concerned.
- The format for Contract and Supply Order is given in Appendix E and D respectively.



## CARTEL FORMATION/POOL RATES

- **CARTEL FORMATION.** Should be discouraged with strong measures :
  - Suitable **administrative actions** like **rejecting the offers,**
  - **Reporting the matter to Registrar of Companies, MRTP Commission, National Small Industries Corporation etc.**
- **Bringing to the notice of the concerned trade associations like FICCI, ASSOCHAM, NSIC, etc.**
- **New firms should also be registered** for the subject goods/services to break the monopolistic attitude of the firms forming cartels.
- **All requests for making reference to outside agencies, are to be made to the Ministry of Defence.**



## PROCUREMENT INVOLVING VALIDATION/TESTING

### CIRCUMSTANCES FOR PROCUREMENT INVOLVING VALIDATION/TESTING :

- Due to **constant changes in technology**, stores & eqpts , which are already in service, **need to be replaced by newer variants or upgraded / refurbished / re-equipped / modified / overhauled ( upgrades, etc).**
- This may necessitate validation trials/testing of upgraded , etc equipment, if considered necessary by the **Service Headquarters concerned.**
- The procedure applicable to cases at the level of the **Ministry of Defence/Service Headquarters only and should be indicated while seeking AON.**
- Such cases will not be treated as new introduction into **Service.**



## PROCUREMENT INVOLVING VALIDATION/TESTING

### CATEGORIES OF CASES:

- Procurement of upgraded new versions of stores & equipment, etc, from the revenue head,
  - Provided these conform to the existing QRs and meet the prescribed performance parameters or certain enhanced parameters as an amendment to the existing QRs.
- Upgradation, refurbishment etc of weapon platforms/systems etc.
  - May be carried out fully or partially at OEM's premises abroad or in India, or at a Repair Overhaul Plant (ROH) with requisite facilities which may at another place, provided certified by the OEM .



## PROCUREMENT INVOLVING VALIDATION/TESTING

### PROCEDURE FOR PROCUREMENT OF STORES :

#### Validation Process.

- Service HQ decide if a **validation process** required and **the scope and duration** is indicated.

#### Procedure.

- In RFP that the compliant vendors to give specified quantities on 'no-commitment-no-cost' basis .
- The period to submit the equipment/ sample after being found technically complaint in the RFP.
- Technical bids are opened, the TEC will short-list compliant vendors and approval by the CFA.
- Technically compliant vendors will go through the process of evaluation/testing.
- **Evaluation within eight months from receipt .**
- **Report ratified by the TEC .**





## PROCUREMENT INVOLVING VALIDATION/TESTING

### Procedure ( contd)

#### Opening of Commercial Offer After Trial Evaluation/Testing:

- The commercial offer should be opened only after acceptance of the TEC of Validation Trial/Testing Report of those vendors who have been recommended as technically compliant.
- The commercial offer should normally have a validity period of **twelve months from the date of submission of the offer**
- This is to ensure that the offer is still valid when the commercial bid is opened, commercial negotiations held and the order placed.
- **A shorter validity period may be prescribed commensurate with the period of trial/testing.**



## PROCUREMENT INVOLVING VALIDATION/TESTING

### Dispensing with Trial Evaluation/Testing

- For equipment available commercially off-the-shelf (COTS), which are upgrades of in-service items and have requisite IS/BIS or equivalent certification
- The Service Headquarters may accept the equipment on the basis of self-certification by the vendor without going through the validation / testing process,
- Provided it is confirmed by the QA Agency/AHSP or any other technical agency concerned.
- However, in such cases also TEC Report should be approved by the CFA.



## PROCUREMENT INVOLVING VALIDATION/TESTING

### PROCEDURE FOR UPGRADATION, REFURBISHMENT, RE-EQUIPMENT, MODIFICATION, TECH LIFE EXTENSION AND OVERHAUL:

- The vendors should be short-listed with approval of the CFA and concurrence of integrated finance
- The short listed vendors may be provided an opportunity to survey the weapon platform/systems, etc, prior to issue of the RFP.
- If upgrade, etc is in India, the vendors should certify the capability and adequacy of the facility.
- If required, a Detailed Project Report (DPR) may be got prepared by the Service HQ after obtaining the AON but before issuing the RFP for defining the scope and other technical details of the upgrade/OH programme.



## PROCUREMENT INVOLVING VALIDATION/TESTING

### SPECIAL PROVISIONS IN RFP:

- Should be on two bid system and may have provision for pre-bid conference.
- Vendors to specify the location of the plant/factory and if the vendor owns the facility.
- If not owned , a certificate of agreement between the OEM and the plant owner required.
- Provision that one lead equipment will be tested with the representatives of the Service HQ before the balance equipments.
- In case of a single weapon platform, there should be concurrent testing along with the upgradation, etc.



## PROCUREMENT INVOLVING VALIDATION/TESTING

### ■ Approval of TEC Report and Opening of Commercial Offer:

- The TEC Report should be approved by the CFA
- The commercial offer of technically compliant vendors should be opened only thereafter.

### ■ Validity of the Offer:

- Validity of commercial offer should be up to **eighteen months**, depending on the period required for completing the technical evaluation,
- To ensure that the offer remains valid till the time the order is placed/contract signed.



## PROCUREMENT INVOLVING VALIDATION/TESTING

### Assessment of the Vendor's Facility

- If required a composite delegation of representatives of the User , CFA and integrated finance may visit the plant/factory of the vendor recommended by the CNC to assess the capability/capacity of the selected vendors before commercial negotiations are finalized.



## INSTRUCTION TO BIDDERS & PURCHASE OFFICERS

### Instruction to Bidders

#### Eligibility

Clarification regarding contents of the Bidding Documents.

Quotations to be submitted under original memos.

Amendment of Bidding Documents

Bid Validity:

Late Bids

Modification and Withdrawal of Bids

Clarification regarding contents of the Bids

Agents of the supplier

### Instruction to the Purchase Officers

Responsiveness of the bid

Evaluation and comparison of substantially responsive bids

Award Criteria

Waiver of QRs/parameters

Pre-bid conference



## INSTRUCTIONS TO BIDDERS

### Eligibility:

- A firm registered with any Procurement/Registering Authority for the manufacture/supply of the tendered goods/services would be eligible to bid. An unregistered firm may get itself assessed for capacity/competency to manufacture/supply the tendered goods/services to become eligible to participate in tendering.

### Clarification regarding contents of the Bidding Documents

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

### Quotations to be submitted under original memos

- Bids should be forwarded by vendors under their original memo /letter pad, *inter alia*, furnishing the TIN No., VAT/ CST No., Bank Address with EFT account No. and the complete postal and e-mail address of the firm..

### 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.





## INSTRUCTIONS TO BIDDERS

### Bid Validity:

A bid shall remain valid for ninety days in case of single bid RFP and one hundred twenty days in case of two-bid system, unless otherwise specified, from the date of the opening of the tender. A bid valid for shorter period can be rejected by the purchaser, as being non-responsive. In exceptional circumstances the purchaser may request the consent of the bidder for an extension to the period of bid validity. Such requests shall be made in writing. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

### Late Bids

In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered and returned unopened to the bidder.

### Modification and Withdrawal of Bids

A bidder may modify or withdraw his bid after submission provided that the written notice of modification or withdrawal is received by the purchaser prior to deadline prescribed for submission of bids. A withdrawal notice may be sent by fax but it should be followed by a signed confirmation copy to be sent by post and such signed confirmation should reach the purchaser not later than the deadline for submission of bids. 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.

### Clarification regarding contents of the Bids

During evaluation and comparison of bids, the purchaser may, at its discretion, ask the bidder for clarification of his bid. The request for clarification shall be in writing and no change in prices or substance of the bid shall be sought, offered or permitted. No post bid clarification on the initiative of the bidder shall be entertained.

### Agents of the supplier

One agent cannot represent two suppliers or quote on their behalf in a particular tender enquiry. Such quote should be rejected.



## Instruction to the Purchase Officers

### Preliminary Examination

- Purchaser shall evaluate the bids to determine whether they are complete; whether any computational errors have been made; whether required sureties have been furnished; whether essential documents such as the technical literature and Agency Agreement in the case of medical stores, etc., as specified in the RFP have been furnished; whether the bid documents have been properly signed; and, whether the bids are generally in order.

### Discrepancy in quoted price

- If there is a discrepancy between unit price and the total price, the unit price shall prevail. If there is a discrepancy between words and figures, the amount in words shall prevail. If a supplier does not accept the correction of the errors, his bid should be rejected and the bid security may be forfeited.

### Trivial errors

- Trivial errors such as omission to (i) enter the rates in words, (ii) initial any alteration in rates or (iii) sign both the tender and the schedules(s) may be corrected, initialed and dated both by the officers opening the tenders and signed and dated by subsequently by the tenderer.



## Instruction to the Purchase Officers

### Responsiveness of the bid

- Prior to detailed evaluation, the purchaser should determine the substantial responsiveness of each bid to the bid documents. A substantially responsive bid is the one which conforms to all terms and conditions of the bid documents without material deviations. Deviations from or objections or reservations to critical provisions like Bid Security, Warranty & Guarantee, Applicable Law, Taxes and Duties and non-submission of documents such as valid Agency Agreement and technical literature in the case of medical stores should be deemed to be a material deviation.

### Evaluation and comparison of substantially responsive bids

- The evaluation and comparison of responsive bids shall be done on the prices of the goods offered inclusive of all levies & taxes, such as VAT, Excise Duty and other charges such as Packing & Forwarding, Freight and Insurance etc., as indicated in the price schedule of the Bid document but exclusive of Octroi/Entry Tax, which is to be paid extra as per actual, wherever applicable.



## Instruction to the Purchase Officers

### 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(\$) against price(\$) quoted by any bidder.

### Waiver of QRs/parameters

- There should be no waiver of parameters after the issue of RFP as this may result in denial of opportunity to firms which could have met the revised essential parameters, had this been reflected in the RFP *ab initio*. This is particularly relevant in single vendor/resultant single vendor cases where waiver of essential parameters after issue of RFP and receipt of tenders would be prejudicial to the interest of other firms which might have submitted their bids as per the revised parameters but could not because of the essential parameters mentioned in the RFP.

### Pre-bid conference

- To obviate the possibility of the RFP fetching no response, resulting in a single vendor situation or resulting in generation of limited competition, technical specifications should be firmed up in a pre-bid conference in two-bid tender, particularly where the goods/services to be procured are not available commercially off-the-shelf or are of complex and highly technical nature. No fresh commercial bids should be invited after opening of technical bids.



## SUMMARY OF IMPORTANT CHANGES

- Procurement of services also included in ambit
- Time for tender opening changed :
  - For OTE : Reduced to three weeks from earlier four weeks
  - For LTE :
    - Now one to three weeks
    - For
- PAC validity increased from one to two years
- Bid security not required upto two lakhs
- Considering unregistered firms claiming compliance in LTE

# CHAPTER -8



## RATE CONTRACT

### Definition:

- **Services** included in ambit
- Specified withdraw/cancel the Rate Contract by serving an appropriate notice on each other, of not less than thirty days
- Clarified that a **supply order becomes a valid and binding contract** and the supplier is bound to supply the ordered quantity

### Items already on DGS&D Rate Contract:

- Directed that normally no Rate Contract should be concluded for DGS&D RC items
- **Option also now available to enter into contracts for such items with CFA's approval taken after consulting integrated finance**



## RATE CONTRACT

### Period of Rate Contract

- Earlier period of rate contract was **three years now changed to one year**
- In special cases **lesser or longer periods may be considered to max three years**

### Determination of the **CFA** to approve RC

- Clarified that **Value of anticipated drawl over a period of one year determines the CFA** for conclusion of Rate Contract/Price Agreement





## RATE CONTRACT

### Price Negotiation:

- Made mandatory that All Rate Contracts and Price Agreements should be processed through the committee CFA or the CNC
- Participation of finance member in all deliberations, particularly regarding the pricing and conditions of contract, is mandatory



## RATE CONTRACTS

### ■ DDOs. All DDOs to operate the RCs:

- Now specified that Orders against a Rate Contract concluded by any authority may be placed on the same terms and conditions by all Direct Demanding Officers of Services/ Departments/ Organizations/Units/ Establishments under the Ministry of Defence
- Subject to there being no downward trend in prices.



## RATE CONTRACT

### ■ **Special Conditions Applicable for Rate Contract.**

Special conditions have now been specified

- Earnest Money Deposit (EMD) is not applicable
- No quantity is mentioned; only the anticipated drawl may be mentioned without any commitment
- The purchaser may conclude more than one rate contract for the same item
- The purchaser as well as the supplier may withdraw by serving suitable notice( thirty days).
- The purchaser has the option to renegotiate the price with the rate contract holders
- In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier



## RATE CONTRACT

- Terms of delivery specified :
  - Usually, the terms of delivery are **FOR “dispatching station”**.
  - For RCs which are **FOR “destination”**, the cost of transportation should be separately asked for
- **Supply orders**, incorporating definite quantity of goods to be supplied along with all other required conditions, are to be issued for obtaining supplies.
- Clarified that supply orders placed upto the **last day of the RC** and, even if supplies are beyond will be guided by the terms and conditions of the RC.
- The RC will be guided by **“Fall Clause”**.



## RATE CONTRACT : FALL CLAUSE

### ■ FALL CLAUSE: price safety mechanism

- If the RC holder reduces below the RC price, the RC price will be reduced wef that date
- Other parallel rate contract holders, are also to be given opportunity to reduce their price as well,
- Reduction of price under guise of fall clause will also be dealt in similar manner
- Special watch of performance be kept on such suppliers who reduce prices on some pretext. If not satisfactory ,severe action like deregistration, suspending business , terminating contract , etc



## RATE CONTRACT

### PERFORMANCE SECURITY:

- Depending on the **anticipated overall draw** and number of parallel rate contracts performance security of **reasonable amount** will be obtained.
- Performance Security shall, however, not be demanded in **the supply orders issued against rate contracts**



# RENEWAL, EXTENSION, TERMINATION AND REVOCAION OF CONTRACTS

## RENEWAL AND EXTENSION:

- New RCs be operative right after the expiry of the existing rate contracts
- In case above not possible the existing rate contracts **should be extended** .
- Firms, refusing extension, to be left out of **consideration for renewal and extension**.
- Extension generally not **more than three months**.
- While extending the rate contracts, it shall be ensured that the **price trend is not lower**.



## RATE CONTRACT : PAYMENTS

### PAYMENT TERMS:

- Payment of earlier 98 % on receipt of stores at consignee's premises changed to 95 %
- In case of dispatch stores by train, earlier 95% payment against proof of dispatch clause changed to 90%.

### FORMAT OF SUPPLY ORDER

- The format of the Supply Order against Rate Contract has now been standardised
- For DGS&D RCs Form -131 of DGS&D may be used suitably changed





## SUMMARY OF IMPORTANT CHANGES

- **Payment Terms**
  - **Payment of earlier 98 % on receipt of stores at consignee's premises changed to 95 %**
  - **In case of dispatch stores by train, earlier 95% payment against proof of dispatch clause changed to 90%.**
- **Period of rate contract now from one to three years.**
- **Now rate contract can be concluded for items already on DGS&D rate contract**
- **CFA determination now on anticipated drawl over one year.**



THANK YOU