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# **GOVERNMENT OF INDIA MINISTRY OF DEFENCE**

**Defence Procurement Manual - 2009  
(Revenue Procurement)**





## INDEX

S. NO.	CONTENTS	PAGE NO.
<b>CHAPTERS</b>		
1.	<b>Chapter-1 : INTRODUCTION</b>	1
2.	<b>Chapter-2 : PROCUREMENT – OBJECTIVE AND POLICY</b>	8
3.	<b>Chapter-3 : SOURCING AND QUALITY</b>	17
4.	<b>Chapter-4 : TENDERING</b>	22
5.	<b>Chapter-5: APPROVAL PROCESS AND CONCLUSION OF CONTRACT</b>	47
6.	<b>Chapter-6 : CONTRACT</b>	54
7.	<b>Chapter-7 : CONDITIONS OF CONTRACT</b>	63
8.	<b>Chapter-8 : RATE CONTRACT</b>	79
9.	<b>Chapter-9 : PROCUREMENT OF GOODS AND SERVICES FROM FOREIGN COUNTRIES</b>	86
10.	<b>Chapter-10. : STANDARD CONDITIONS OF CONTRACT - FOREIGN PROCUREMENT</b>	103
11.	<b>Chapter-11 : REPAIR CONTRACTS WITH FOREIGN AND INDIGENOUS FIRMS</b>	112
12.	<b>Chapter-12 : BANKING INSTRUMENTS</b>	117
13.	<b>Chapter-13 : EVALUATION OF QUOTATIONS AND PRICE REASONABILITY</b>	125
14.	<b>Chapter-14 : OFFLOADING OF PARTIAL/ COMPLETE REFITS/REPAIRS OF SHIPS/ SUBMARINES/CRAFTS/ASSETS TO INDIAN PSU/PRIVATE SHIP YARDS/TRADE</b>	134
15.	<b>Chapter-15 : DESIGN, DEVELOPMENT AND FABRICATION CONTRACTS</b>	142

<b>APPENDICES</b>		
16.	<b>Appendix – A TIME FRAME FOR PROCUREMENT</b>	159
17.	<b>Appendix- B FORMAT FOR THE STATEMENT OF CASE (SOC)</b>	160
	Annexure-A	164
	Annexure-B	165
18.	<b>Appendix – C SUBSIDIARY INSTRUCTIONS TO BUYER FOR FRAMING REQUEST FOR PROPOSAL (RFP)</b>	166
	Part-I	169
	Part-II	172
	Part-III	175
	Part -IV	184
	Part- V	210
19.	<b>Appendix- D SUBSIDIARY INSTRUCTIONS TO BUYER FOR FRAMING SUPPLY ORDER</b>	214
	Part-I	214
	Part-II	217
	Part-III	218
	Part -IV	225
	Part- V	250
20.	<b>Appendix- E SUBSIDIARY INSTRUCTIONS TO BUYER FOR FRAMING CONTRACT</b>	251
	Part-I	252
	Part-II	254
	Part-III	255
	Part -IV	262
	Part- V	286
21.	<b>Appendix- F DRAFT SUPPLY ORDER AGAINST RATE CONTRACT</b>	287
22.	<b>Appendix- G REQUEST FOR PROPOSAL (RFP)</b>	289
	Enclosure-I	289
	Enclosure-II	293
	Enclosure-III	294
	Enclosure-IV	295
	Enclosure-V	296
	Enclosure-VI	298
	Enclosure-VII	--
	Enclosure-VIII	--

23.	<b>Appendix- H STANDARD CONDITIONS OF CONTRACT FOR PARTIAL/COMPLETE REFIT/ REPAIRS OF SHIPS/SUBMARINES/MARINE AND SERVICE ASSETS</b>	299
24.	<b>Appendix- I DRAFT AGREEMENT FOR DESIGN, DEVELOPMENT AND FABRICATION CONTRACTS</b>	321
25.	<b>Appendix- J FABRICATION CONTRACT</b>	325
26.	<b>Appendix- K FORMAT FOR ISSUING SANCTIONS</b>	328
<b>FORMS of DPM</b>		
27.	DPM -1	329
28.	DPM -2	339
29.	DPM -3	346
30.	DPM -4	349
31.	DPM -5	351
32.	DPM -6	355
33.	DPM -7	359
34.	DPM -8	360
35.	DPM -9	362
36.	DPM -10	363
37.	DPM -11	370
38.	DPM -12	371
39.	DPM -13	373
40.	DPM -14	374
41.	DPM -15	376
42.	DPM -16	378
43.	DPM -17	380
44.	DPM -18	382
45.	DPM -19	384
46.	DPM -20	386
47.	DPM -21	388

48.	DPM -22	389
49.	DPM -23	390
50.	DPM -24	392
51.	DPM -25	393
52.	DPM -26	395
53.	DPM -27	397
54.	DPM -28	399
55.	DPM -29	400



सत्यमेव जयते

रक्षा मंत्री  
भारत

MINISTER OF DEFENCE  
INDIA

FOREWORD

The acquisition of defence equipment and the modernization of our Armed Forces are complex processes governed by procedures prescribed in various manuals and rules including the Defence Procurement Procedure-2008 and the present volume, the Defence Procurement Manual 2009. Taken together, these Manuals represent two sides of the same coin – while the former handles the acquisition of new capital equipment, the DPM is a more detailed compendium of procedures covering revenue procurements as well as the provision of all other goods, services and support activities intended to maintain the operational effectiveness of our Armed Forces.

Since the last update of the DPM in 2006, several policy and procedural changes have taken place. The present volume attempts to reflect them while speeding up decision-making processes and, at the same time, ensuring that the highest standards of probity and financial prudence are observed. Among other things, it addresses the problem of certain bottlenecks in the exercise of delegated powers as well as adding a new chapter on ship repair not covered earlier.

A significant proportion of our defence requirements continue to be imported. In order to promote indigenization, a mechanism has been introduced in our procurement procedures in the form of an offset policy which requires foreign vendors involved in large projects to actively invest in Indian firms and joint ventures. The new DPM facilitates this objective and complements the offset policy by streamlining the procedure for placement of development orders on domestic firms for equipment and services hitherto being imported.

With the considerable flexibility that has now been built into the new DPM, our expectations are that it will go a long way in ensuring more expeditious processing of revenue procurement proposals.

  
(A.K. Antony)

New Delhi  
25<sup>th</sup> March, 2009

# **CHAPTER 1**

## **INTRODUCTION**

### **1.1 Short Title and Commencement**

- 1.1.1 This Manual may be called the Defence Procurement Manual, 2009 (DPM 2009, for short).
- 1.1.2 This Manual contains principles and procedure relating to procurement of goods and services for the Defence Services, Organizations and Establishments, laid down in terms of Rule 135 of the General Financial Rules, 2005 and shall come into force with effect from 1<sup>st</sup> of April 2009.
- 1.1.3 All on-going cases of procurement in which Request for Proposal (RFP) has already been issued may continue to be regulated by the provisions of the Defence Procurement Manual, 2006.

### **1.2 Applicability**

- 1.2.1 The principles and procedures contained in this Manual are to be followed by all wings of the Ministry of Defence and the Defence Services, as well as all organizations and units/establishments thereunder, for procurement of goods and services, expenditure on account of which is met from the revenue heads of the Defence Services Estimates (DSE) and any other type of purchases to which the provisions are made specifically applicable.
- 1.2.2 The procedure laid down in this Manual shall also be applicable to the following:
- (a) the Coast Guard Organization and Jammu & Kashmir Light Infantry (JAKLI) for procurement under the revenue heads for which budgetary allocation is made in the Demand for Grant of the Ministry of Defence (Civil);
  - (b) procurement of certain capital items, as notified by the Ministry of Defence from time to time;
  - (c) procurement of medical equipment, both under revenue and capital heads; and
  - (d) purchases made by the Defence Services from grants placed at their disposal by other Ministries/Departments like the Ministry of Home Affairs, Ministry of Environment and Forests, etc.

1.2.3 The procedure laid down in this Manual shall be followed for central procurement as well as local purchases under delegated financial powers of authorities in the Ministry of Defence, Service Headquarters and all subordinate authorities in the Command Headquarters, lower formations, establishments and units thereunder at all levels.

### **1.3 Scope**

1.3.1 The term procurement means acquiring all types of goods (both scaled and non-scaled), such as equipment, stores, spares, technical literature, etc., as well as all types of services, including packing, unpacking, preservation, transportation, insurance, delivery, special services, leasing, technical assessment, consultancy, systems study, software development, maintenance, updates, conservancy, etc.

### **1.4 Definitions**

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

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

1.4.3 **Competent Financial Authority:** The Competent Financial Authority (CFA) is an authority duly empowered by the Government of India to sanction and approve expenditure from public accounts upto a specified limit in terms of amount of such expenditure and subject to availability of funds. All financial powers are to be exercised by the appropriate CFA. Where financial powers have been delegated to more than one authority under the same Serial/Head, authority with higher delegated financial powers will constitute the 'next higher CFA'.

1.4.4 **Contract:** A proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement, if made with free consent of parties

competent to contract, for a lawful consideration and with a lawful object, is a contract.

- 1.4.5 **Direct Demanding Officers:** The authorities in the Services/ Departments/establishments/units/hospitals etc. who have been duly authorized to place purchase orders directly on the rate contract holding firms/suppliers with whom Rate Contracts have been concluded by the central purchase organizations for the particular items/goods.
- 1.4.6 **Financial Power:** Financial power is the power to approve expenditure to be incurred for bonafide purposes in accordance with the laid down procedure and subject to availability of funds. The powers delegated by the Ministry of Defence to various authorities in the Services Headquarters and other organizations/establishments under them, as also to authorities in other organizations under the Ministry of Defence, are personal and cannot be further sub-delegated to any subordinate authority by the delegatee. However, on the strict understanding that the sole responsibility rests on them, the authorities to which financial powers have been delegated may authorize staff officer(s) to sign communications and financial documents on their behalf provided that the name of the officer who is authorized to sign is communicated to the Audit Officer concerned.
- 1.4.7 **GSQRs/JSQRs/NSQR/AFSQR:** The General Staff Qualitative Requirements which lay down the technical parameters of the equipment/item required by the Service (Army), reflecting the user's requirements in terms of functional characteristics of the stores being procured. These also generally need to indicate the requirement of military grade, ruggedized or commercially off the shelf items. NSQRs and AFSQRs refer to the Naval and Air Force Staff Qualitative Requirements respectively for equipment specific to these Services. JSQRs refer to specifications reflecting the Joint Services Qualitative Requirements in cases where commonality of equipment exists and standardization of QRs between the three Services is merited.
- 1.4.8 **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 a distinct item code/part number. All necessary details of the item, including quantity, denomination, estimated price, specification, scope of supply, date by which required and inspection authority are to be indicated in the indent to enable prompt procurement of the item.
- 1.4.9 **Indenting Agency:** The indenting agency is a logistic entity that places the requirement of stores in the form of an indent on a procurement agency to meet the requirement of stores based on periodic reviews or urgent unforeseen requirements. Normally, the indenting agency is a store

holding agency and the indenter is the person authorised to raise indents on behalf of the indenting agency.

- 1.4.10 **Inspecting Authority**: Normally, AHSP is designated as the Inspecting Authority. This can be DGQA/DGAQA/DGNAI 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 Inspecting Authority is to promulgate inspection methodology and nominate suitable inspection agency for specific contracts.
- 1.4.11 **Inspecting Agency**: The Inspecting Authority nominates the Inspecting Agency and the Inspecting officer based on the type of items and geographical location of the purchaser and supplier. The Inspecting officer need not necessarily be from the organization of the Inspecting Authority.
- 1.4.12 **Integrated Finance**: While Finance Division of the Ministry of Defence functions as Integrated Finance for CFAs in the Ministry, officers designated as Integrated Financial Advisors (IFAs) constitute integrated finance for the CFAs in the Services Headquarters, ISOs, Command Headquarters, lower formations and units thereunder. The term 'IFA' used in this Manual includes the Finance Division and vice versa.
- 1.4.13 **Not in Vocabulary (NIV)**: Items which are not in the vocabulary of stores, i.e., the items that have not been formally introduced and allotted a unique cat part number in the central approved list of inventory items of the concerned Service/Organization, as applicable.
- 1.4.14 **Original Equipment Manufacturer (OEM)**: The original equipment manufacturer which is the only firm manufacturing the specified item/equipment of a specific make, as distinguished from the stockists/distributors or suppliers of such items/equipment and no other manufacturer exists for that equipment.

**Paying Authority**: In respect of procurements made under this Manual, Paying Authority means any of the following authorities:

- (a) Office of the Principal Controller of Defence Accounts/Controller of Defence Accounts under the Controller General of Defence Accounts
- (b) A sub-office of the Principal Controller of Defence Accounts/Controller of Defence Accounts
- (c) An authority holding cash assignment/imprest and duly authorized to make payment for procurement

- 1.4.16 **Procurement**: Procurement refers to the entire gamut of activities involved in and the procedures to be adopted for acquiring goods and services as defined in paragraph 1.3.1 of this Manual.
- 1.4.17 **Procurement Agency**: The Procurement or Procuring Agency is the logistic agency that is responsible for the actual procurement as per the prescribed procedure to meet the requirement of the indenter.
- 1.4.18 **Purchaser**: The President of India acting through the authority issuing the purchase/supply orders or signing the Contracts/Memo of Understanding/Agreements, is the Purchaser in all cases of procurement on behalf of the Government of India. Where the context so warrants, other terms, such as the 'buyer', have also been used in this Manual.
- 1.4.19 **Rate Contract (RC)**: A Rate Contract is an agreement between the Purchaser and the Supplier to supply stores at specified prices during the period covered by the contract. An RC is in the nature of a standing offer from the supplier and no minimum drawal need be guaranteed. A contract comes into being only when a formal order is placed by the CFA or the Direct Demanding Officers (DDOs) on the Supplier.
- 1.4.20 **Stores**: The terms 'Stores' would include all items mentioned in paragraph 1.3.1 of this Manual.
- 1.4.21 **Supplier**: Supplier is the entity, which enters into a contract to supply goods and services. The term includes employees, agents, assigns, successors, authorized dealers, stockists and distributors of such an entity. Where the context so warrants, other terms, such as 'vendor' or 'seller', have also been used synonymously in this Manual.
- 1.4.22 **Terms and expressions not defined in the Manual**: The terms and expressions not defined herein shall have the meaning assigned to them, if any, in the Indian Sale of Goods Act 1930, the Indian Contract act 1872, the General Clauses Act 1897, or other Indian Statutes and Government Instructions, as amended from time to time.

## **1.5 Departmental Manuals and Instructions**

- 1.5.1 **Conformity of the Manual with other Government Orders, etc.**: The provisions contained in this Manual are in conformity with other Government manuals like the General Financial Rules, Financial Regulations (Defence Services Regulations), as also other instructions issued by the Government and the Central Vigilance Commission from time to time. If any instance of variance between the provisions of this Manual and other Government Manuals comes to notice, the matter should be immediately referred to the Ministry of Defence for clarification.

In such cases, however, the on-going procurement need not be stopped pending resolution of the issue, if the requirement is operationally urgent or delay is likely to have any adverse implications.

- 1.5.2 **Validity of internal orders and instructions:** Internal orders and instructions, including Standard Operating Procedures (SOPs), issued by various Wings of the Ministry of Defence and the Services may be deemed to have been modified by the provisions of this Manual, to the extent the former are not in conformity with this Manual. This is necessary for ensuring uniformity among the purchase practices followed by various wings of the Ministry and the Services. The concerned Wings of the Ministry and Services may take necessary action to suitably modify their internal instructions and orders accordingly.
- 1.5.3 **Applicability of the Manual to OFB and DRDO:** Purchases made by the Ordnance Factories are regulated by the provisions of the Material Management and Procurement Manual, 2005. DRDO also follows the procedure laid down in the Purchase Manual, 2006. Ordnance Factories Board and the DRDO would take immediate steps to review the said Manuals and make necessary amendments, if required, to ensure that the provisions thereof are in conformity with the provisions of this Manual.
- 1.5.4 **Applicability of instructions/orders issued in future:** The provisions of this Manual would be subject to general or special instructions/orders/ amendments which the Government may issue from time.

## **1.6 Removal of doubts and modification**

- 1.6.1 **Doubts and modifications:** Where any instance of variance between the provisions of this Manual and other Government Manuals comes to notice or a doubt arises as to the interpretation of any provision of this manual, the matter should be referred through proper channel to the designated officer/section in the Finance Division of the Ministry of Defence. Pending further instructions, JS & Additional Financial Advisor (A) will be the designated officer for this purpose. If required, such references would be placed before an empowered committee to be set up under Secretary (Defence Finance)/ Financial Advisor (Defence Services). The Chairman of the Committee may set up sub-committee(s). Suggestions for improvements/ amendments, if any, may also be sent to JS & Addl FA (A).

## **1.7 Deviation from procedure**

- 1.7.1 **Instructions to be followed:** There should normally be no occasion to deviate from the procedure as sufficient flexibility has been built into the provisions of this Manual. However, if such a need arises, the matter should be referred through the Principal Staff Officer concerned to the JS & Additional Financial Advisor concerned for approval of Secretary

(Defence Finance)/FA (DS) and Defence Secretary. Depending on the merit of a case, the matter may also be submitted for approval of the Raksha Mantri (RM). If considered necessary, the designated officer, referred to in paragraph 1.6.1 may be consulted before the matter is submitted to the Secretary (Defence Finance)/FA (DS) to maintain uniformity. In any case, brief particulars of all such deviations should be communicated to the said officer after approval of the Secretary (Defence Finance/FA (DS) and Defence Secretary/RM.

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## CHAPTER 2

### **PROCUREMENT – OBJECTIVE AND POLICY**

#### **2.1 Procurement**

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

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

- a) 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 organizations. The specifications so worked out should meet the basic needs of the organization 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;
- b) offers should be invited following a fair, transparent and reasonable procedure;
- c) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;
- d) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;
- e) 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.

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

- (a) Placing demands on the Director General of Ordnance Factories for manufacture of stores in Ordnance Factories;
- (b) Placing demands on:
  - (i) Other Ministries of the Government of India.

- (ii) State Governments, for supply from factories/ workshops/ other procurement agencies under them
- (c) Placing demands on the Industries/Factories/Statutory Corporations – whether wholly or partly financed by the State set-up for the manufacture of specific range of items in the country;
- (d) Placing demands on the indigenous trade either directly or through the Director General of Supplies and Disposals including Textile Commissioner, Mumbai;
- (e) Local Purchase in respect of items which are not supplied by the central procurement authority/ organizations of the Services / Departments and stores emergently required; and
- (f) Placing demands on Defence Public Sector Undertakings and other Government Public Sector Undertakings for purchase / repair/manufacture/fabrication of items/equipment/systems/ aircrafts etc. to meet Defence Services requirements.

## **2.2 Policy Guidelines**

- 2.2.1 **Economy:** Purchases of stores must be made in the most economical manner and in accordance with the definite requirements of the defence Services. Stores should not be purchased in small quantities. Periodical indents should be prepared covering the requirement for one year or more, except where for reasons of short life or for other recorded reasons it is necessary to procure lesser quantities. Care should also be taken not to purchase stores much in advance of actual requirements, if such purchase is likely to prove unprofitable to the Government, and thus locking up of capital in stock should be minimized.
- 2.2.2 **Scales:** Where scales of consumption or limits of stores have been laid down by the competent authority, the officer ordering a supply should certify on the purchase order/demands that the prescribed scales or limits are not exceeded.
- 2.2.3 **Splitting:** Purchase order should not be split to avoid the necessity for obtaining the sanction of the higher authority required with reference to the total amount of the orders.

- 2.2.4 **Open competitive tendering:** When stores are purchased from contractors, the system of open competitive tender should normally be the preferred mode, except where otherwise permissible under the rules and the purchase should be made from the lowest tenderer.

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

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

### **2.4 Types of Procurement**

- 2.4.1 **Capital Procurement:** As per Rule 90 of the General Financial Rules, 2005, significant expenditure incurred with the object of acquiring tangible assets of a permanent nature (for use in the organization and not for sale in the ordinary course of business) or enhancing the utility of the existing assets, shall broadly be defined as Capital expenditure. Further, as per Rule 91 (a) of the General Financial Rules, 2005, Capital shall bear all charges for the first construction and equipment of a project as well as charges for intermediate maintenance of the work while not yet opened for service. It shall also bear charges for such further additions and improvements, which enhance the useful life of the asset. Capital procurement would, therefore, refer to procurement of all goods and services that fit the description of capital expenditure. The procedure for capital procurement is separately laid down in the Defence Procurement Procedure, 2008.
- 2.4.2 **Revenue Procurement:** As per Rule 91 of the General Financial Rules, 2005, revenue should bear all subsequent charges for maintenance and

all working expenses, including all expenditure on working and upkeep of the project and also on such renewals and replacements and such additions, improvements or extensions, etc., as under rules made by the Government are debitable to revenue account. The revenue procurement, therefore, implies procurement of items and equipments, including replacement equipment (functionally similar) assemblies/sub assemblies and components, to maintain and operate already sanctioned assets in the service, the necessity of which has been established and accepted by the Government. In the context of defence procurements, what would constitute revenue procurement is defined in Chapter 1 of this Manual

- 2.4.3 **Financial powers for procurement:** For Revenue Procurement, Government has delegated financial powers under revenue heads to a number of authorities in each Service/Department. Procurements involving financial implications beyond the delegated powers of the Service HQs and Heads of the ISOs are undertaken with the approval of the Ministry of Defence.
- 2.4.4 **Indigenous Procurement:** Procurement from indigenous sources is called indigenous procurement. It is the policy of the Government to encourage indigenization, particularly in the field of defence to achieve self-reliance. Hence, indigenous firms should be given all support to produce and supply quality goods conforming to specifications. Proper loading criteria for all taxes, duties and other expenses involved in procurement of an item need to be applied to provide a level playing field to the indigenous manufacturers. Payments against indigenous procurement are made in rupee terms.
- 2.4.5 **Foreign Procurement (Import):** For such defence equipments and assets, which are of foreign origin, items required to maintain and operate these equipments may also need to be procured from suppliers abroad. The procedure for such procurement is laid down in Chapters 9 and 10 of this Manual.
- 2.4.6 **Central Procurement:** Central Procurement (CP) is undertaken against indents resulting from planned provisioning process like the Annual Provision Review, refit planning, obsolescence planning and planned routines. CP indents normally cover the entire requirement of the item for the duration of the provisioning period.
- 2.4.7 **Local Procurement:** Local Purchase (LP) is undertaken within the LP powers of various authorities as per the delegated powers in the following circumstances:
- (a) To meet the short-term, ad-hoc or urgent requirements of units/ establishments when supplies are not available through the central

provisioning agency. Intimation regarding such purchases should immediately be sent to the central provisioning agency so that the latter could take the quantities procured through local purchase into account.

(b) To meet the normal requirements of units/establishments for stores which are not within the purview of central purchase organizations.

#### 2.4.8 **Procurement from Ordnance Factories and Defence Public Sector**

**Undertakings:** The following guidelines should be followed for procurement of goods/services from the Ordnance Factories and Defence Public Sector Undertakings:

(a) After acceptance of necessity, all stores falling within the product range of the Ordnance Factories should be procured through the Ordnance Factories Board (OFB) by placing indents without issuing RFPs. In the case of emergent purchase, items falling within OFB's product range may be procured from trade following the tendering procedure but only after obtaining a "No Objection Certificate" from the OFB. All requests for obtaining No Objection Certificate should be addressed to the Secretary, Ordnance Factories Board, 10-A, S. K. Bose Road, Kolkata 700 001 (Fax No. 033-22482927).

(b) Goods and Services may be procured from Defence Public Sector Undertakings by following the tendering procedure. Any item developed/manufactured by a Defence PSU specifically for the Defence Services, with transfer of technology or through design and development, should be procured from the concerned Defence PSU only. Similarly, Defence PSUs shall be approached for providing any service, such as repairs and overhauling, if facility for providing such services has been set up by a Defence PSU exclusively for the Defence Services.

(c) Cases falling under (a) & (b) above, including procurement against provision review for scaled items, will not be treated as STE/PAC procurements.

(d) For induction of new equipment or procurement of new goods and services on the basis of global/open/limited tendering, RFPs should also be issued to the OFB/concerned Defence PSUs. In such cases, tender fee, EMD and PBG need not be taken from the OFB/Defence PSU.

#### 2.4.9 **Purchase of goods and services without quotation:** Purchase of goods and services up to 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 Financial Authority in the following format.

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

2.4.10 **Purchase of goods by Purchase Committee:** Purchase of goods costing above Rs. 15,000/- (Rupees Fifteen Thousand) only and up to 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 Competent Financial Authority. The committee will be required to survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee should jointly record a certificate as under:

"Certified that we, \_\_\_\_\_, members of the local purchase committee are jointly and individually satisfied that the goods/services recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question."

2.4.11 **Obtaining of Quotations by the Local Purchase Committee:** The Competent Financial Authority may direct the local purchase committee responsible for carrying out the market survey to obtain quotations as a part of the market survey. Where no such direction has been given, it would be up to the purchase committee to decide whether or not to obtain quotations as a part of documentation of market survey. In either case, however, details of the market survey (suppliers contacted and the rates quoted by them) would be recorded by the local purchase committee.

2.4.12 **Purchase of goods directly under Rate Contract:** Goods for which Director General of Supply & Disposal (DGS&D) has rate contracts can be procured directly from the suppliers. While resorting to such procurement it should be ensured that the prices to be paid for the goods do not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase are in line with those specified in the rate contract. The Purchaser should also make its own arrangement for inspection and testing of such goods, where required. In the case of drugs, consumables, FOL, hygiene chemicals, etc. the inspection may be done by DGQA/NABL but any costs incurred thereon should be borne by the Suppliers. Payment in such cases would be made by the concerned Principal Controllers/Controllers of Defence Accounts, their subordinate offices or other paying authorities as per the existing arrangement. Wherever Senior Accounts Officers/Imprest Holders are authorized,

payment may be made by them. The format for placing Supply Order on Rate contracts is given at Appendix F.

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

2.4.14 **Cash and Carry Procurement:** Cash and carry purchase is a type of LP (local purchase) resorted to in case of extreme urgency or when the supplier is not willing to supply the required item on credit. Cash and carry powers are very limited as such procurement is made only in exceptional cases when cash payment is made from the imprest of the unit and the same is claimed from the paying authority who reimburses the amount after due audit of the transaction.

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

2.5.1 **Product Reservation for Khadi Village Industries Commission (KVIC), etc.:** The Government of India, through administrative instructions, has reserved all items of handspun and hand woven textiles (khadi goods) for exclusive purchase from Khadi Village Industries Commission (KVIC). It has also reserved all items of handloom textiles required by Central Government departments for exclusive purchase from KVIC and/or the notified handloom units of ACASH (Association of Corporations and Apex Societies of Handlooms). Purchases of such reserved goods and items would be made from these units. Form DPM-4 gives the details of such items.

2.5.2 **Product Reservation and other facilities for Micro, Small and Medium Enterprises (MSMEs):** The Government of India has also reserved some items for purchase from registered Micro, Small and Medium Enterprises (MSMEs). A list of 358 such items is given in Form DPM-1. Under the Government Stores Purchase Programme, the Government of India has been extending various facilities as given below to these MSMEs registered with NSIC under its Single Point Registration Scheme:

- (a) Issue of Tender Sets free of cost;
- (b) Exemption from payment of Earnest Money;

(c) Waiver of Security Deposit up to the monetary limit for which the unit is registered; and

(d) Price Preference up to 15% over the quotation of large-scale units.

2.5.3 **Purchase Preference Policy (PPP) for products of Pharma Central Public Sector Enterprises (CPSEs) and their subsidiaries:** The policy of the Government of India to grant purchase preference exclusively to Pharma CPSEs and their subsidiaries, as laid down in Ministry of Chemicals and Fertilizers, Department of Chemicals and Fertilizers Office memorandum No. 50013/1/2006-SO(PI-IV) dated 7<sup>th</sup> August 2006, would be followed while purchasing medical stores. A copy of the said office Memorandum is at Form DPM-2.

2.5.4 **Local Purchase of Stationery and other articles from Kendriya Bhandar, NCCF, etc.:** Keeping in view the avowed objectives of the co-operative movement to ensure supply of goods and services to the consumers at the most economical and competitive prices and taking note of the changed concepts of marketing, the Government of India vide DoP&T (Welfare Section) OM No. 14/12/94-Welfare (Vol II) dated 5<sup>th</sup> July 2007 (given in Form DPM-3) has decided to adopt the following dispensation in respect of all Central Government Departments, their attached and subordinate offices and other organizations financed and/or controlled by them in making local purchases of stationery and other items from Kendriya Bhandar/National Consumer Cooperatives Federation:

(a) As per paragraph 2.4.9 of this Chapter, purchase of goods up to Rs.15,000 is permissible without inviting quotations or bids. Further, as per paragraph 2.4.10 of this Chapter, a Local Purchase Committee constituted by the CFA can make purchase of goods up to Rs.1 lakh on the basis of a market survey to ascertain the reasonableness of rate, quality, etc. and submission of a certificate to that effect. In partial modification of these provisions, it would be permissible to make purchase, at the discretion of the CFA, of all items required for office consumption up to Rs.1 lakh on each occasion directly from Kendriya Bhandar/NCCF without calling for quotations. The responsibility for ensuring the reasonableness of rates, quality specifications etc. will be equally that of the Purchasing Ministry/Department and KB/NCCF. Further, the reasonableness of rates, quality, specifications, etc. should be certified by the Local Purchase Committee as envisaged in paragraph 2.4.10 above. It is to be ensured that supply orders are not split under any circumstances with the objective of circumventing the limit of Rs.1 Lakh.

(b) For procurement of all items of office consumption beyond Rs.1 lakh up to Rs 25 lakh, where limited tenders are to be invited as per the provisions of this Manual, KB and NCCF among others should also be

invited to participate in such limited tenders, in case these cooperatives are functioning at the station. Other things being equal, Purchase Preference will be granted to KB/NCCF, if the price quoted by the cooperatives is within 10% of the L<sub>1</sub> price and if these cooperatives are willing to match the L<sub>1</sub> price. No price preference over and above the L<sub>1</sub> price shall be given to these cooperatives. However, KB/NCCF will be exempted from furnishing bid security (Earnest Money Deposit).

(c) Supply orders up to Rs. 25 lakh, in respect of office equipments covered under the DGS&D rate contract may also be procured from KB and NCCF provided KB/NCCF offer the items at DGS&D rate contracted prices as also fulfill all the contractual obligations which the manufacturers/suppliers of such products are required to meet under the DGS&D rate contract. The Purchaser will have to make his own arrangements for inspection and testing of such goods, where required.

(d) The above dispensation shall be applicable only up to 31.3.2010.

(e) Other Multi-State Co-operative Societies registered prior to the issue of DoP&T (Welfare Section) OM No. 14/12/94-Welfare (Vol II) dated 5<sup>th</sup> July 2007 in which the majority of the shares are held by the Central Government, are also permitted to avail of the facility of Purchase Preference in respect of limited tender enquiries up to Rs. 25 lakh.

2.5.5 **Purchase Preference:** Purchase preference policy for Central Public Sector Enterprises has been terminated with effect from 31.03.2008 vide DPE OM No. DPE/13(15)/2007-Fin dated 21<sup>st</sup> November 2007 (not reproduced in this Manual). However, this termination does not apply to the purchase preference allowed for sector specific CPSEs for which the purchase preference policy is laid down by the Ministries concerned, as in the case of pharma products, as per paragraph 2.5.3 above.

## **2.6 Time limit and accountability**

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

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## **CHAPTER 3**

### **SOURCING AND QUALITY**

#### **3.1 General**

- 3.1.1 **Identification of suitable suppliers:** Proper source knowledge and identification of suitable suppliers capable of meeting the product quality required by the defence departments, particularly by the Defence Services, are vital 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.

#### **3.2 Registration of Firms**

- 3.2.1 **Registration by the Central Procurement Agencies:** The detailed procedure for registration of firms is given in Joint Services Guide on Assessment and registration of Suppliers for Defence (JSG: 015: 03:2007) published by the Directorate of Standardization, Department of Defence Production, Ministry of Defence. JSG is an enabling document which serves as a guide for procurement agencies to formulate guidelines for registration of vendors. The publication is available on DGQA website [www.dgqadefence.gov.in](http://www.dgqadefence.gov.in). It can also be obtained on payment from the Director, Directorate of Standardization, Ministry of Defence, New Delhi 110 011.
- 3.2.2 **Registration by Agencies at the Command and Other Levels:** Apart from the central procurement agencies at the Services Headquarters, firms should also be registered by the Command Headquarters, Depots, Workshops and Naval Dockyards, etc., as per the instructions contained in this Chapter.
- 3.2.3 **Registration at the Unit Level:** It would not be necessary to register the firms at the unit level for the purpose of carrying out local purchase. However, the reputation, capacity and credibility must be ascertained before obtaining quotations from or placing supply orders on a particular firm.
- 3.2.4 **Scrutiny of the Credentials of the Firms:** It is essential that the credentials of the firms applying for registration, including their financial status, the manufacturing and quality control facilities, the business ethics and their market standing are thoroughly scrutinized before registering them as an approved source of supply.

- 3.2.5 **Inter-Services and Inter-Departmental Acceptability of Registration:** A firm registered with any department of the Ministry of Defence, the Services or OFB or the Inter-services organizations, may be considered as a registered firm for procurement by other departments of the ministry or the other services, for the same range of products/goods/services for which the firm is registered with any of the aforesaid organizations.
- 3.2.6 **Registration of Suppliers and Service Providers:** The Joint Services Guide on Assessment and registration of Suppliers for Defence (JSG: 015: 03:2007) is applicable mainly to registration of manufacturing firms as suppliers. The guidelines and procedures laid down therein may, however, also be applied, *mutatis mutandis*, by the Registering Agencies to other suppliers and service providers till such time as a separate procedure is laid down by DGQA.

### **3.3 Assessment of Performance of the Registered Firms**

- 3.3.1 **Criteria for Assessment of Performance:** Performance of the registered firms must be reviewed by the procurement agencies periodically and reported to the Registering Agency. While the detailed guidelines in this regard are contained in DGQA Publication JSG:015:03 – 2007, the general criteria for assessing the performance of the registered firms are as follows:
- (a) **Quality:** Quality has to be assessed from the inspector's report as well as the feedback from the actual users.
  - (b) **Delivery:** Delivery compliance has to be assessed from the delivery data against purchase orders placed on the firm. The purchaser could generate the data from the computer records to determine the percentage of orders in which delivery was completed within the original delivery date as per the contract/supply order.
  - (c) **Price:** Price competitiveness of a firm has to be assessed against its ability to secure orders on competitive basis. Orders secured as percentage of quotes should indicate the price competitiveness of the supplier. This data can be generated *from* the computer records.
  - (d) **Response:** The response analysis of the firms could be carried out in terms of number of quotes submitted against the number of RFPs sent to them. Computer generated data for quotes received as a percentage of RFPs sent could be one of the valid criteria for response analysis.
  - (e) **Product Support:** Product support record of a firm may be determined on the basis of response to enquiries for spare parts and maintenance services for the equipment originally supplied by that firm.

3.3.2 **Assessment of Technical and Financial Capabilities:** The technical and financial capabilities of the firms, including their past performance, must be carefully evaluated and verified by a Board of Officers constituted by AHSP/Registering Agencies for the purpose of considering registration/renewal of registration. The Registering Agency may also co-opt a representative of the User. IFA may be associated with assessment of the financial capabilities of the firm, if considered necessary by the CFA. The format for preparing Verification Report of Vendor capacity/capability has been given in Form DPM-5.

### **3.4 Removal from the List of the Approved Firms**

3.4.1 **Removal from the List:** Whenever a firm is found lacking in performance in terms of response, delivery compliance, capacity, quality standards, ethics or any other valid reason, the firm may be removed from the list by the registering authority after giving notice of proposed removal to the firm. Besides, there may be registered firms which may have ceased to exist or may have been acquired by or merged with another firm, may have switched over to other sectors of business operation or indulged in unethical business practices and influence peddling. Such firms should be removed from the list of approved vendors after giving them notice of the proposed removal.

3.4.2 **Effect of Removal from the List:** Whenever a firm is removed from the list of approved vendors, its registration stands cancelled. Such removal must be communicated to all other registering and procuring agencies so that no further business relations are maintained with such firms.

### **3.5 Ban on dealings with a firm**

3.5.1 **Ban on dealings:** When the misconduct of a firm or its continued poor performance justifies imposition of ban on business relations with the firm, this action should be taken by the appropriate authority after due consideration of all factors and circumstances of the case and after giving due notice.

### **3.6 Specification**

3.6.1 **Specifications:** Items bought by the defence department, particularly the defence services, must be manufactured as per or conforming to the specifications. The specifications are the detailed qualitative requirements of the item being procured and should indicate the material composition, physical, dimensional and performance parameters, tolerances, if any, manufacturing process where applicable, test schedule, preservation and packing etc. AHSP/ Specification promulgating authority should forward copies of specification/amendments to all the concerned procurement

agencies periodically. Various types of specifications relevant to the defence items are as follows:

(a) **PAC Specifications**: These are available only with the proprietary firms 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 available with the procuring and inspecting agencies.

(b) **Branded Product**: The specification for branded commercial product is not available with the purchaser or the inspecting agency and these are to be accepted on the firm's guarantee.

(c) **Industrial Specification**: There are standard industrial specifications like the IS, BS, DIN and GOST available for sale in the market. In the case of medical stores standard specifications are issued by WHO, FDA, CE etc. Every procuring and inspecting agency should acquire such specifications for reference to ensure quality standards of the product being procured.

(d) **Defence Specifications**: There are defence specifications for specialist items for use by the defence departments, particularly the Defence Services. These are Joint Services Specification, Milspecs, etc. Copies of such specifications should be available with the procuring agency, authority and the AHSP.

(e) **Indigenized Item**: The manufacturing agency, QA agency, DRDO and Service Headquarters, involved in the indigenization efforts often successfully indigenize some items as import substitute. In such cases, the specification including the drawing and other details are formulated by these agencies in consultation with the manufacturing firms/QA agency/Design agency/Service HQrs, as the case may be, to guide future production. Such specifications should be available with the purchase agency as well as the inspecting authority so as to ensure conformity with the required quality standards of the items being supplied.

(f) **Ad-hoc Specifications**: There are items for which neither industrial nor defence specifications are available. In such cases, the indenter must indicate the general parameters, normally the dimensional and performance parameters to enable procurement and inspection. Such ad-hoc specifications must be broad enough to permit wider participation by the suppliers and should not be restrictive so that adequate competition is not obviated.

(g) **As per Sample**: There are occasions when items, normally PAC products, cannot be procured from the original manufacturer and have to

be procured from another manufacturer as per sample in the absence of detailed specifications or drawing. For such items the supplier prepares detailed specification as well as the drawing. The purchaser and the inspecting authority should acquire such specifications and drawings and retain with them to guide future production and inspection.

(h) **Common Use Items**: There are a large number of items in use by the defence departments and defence services, which are common-use items, freely available in the open market. As in the case of ad-hoc specifications, specifications of common use items should also be broad enough to permit wider participation by the suppliers and should not be restrictive so that it does not pre-empt adequate competition.

### **3.7 Inspection Note**

3.7.1 **Waiver of inspection note**: There would be no requirement of Inspection Note in respect of items procured against specifications mentioned at 3.6.1 (f), (g) & (h) above or for items available commercially off-the-shelf (COTS) or in respect of items for which testing facilities do not exist with AHSP/DGQA. Such items may be accepted based on self-certification by the firm and inspection by a Board of Officers at the user's end. Relevant certificate from the firm should be enclosed with the bill by the procurement agency.

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## **CHAPTER 4**

### **TENDERING**

#### **4.1 Types of Tendering**

4.1.1 **Procurement of goods by obtaining bids:** Except for cases covered by paragraphs 2.4.9 (purchase of goods without obtaining quotations), 2.4.10 (purchase of goods through Purchase Committee) and 2.4.12 (purchase of goods against Rate Contracts) of Chapter 2 of this Manual, goods should be procured by adopting one of the following standard methods of obtaining bids:

- (a) Advertised Tender Enquiry (also known as Open Tender Enquiry);
- (b) Limited tender Enquiry; and
- (c) Single Tender Enquiry.

4.1.2 **Procurement of Services:** The above mentioned methods will also be applicable for procurement of services, subject to other instructions contained in this Manual being followed.

#### **4.2 Advertised Tender Enquiry/Open Tender Enquiry (ATE/OTE)**

4.2.1 **Advertised/Open Tender Enquiry:** The Open Tendering system should be the preferred mode for procurement of common use items of generic or commercial specifications which are readily available off-the-shelf in the market from a wide range of sources/vendors. It must be adopted in all such cases in which the estimated value of the tender is more than Rs twenty five lakhs, subject to the exceptions as provided for in this Chapter.

4.2.2 **Global Tender Enquiry:** Where it is felt that the goods/services of the required quality, specifications, etc., may not be available in the country and it is necessary to also look for suitable competitive offers from abroad, 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.

4.2.3 **Publicity:** Open tender system involves wide publicity through advertising media (Press, Trade, Journals etc). Open tender notifications should be sent to the Director General of Commercial Intelligence and Statistics,

Kolkata for publication in the Indian Trade Journal (ITJ) and to the DAVP, New Delhi for publication at least in one leading daily, which has a wide circulation. Such notifications should also be published in the bulletin, if any, of the Service/Department concerned.

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

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

4.2.5 **Publicity through the website:** All OTE notifications in respect of non-lethal/security and non-sensitive items should invariably be posted on the website of the Ministry of Defence, as also on the websites of the Service HQ/Department concerned, wherever such websites already exist. A link may also be provided to the NIC website. The website address should also be given in the notifications advertised through the ITJ and the newspapers.

4.2.6 **Direct dispatch of tender documents:** In case of OTE, Notice Inviting Tenders (NIT) and/or tender forms may also be sent to all suppliers registered for the particular range of items.

4.2.7 **Tender documents on the website:** The complete tender document should be posted on the website and the prospective bidders should be permitted to make use of the documents downloaded from the website. If such a downloaded document is priced, there should be clear instructions

for the bidder to pay the amount by demand draft, etc., along with the bid. Such documents must be secured to avoid possibility of modification and restriction of access to bidders.

- 4.2.8 **Time to be given for submission of bids:** Ordinarily the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. 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. as permissible.
- 4.2.9 **Unregistered firms claiming compliance:** In OTE cases, where an unregistered firm claiming compliance of technical specifications meets the laid down technical parameters detailed in the RFP, before opening the commercial bid of such firm, assessment of capability of the firm by procuring/registering agency would be mandatory. This capability verification will, however, not amount to automatic registration of the firm by the Registering Authority. However, in the case of specialized and critical medical equipment/stores, where DGQA and 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.

### **4.3 Limited Tender Enquiry (LTE)**

- 4.3.1 **Limited Tender Enquiry:** This method may be adopted when estimated value of the goods to be procured is up to Rupees Twenty-five lakhs. Normally, the number of supplier firms in Limited Tender Enquiry should be more than three. However, Limited Tender Enquiry may be resorted to also when there are only two or three known sources of supply.
- 4.3.2 **Limited Tender Enquiry in Special Circumstances:** Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twenty five lakhs, in the following circumstances, subject to approval by the CFA and in consultation with the IFA, where required as per delegation of financial powers:
- (a) The Indenter certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The nature of the urgency and reasons why the procurement could not be anticipated should also be placed on record.
- b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.

(c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.

(d) The nature of item to be procured is such that pre-verification of the competence of the firms and their registration is essential.

4.3.3 **Publicity and dispatch of tender documents:** 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 these are initially sent by fax/e-mail. Web based publicity should be given for Limited Tender Enquiry also and efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.

4.3.4 **Time to be given for submission of bids:** Sufficient time, normally ranging from one to three weeks, should be allowed for submission of bids in Limited tender Enquiries. For perishable goods or consumables a reduced time frame may be followed.

4.3.5 **Unregistered firms claiming compliance:** Though normally no such occasion should arise in the case of LTE, some unregistered firms may nevertheless submit unsolicited bids. In such cases action may be taken as follows:

(a) If it is a two-bid tender, the technical bid of the firm may be opened and evaluated, where procurement does not involve any trials. If the firm is found to be technically compliant, further action may be taken as per provisions of paragraph 4.2.9 of this Manual, provided it does not entail any delay in procurement, defeating the very purpose of procurement.

(b) If the firm is not found to be technically compliant, further cognizance of the tender need not be taken and the firm advised accordingly, with the advice to apply separately for registration.

(c) In a single bid tender, the tender may be considered if it does not involve any trials or does not result in delay in procurement.

#### **4.4 Single Tender Enquiry (STE)**

4.4.1 **Single Tender Enquiry (STE):** Procurement from a single source may be resorted to with the prior approval of the CFA and in consultation with the IFA, where required as per delegation of financial powers for reasons to be recorded in writing in the following circumstances, after determining reasonableness of the rates:

(a) In a case of emergency/urgency, the required goods are necessarily to be purchased from a particular source.

(b) On account of any other operational or technical requirement, which should, however, be clearly recorded.

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

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

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

4.5.1 **PAC Tendering:** Certain items, particularly equipments, are the propriety product of a manufacturing firm. Such items are only available with that firm or their dealers, stockists or distributors as the detailed specifications are not available for others to manufacture the item. Situations may also arise when, for standardization of machinery or ensuring compatibility of spare parts with the existing sets of equipment, as per the advice of the competent technical expert, goods and services have to be obtained from a particular source. In such situations, a Propriety Article Certificate (PAC) may be issued to the original equipment manufacturer (OEM) and items procured on PAC basis from that particular firm or its authorized dealers, stockists or distributors. While PAC is issued only in respect of the concerned OEM, the item may be bought from any dealer, stockist or distributor specified in that particular PAC on the basis of the information provided by the OEM, provided the purchase is accompanied by a proper manufacturer certification. PAC once issued will be valid for two years from the date of issue unless cancelled earlier by the CFA.

4.5.2 **Repairs/servicing on the basis of PAC:** The provisions of paragraph 4.5.1 would also apply to repairs and servicing of equipment through the sole dealer/servicing agency, authorized by the OEM, if the main equipment was purchased on the basis of PAC.

4.5.3 **Caution to be exercised while granting PAC:** PAC bestows monopoly and obviates competition. Hence, PAC status must be granted after careful consideration of all factors like fitness, availability, standardization and value for money. Many OEMs do not manufacture assemblies, sub-assemblies and components but outsource these items. Hence, such items may be available at cheaper prices with the actual manufacturers. The procurement officers must, therefore, keep abreast of the proper source knowledge and procure items from the right source to protect the interest of the State. However, the spares have to be sourced from OEM

or OEM approved/recommended manufacturers only in order to make the OEM responsible for the malfunctioning of the main equipment in which the spares have been fitted.

4.5.4 The PAC Certificate should be as per the following format.

**Proprietary Article Certificate**

(Description of Goods/services): \_\_\_\_\_

It is certified that:

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

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

**4.6 Single and Two Bid Systems**

4.6.1 **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.

- 4.6.2 **Two bid system**: For purchasing high value plant, machinery, equipment, IT and communication systems and for turnkey projects, etc., which are of a complex and technical nature or for procurement of items which have indeterminable parameters, such as shade, tone, make-up, feel, finish and workmanship, etc., bids should normally be obtained in two parts as follows:
- (a) Technical bid consisting of all technical details along with commercial terms and conditions; and
  - (b) Financial bid indicating item-wise price for the items mentioned in the technical bid and all other commercial terms and conditions.
- 4.6.3 **Description of the user requirement**: The RFP should lay down user requirements in a comprehensive, structured and concrete manner and should be broad based. The user requirements should be expressed in terms of functional characteristics. Its formulation must not prejudice the technical choices by being narrow and tailor-made. Specific Quality Assurance requirements, if any, should be included in the RFP.
- 4.6.4 **Manner of submission of bids in two bid system**: The technical bid and the financial bid should be sealed by the bidder in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly superscribed. The technical bids are to be opened and evaluated in the first instance. At the second stage, financial bids of only the technically acceptable offers should be opened for further evaluation and ranking before awarding the contract.
- 4.6.5 **Performance parameters**: The performance parameters should be verifiable and provide for the minimum essential military requirements. Fulfillment of essential parameters mentioned in the RFP would be the basis for further consideration by TEC (Technical Evaluation Committee).

#### **4.7 Cost of Tender and Bid Security/Earnest Money Deposit**

- 4.7.1 **The cost of the Tender document**: Tender sets in respect of Advertised (Open) Tender Enquiry will be sold on payment of the prescribed price given below.

	Estimated value of the Tender	Price of the Tender set (Rs)
1	Upto Rs 50 lakhs	100
2	More than Rs 50 lakhs but upto Rs 1 crore	250
3	More than Rs 1 crore but upto Rs 5 crores	500
4	More than Rs 5 crores	1,000

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

- 4.7.2 **Bid security:** To safeguard against a bidder's withdrawing or altering his bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money Deposit) is to be obtained from the bidders. The bidders should be asked to furnish the bid security along with their bids.
- 4.7.3 **Amount of Bid Security:** Amount of bid security should ordinarily range between two percent to five percent of the estimated value of the goods to be procured. The exact amount of bid security should be determined judiciously while processing the proposal for CFA's approval and indicated in the RFP.
- 4.7.4 **Form of Bid Security:** 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 public sector banks or a private sector bank authorized to conduct government business, as per Form DPM-13, safeguarding the purchaser's interest in all respects.
- 4.7.5 **Validity of the Bid Security:** The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period.
- 4.7.6 **Refund of Bid Security of Bidders:** Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30<sup>th</sup> day after the award of the contract. The Bid Security of the successful bidders should be returned, without any interest whatsoever, after the receipt of Performance Security from them as called for in the contract.
- 4.7.7 **Exemption from Submission of Bid Security:** Bid security is not required to be obtained from those firms who are registered with the Central Purchase Organization (e.g. DGS&D), National Small Industries Corporation (NSIC) or concerned Departments or Ministries of the Government of India. Bid security need not be asked for if the value of the tender is Rs two lakh or less.
- 4.7.8 **Forfeiture of the Bid Security:** The bid security/earnest money will be liable to be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect 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.

## **4.8 Tendering Process**

- 4.8.1 **Expression of Interest:** In those cases where specifications of the desired goods or services are not clear or the sources are not known and it is considered desirable to resort to pre-qualification of suppliers, a notice calling for expression of interest/information may be issued and pre-bid conference may be held with the firms which fulfill the criteria prescribed in the notice to firm up the Qualitative Requirements (QRs)/specifications before issuing the Request for Proposal.
- 4.8.2 **Preparation of the Request for Proposal/Tender Enquiry:** The Request for Proposal (RFP), also called Tender Enquiry (TE), is the most important document in the procurement process. The RFP should 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 RFP should contain full and clear specifications, scope of requirement and the evaluation criteria, both for technical bids and commercial bids. RFP should be vetted by integrated finance in those cases where financial powers are to be exercised with their concurrence. The provisions of paragraph 4.6.3 of this Manual should be kept in mind while specifying the user requirements.
- 4.8.3 **Reference to Brand Names in the RFP:** Standards and specification, quoted in bidding documents in generic terms shall promote the broadest possible competition while assuring the critical performance or fulfillment of other requirements for the goods. Reference to the brand names, catalogue numbers, etc. in the RFP should be avoided.
- 4.8.4 **Format of RFP:** The suggested format for the RFP for indigenous procurement of goods and services as defined in Chapter 1 of this Manual is given at Appendix 'C'. The specimen format is based on various instructions contained in this Manual and, therefore, it should generally not be changed, except for minor changes relating to the text to suit the requirement of a specific proposal or deletion of clauses that may not be applicable in a particular case. It must be borne in mind that no clause should be incorporated in the contract/supply order if it was not mentioned in the RFP as inclusion of clauses in the contract which did not figure in the RFP would amount to unfair denial of opportunity to other suppliers.

## **4.9 Receipt of tenders**

- 4.9.1 **Tender Box:** In order to ensure that the bids are received by the purchaser in time, a tender box is to be placed in an easily accessible but secured place, duly locked and sealed, clearly indicating the name of the department. The words "Tender Box" should be written on the box in bold font.

- 4.9.2 **Delivery of Bids by Hand**: 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.

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

- 4.10.1 **Amendment to the RFP**: Sometimes situations may arise necessitating modification of the tender documents already issued (in Limited Tender Enquiry cases) or already put on sale (in Advertised/Open Tender Enquiry cases) due to change in the required quantity or specifications. In some cases, after receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it may become necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment/ modification should be simultaneously sent to all the selected suppliers by registered/speed post/ courier/e-mail in case of Limited Tender Enquiry. In case of Advertised/Open Tender Enquiry, copies of such amendments/ modifications should be dispatched simultaneously free of cost by registered/speed post/courier/e-mail to all the parties who may have already purchased the tender documents and copies of such amendments are also required to be prominently attached to the unsold tender documents (which are available for sale), including the tender documents put on the website.

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, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period etc and validity period of the corresponding EMD/Bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

- 4.10.2 **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 Competent Financial Authority, with the concurrence of integrated finance, where required as per delegation of financial powers, may extend the date of opening of the tender as specified in the RFP but such extension should not exceed the total delivery period envisaged in the RFP. Any further extension would require approval of the next higher CFA. Such extensions and amendments should be published in the same journals/newspapers in which the original

RFP was published and must be given publicity through the website if the original RFP was hosted on the website.

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

#### **4.11 Tender Opening**

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

- (a) All the tenders received on time should be opened in the presence of authorized representatives of the tenderers at the prescribed time, date and place by the official/Tender Opening Committee, to be nominated by the CFA in advance. The authorized representatives, who intend to attend the tender opening, would be required to bring with them letters of authority from the tenderers concerned.
- (b) The tender opening official/committee should announce the salient features of the tenders like description and specification of the goods, quoted price, terms of delivery, delivery period, discount if any, whether EMD furnished or not and any other special feature of the tender for the information of the representatives attending the tender opening.
- (c) After opening, every tender should be numbered serially, initialed, and dated on the first page by the official(s) authorized to open the tenders. Each page of the price schedule or letter attached to it shall also be initialed by them with date, particularly the prices, delivery period etc., which should also be circled and initialed indicating the date. Blank tenders, if any, should be marked accordingly by the tender opening officials.
- (d) Alterations in tenders, if any, made by the tenderers, should be initialed with date and time by the official(s) opening the tenders to make it perfectly clear that such alterations were present on the tenders at the time of opening.
- (e) Wherever any erasing or cutting is observed, the substituted words should also be encircled and initialed with date and time to make clear that such erasing/cutting of the original entry was present on the tender at the time of opening.

- (f) The tender opening official(s) should prepare a list of the representatives attending the tender opening and obtain their signatures on the list. The list should contain the representatives' names and the corresponding tenderers' names and addresses. The authority letters brought by the representatives should be attached with this list. This list should be signed by both the tender opening official(s) with date and time.
- (g) An on-the-spot report containing the names of the tenderers (serial number wise) salient features of the tenders, as read out during public opening of tenders should be prepared by the tender opening official(s) duly signed by them with date and time.
- (h) The tenders, which have been opened, the list of the representatives attending the tender opening and the on-the spot report should be handed over to the nominated officer of the procuring agency and acknowledgement obtained for the same.

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

#### **4.12 Evaluation of Technical Bids**

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

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

4.12.3 **Technical Evaluation Committee (TEC):** TEC, wherever formed, should invariably have representatives of the user, designated inspecting agency, maintenance agency, procurement agency and CFA, apart from the Chairman. Finance representative need not be associated with the TEC.

4.12.4 **Objective of the TEC:** The main objective of the TEC is to prepare technical matrix showing how the technical parameters of bids received compare with the parameters mentioned in the tender document/RFP. If the offers conform to essential parameters they should be accepted.

- 4.12.5 **Preparation of Compliance Report by TEC:** The TEC should prepare a compliance statement bringing out the extent of variations and differences, if any, in the technical characteristics of the equipment/ tendered item(s) offered by various vendors with reference to QRs and compliance or non-compliance with the essential parameters. If considered necessary, the TEC may invite those vendors who meet essential parameters for technical presentation/clarification.
- 4.12.6 **Format of the TEC Report:** The TEC report should be prepared in the format as given at Form DPM-24. The following aspects should be kept in mind by the TEC:
- (a) The basic profile/character of technical offer must not be permitted to be changed.
  - (b) Opportunity for revision of minor technical details should be accorded to all vendors in equal measure to ensure fair play.
  - (c) No extra time should be given to any vendor to modify his offer to make it QR compliant.
  - (d) Original commercial quotes must remain firm and fixed and no loading/unloading in price should be permitted during TEC's discussion with the vendor.
  - (e) No conditional offer should be accepted which is not in conformity with the specifications mentioned in the RFP.
- 4.12.7 **Mandate of the TEC as regards commercial aspects:** The TEC is not authorized to discuss commercial aspects of the case. However, the TEC should prepare a compliance statement in respect of commercial terms and conditions, such as bid security, warranty, etc., included in the technical bid as per the RFP.
- 4.12.8 **Association of IFA:** Whenever two bid system of tendering is followed, technical evaluation of the bid becomes a vital step not only for ascertaining conformity of the technical bids with the technical specifications mentioned in the tender, but also to bring all bidders on a level playing field in respect of qualitative requirements. While technical evaluation is to be carried out by the TEC and integrated finance need not be associated at this stage, CFA may, if considered necessary, evolve a system of associating the IFA or his representative in examination of the

TEC Report in regard to compliance with the commercial terms and conditions before opening of the price bid. TEC report, once finalized, should be sent to CFA for acceptance.

- 4.12.9 **Approval by the CFA:** The TEC report should be approved by the respective CFA. TEC report may be accepted by Defence Secretary and Special/Additional Secretary in those cases where Raksha Mantri and Defence Secretary respectively are the CFAs.
- 4.12.10 **QR-compliant Offers:** Those offers which meet the essential parameters as per the TEC report, duly approved by the CFA, should be considered by the Commercial Negotiation Committee (CNC) which, in turn, should evolve methods for benchmarking of price and holding internal meetings to finalize approach for conducting negotiations with the L<sub>1</sub> vendor, if considered necessary by the CFA, in consultation with the IFA where powers are to be exercised with the concurrence of integrated finance.
- 4.12.11 **Revised Commercial Bids in Two Bid System:** In case of procurement involving two-bid system, it may not be practicable to incorporate all possible details in the technical specification(s), thereby requiring elaborations/clarifications during technical discussion. This may necessitate submission of revised commercial bids consequent upon discussion during TEC/CNC. 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 L<sub>1</sub>.
- 4.12.12 **CFA's Approval for Obtaining Revised Commercial Bids:** Before calling for revised commercial bids where original price bids have not been opened, approval of CFA should invariably be taken, after consulting integrated finance, where required as per delegation of financial powers. It is absolutely essential to give equal opportunity to all qualified vendors.

#### **4.13 Evaluation of Commercial Bids**

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

financial powers are to be exercised with the concurrence of integrated finance.

- 4.13.2 **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 the criteria incorporated in the RFP, purchase decision may become deficient and faulty. Detailed guidelines on establishing reasonability of prices and ranking of bids are contained in Chapter 13 of this Manual.
- 4.13.3 **Commercial Negotiations:** It is not mandatory to hold commercial negotiations 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. However, commercial negotiation may become necessary to ensure that the interest of the State is fully protected and the price paid is reasonable. Commercial negotiations are invariably conducted in case of single tender situations, including PAC cases, or when price is considered high with reference to assessed reasonable price, irrespective of the nature of tendering. Such negotiations are invariably conducted by a duly appointed Commercial Negotiation Committee (CNC), which should invariably include a finance member, unless the negotiation is carried out by the committee CFA itself.
- 4.13.4 **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 and the CFA, wherever applicable. CFA may nominate any other member, like a costing expert, in case of high value single vendor offers while constituting the CNC.
- 4.13.5 **Chairman of the CNC:** The CNC may be headed by an officer one rank below that of the CFA. The CNC may be headed by a Joint Secretary where Raksha Mantri or Defence Secretary is the CFA. The CFAs in the Ministry of Defence may also authorize an officer from the Services Headquarters to be the chairman of a CNC, particularly in those cases where the proposal was initially processed under the delegated powers but on opening of the tenders the cost was found to have exceeded the financial powers delegated to the CFAs in the Services Headquarters.
- 4.13.6 **Price Reasonableness:** The basic objective of the CNC is to establish reasonableness of price being paid by the Government. 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 complexities involved, whether the items are of current production or otherwise, maintenance requirements, requirement of spares and warranty etc. need to be considered while examining price reasonableness.

4.13.7 **Responsibility of the CNC:** Wherever negotiations are conducted by the CNC, minutes of the CNC meetings should be recorded clearly and expeditiously. CNC should determine L<sub>1</sub> and make unambiguous and specific recommendations giving reasons for making the recommendations. Detailed record of discussions regarding compliance with tendered QRs, price and contract clauses held during the CNC should be prepared and placed on record in the form of minutes of the meeting. All the members of the CNC should sign the minutes.

4.13.8 **Acceptance of CNC's recommendations:** The recommendations of the CNC should be processed on file by the Procuring Agency for the approval of the CFA with the concurrence of the IFA, wherever required as per the delegation of powers.

#### **4.14 Lack of Competition**

4.14.1 **Lack of competition.** The following situations would imply lack of competition:

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

#### **4.15 Resultant Single Vendor Situation**

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

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

If the examination reveals that (a) and (b) had been complied with and (c) and (d) are not feasible, the proposal may be processed further treating it as a case of OTE or LTE as the case may be with the approval of the CFA. In case, however, there is any doubt about the tendering process or it is considered feasible to consider reformulation of SQRs without compromising on operational requirement, the RFP should be retracted and re-issued after rectifying the deficiencies and/or reformulating the SQRs.

#### **4.16 Re-tendering**

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

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

possibility of reviewing the specifications to facilitate wider and adequate competition.

4.16.2 **Withdrawal of offer by L<sub>1</sub>**: In case the lowest tenderer withdraws his offer, re-tendering should be resorted to as per the instructions issued by the Central Vigilance Commission. While re-tendering RFP may not be issued to the vendor who had backed out and EMD, if any, of such a firm should be forfeited.

4.16.3 **Procurement of bare minimum quantity in case of re-tendering**: In cases where it is decided to resort to re-tendering due to unreasonableness of the quoted rates but the requirement is urgent/inescapable and re-tendering for the entire quantity is likely to delay the availability of the item(s) jeopardizing the essential operations, maintenance and safety, negotiation may be held with the 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.

#### **4.17 Signing of Contract/Placing of Supply Order**

4.17.1 **Signing of Contracts/Placing of Supply Orders**: Once the CNC recommendations are accepted by the CFA or approval accorded by the CFA in those cases in which no CNC is held, the contract should be signed or the supply order placed, as the case may be, immediately. It must be ensured that the contract/supply order is as per the approved terms and conditions and the rates are correctly shown as finally negotiated and accepted by the CFA. Contracts/supply orders should be vetted by the IFA, wherever required as per delegation of financial powers, prior to acceptance of the purchase proposal by the CFA. Copies of the contract/supply order should be sent to all concerned, including the IFA, the audit authority and the paying authority, and their acknowledgement obtained. The format for Contract and Supply Order is given in Appendix E and D respectively.

#### **4.18 Cartel Formation / Pool Rates**

4.18.1 **Cartel Formation/Pool Rates**: Sometimes a group of tenderers quote identical rates against a rate contract tender. Such Pool/Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Registrar of Companies, MRTTP Commission, National Small Industries Corporation etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Ministries/ Departments may also

examine the desirability of bringing such unhealthy practice to the notice of the concerned trade associations like FICCI, ASSOCHAM, NSIC, etc. requesting them, *inter alia*, to take suitable strong action against such firms. New firms should also be encouraged to get themselves registered for the subject goods/services to break the monopolistic attitude of the firms forming cartels. All requests for making reference to outside agencies, such as Registrar of Companies or trade associations, are to be made to the Ministry of Defence.

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

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

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

a) Procurement of upgraded new versions of equipment, ammunition, vehicles, etc., which are classified as stores that can be procured from the revenue head, provided these conform to the existing laid down QRs and meet the prescribed performance parameters or certain enhanced parameters which have been incorporated as an amendment to the existing QRs.

b) Upgradation, refurbishment, re-equipment, modification, Technical Life Extension, Overhaul, etc. of weapon platforms/systems/aggregates which can be carried out under the provisions of this Manual and as per the existing orders. The upgradation, refurbishment, re-equipment, modification, overhaul, etc. may be carried out at OEM's premises abroad or in India, or partially in India and partially at OEM's premises abroad, or even at a venue such as a Repair Overhaul Plant (ROH) where the requisite facilities are available, which may neither be in India nor at the OEM's premises, provided it is certified by the OEM as having the technical capacity/capability.

4.19.3 **Procedure to be Followed for Procurement of Stores:** For procurement of items mentioned in paragraph 4.19.2 (a) above, the Service

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

- 4.19.4 **Opening of Commercial Offer After Trial Evaluation/Testing:** The commercial offer should be opened only after acceptance of the TEC/ Validation Trial/Testing Report of those vendors who have been recommended as technically compliant. The commercial offer should normally have a validity period of twelve months from the date of submission of the offer to ensure that the offer is still valid when the commercial bid is opened, commercial negotiations held and the order placed. A shorter validity period may be prescribed commensurate with the period of trial/testing.
- 4.19.5 **Dispensing with Trial Evaluation/Testing:** For equipment available commercially off-the-shelf (COTS), which are upgrades of in-service items and have requisite IS/BIS or equivalent certification, the Service Headquarters may accept the equipment on the basis of self-certification by the vendor without going through the validation/testing process, provided it is confirmed by the QA Agency/AHSP or any other technical agency concerned. However, in such cases also TEC Report should be approved by the CFA.
- 4.19.6 **Procedure to be Followed for Upgradation, Refurbishment, Re-Equipment, Modification, Technical Life Extension and Overhaul:** For upgradation, refurbishment, etc., as mentioned in paragraph 4.18.2 (b) above, the vendors should be short-listed with the prior approval of the CFA and with the concurrence of integrated finance and the short listed vendors may be provided an opportunity to survey the weapon platform/systems, etc., which is to undergo upgradation/refurbishment/re-equipment/ modification/Technical Life Extension/Overhaul prior to issue of the RFP. In case the upgrade, refurbishment, etc. is to be done in India,

the vendors should certify the capability and confirm the adequacy of the facility to the satisfaction of the Service Headquarters. If required, a Detailed Project Report (DPR) may be got prepared by the Service Headquarters after obtaining the AON but before issuing the RFP with a view to defining the scope and other technical details of the upgrade/OH programme.

- 4.19.7 **Special provisions to be made in the RFP:** The RFP for upgradation, refurbishment, etc. should invite technical and commercial offers separately and may also have a provision for pre-bid conference prior to submission of the offers so that the technical and other issues could be clarified to vendors. The RFP should ask the vendors to specify the location of the plant/factory where upgradation, refurbishment, etc. will be undertaken and whether the vendor owns the facility. If the facility is not owned by the vendor, a certificate of agreement between the OEM and the plant owner would be required to be submitted by the vendors along with their offer. There should be a provision in the RFP that one lead equipment (where there are more than one number) will be tested by the vendor along with the representatives of the Service Headquarters (either in India or abroad) before the balance equipments are taken up for upgradation, refurbishment, etc. In case of a single weapon platform, there should be a provision for concurrent testing along with the upgradation, refurbishment, etc.
- 4.19.8 **Approval of the Final TEC Report and Opening of Commercial Offer:** The TEC Report should be approved by the CFA and the commercial offer of the vendors who have been recommended as technically compliant should be opened only thereafter. This would be applicable in respect of cases covered by paragraph 4.19.2 (b).
- 4.19.9 **Validity of the Offer:** The commercial offer should have a validity of up to eighteen months from the date of submission of the offer, depending on the period required for completing the technical evaluation, so as to ensure that the offer remains valid till the time the order is placed/contract signed.
- 4.19.10 **Assessment of the Vendor's Facility:** If required and considered necessary, a composite delegation of representatives of the User Department, CFA and integrated finance may be deputed to visit the plant/factory of the vendor finally recommended by the CNC to assess the capability/capacity of the selected vendors to carry out upgradation, refurbishment, etc. before commercial negotiations are finalized and approved by the CFA.

## **4.20 Instruction to Bidders**

4.20.1 **Instruction to Bidders**: Subject to other specific provisions in this Manual, the broad instructions for the prospective bidders are as follows:

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

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

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

(d) **Amendment of Bidding Documents**: At any time prior to the date of submission of bids the purchaser may, whether at his own initiative or in response to a clarification requested by a prospective bidder, may modify bid documents by amendments. The amendments shall be notified in writing to all prospective bidders. In order to afford prospective bidder a reasonable time to take the amendment into account in preparing their bids, the purchaser may, at his discretion, extend the deadline for submission of bids.

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

(f) **Late Bids**: In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for

receipt of bids) should not be considered and returned unopened to the bidder.

(g) **Modification and Withdrawal of Bids**: A bidder may modify or withdraw his bid after submission provided that the written notice of modification or withdrawal is received by the purchaser prior to deadline prescribed for submission of bids. A withdrawal notice may be sent by fax but it should be followed by a signed confirmation copy to be sent by post and such signed confirmation should reach the purchaser not later than the deadline for submission of bids. No bid shall be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity specified. Withdrawal of a bid during this period will result in Bidder's forfeiture of bid security.

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

(i) **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.

#### **4.21 Instruction to the Purchase Officers**

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

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

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

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

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

(e) **Evaluation and comparison of substantially responsive bids:** The evaluation and comparison of responsive bids shall be done on the prices of the goods offered inclusive of all 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.

(f) **Award Criteria:** The purchaser will award contract to the successful bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the bidder is found to be technically, commercially and financially acceptable and whose goods have been type-approved/validated by the purchaser. The purchaser reserves the right to counter offer price(s) against price(s) quoted by any bidder.

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

(h) **Pre-bid conference:** To obviate the possibility of the RFP fetching no response, resulting in a single vendor situation or resulting in generation of limited competition, technical specifications should be firmed up in a pre-bid conference in two-bid tender, particularly where the goods/services to

be procured are not available commercially off-the-shelf or are of complex and highly technical nature. No fresh commercial bids should be invited after opening of technical bids.

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## **CHAPTER 5**

### **APPROVAL PROCESS AND CONCLUSION OF CONTRACT**

#### **5.1 Procurement of Goods and Services**

5.1.1 **Procurement of Goods:** The need for procurement of goods may arise in the following circumstances:

- (a) to make up the deficiency of stores, which are authorized as per scales laid down in various Government letters, revealed as a result of provisioning reviews;
- (b) to build up authorized stocks; or
- (c) on account of non-scaled and not-in-vocabulary (NIV) items, which may include any kind of equipment, spares and other medical/miscellaneous stores.

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

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

#### **5.2 Processing of Procurement Proposals**

5.2.1 **Processing of Proposals for CFA's Approval:** All procurement proposals should be initiated in the form of a statement of case (SOC), which should clearly bring out all aspects of the proposal, including the justification/reason for procurement, quantity, cost, likely sources of supply, mode of tendering, etc. The format of SoC given in Appendix 'B' may be used for this purpose, with suitable changes as required. It needs to be kept in view that expeditious processing of the proposal depends on the comprehensibility and quality of the SoC. Draft NIT/RFP should also be submitted along with the SOC for approval of the CFA in consultation with integrated finance, where required as per the delegation of financial powers.

5.2.2 **Costing of Procurement Proposals:** It is important that the procurement proposal is costed with due attention and care. The basis of costing must be placed on record. The level of approval by the CFA would depend on the entire cost of a proposal, inclusive of all taxes, levies and other charges. The procedure for costing is given in Chapter 13 of this Manual.

- 5.2.3 **Processing of Proposals after CFA's Approval:** After CFA's approval, the procuring agency is required to go through the tendering action approval as per the provisions of Chapter 4 of this Manual and obtain CFA's approval for the proposed procurement in consultation with integrated finance, where required as per the delegation of financial powers.
- 5.2.4 **Processing of Proposals Subject to Availability of Funds:** A procurement proposal should normally be processed only if it figures in the Annual Procurement Plan (wherever such Plans are being prepared, irrespective of the nomenclature of the Plan) and subject to availability of funds. Availability of funds should be determined only after accounting for cash outgo during the relevant financial year on account of committed liabilities.
- 5.2.5 **Processing of Proposals Without Linking Them With Availability of Funds:** Subject to the general rule that purchase proposals should be processed with due regard to availability of funds, a procurement proposal may be processed without linking it with actual availability of funds, if it is certified by the budget holder that there is reasonable certainty of funds becoming available by the time the proposal reaches the final stage of contracting/placing of supply order. In such cases, however, availability of funds would be determined after taking into account cash outgo on account of the committed liabilities.
- 5.2.6 **Prior Concurrence of Integrated Finance:** Competent Financial Authority's approval is subject to prior concurrence of integrated finance, if required as per the delegation of financial powers.
- 5.2.7 **Ex-post Facto Financial Concurrence:** There is no provision under the delegated financial powers to obtain ex-post facto concurrence of integrated finance. Such cases where prior concurrence is not obtained, though required as per the delegation of financial powers, would be treated as cases of breach of rules and regulations and referred to the next higher CFA for regularization. Such regularization will be subject to concurrence of IFA to the next higher CFA.
- 5.2.8 **Ex-post Facto Approval of the CFA:** Where a proposal is approved, with or without the concurrence of integrated finance, by an authority not competent to sanction that proposal as per the delegation of financial powers, ex-post facto sanction may be accorded by the appropriate CFA with or without the concurrence of the IFA, as the case may be, as per delegation of financial powers.

- 5.2.9 **Disagreement with the IFA:** In case of disagreement with the IFA, the CFA can overrule the IFA under intimation to the next higher CFA as well as the IFA giving reasons for overruling the financial advice. In such cases, it would be open to the IFA to take up the matter with the higher IFA and CFA or drop it.

### **5.3 Acceptance of Necessity**

- 5.3.1 **Acceptance of Necessity in Respect of Scaled Items:** Acceptance of Necessity in case of scaled items would actually only entail vetting of quantities, assessment of physical requirement of various resources with respect to targets fixed and budget availability.
- 5.3.2 **Acceptance of Necessity In Respect of Scaled Items Whose Inventory is Computerized:** In case of scaled items where inventories are maintained through automated systems and IFAs have been provided terminal on the same, IFA will vet the quantity on the automated systems based on data available on such automated systems, which would be deemed to be financial concurrence for acceptance of necessity also.
- 5.3.3 **Acceptance of Necessity in Respect of Non-Scaled and NIV Items:** Acceptance of necessity in respect of non-scaled and NIV items would depend entirely on the justification provided for their procurement. It must be ensured that procurement of such items does not introduce a new practice and does not have the effect of changing the existing scales or policy.
- 5.3.4 **Acceptance of Necessity in Respect of Items Included in Procurement Plans:** Some of the Services HQrs/Command HQrs and other establishments prepare annual procurement plans for revenue procurement. Where such a plan, irrespective of its nomenclature, is being prepared with the concurrence of Integrated Finance, necessity would be deemed to have been accepted in respect of each item included in the plan. No separate AON would be necessary in such cases. However, the AON would be for the item and not the quantities required. In such cases, however, Integrated Finance should be consulted for vetting of quantity, mode of tendering, identification of vendors in case of LTE/STE/PAC and vetting of draft RFP, where financial powers are to be exercised with the concurrence of integrated finance.

Provided that if in any such case Integrated Finance wishes to make any observation regarding necessity, it may be done with the specific approval of the IFA concerned. Further processing of the proposal would, however, not be deferred pending resolution of the issue raised by Integrated Finance, unless the procuring agency considers it desirable to resolve the issue before proceeding further. Where it is decided not to defer further processing of the proposal, the observations made by Integrated Finance

would be brought to the notice of the CFA while seeking approval for the proposal.

Provided further that AON of the CFA would need to be taken in consultation with the IFA, where financial powers are to be exercised with the concurrence of integrated finance, before the proposal is processed any further in case of non-scaled items which do not also figure in any approved procurement plan.

#### **5.4 Quantity Vetting**

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

#### **5.5 Seeking Approval of the CFA**

- 5.5.1 **Combining Various Stages of Processing:** It is not necessary that a proposal should be processed sequentially for AON, Quantity Vetting, financial concurrence, etc. A proposal, when initiated, should be complete in all respects so that all the aspects relating to AON, quantity vetting, costing, vetting of NIT/RFP, etc., could be examined simultaneously by the IFA, where required as per the delegation of financial powers.
- 5.5.2 **CFA's Sanction:** A sanction is a written authority from the CFA authorizing the expenditure. A sanction invariably indicates the reference to the authority under which expenditure is being sanctioned, the financial implication, the item for which the expenditure is approved and the budget code head. Whenever the final expenditure exceeds the sanctioned

amount, revised financial sanction of the CFA, in whose delegated powers the total expenditure would fall, is required to be obtained. The format for Sanction letter is given in Appendix K.

## **5.6 Transparency, Competition, Fairness and Elimination of Arbitrariness in the Procurement Process:**

**5.6.1 Need for Ensuring Propriety of 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 be 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 authorized 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.

## **5.7 Responsibility of the CFA**

5.7.1 **Responsibility of CFA in Purchase Decision:** The CFA must consider all aspects of the case, including the quoted terms and conditions of the contract, delivery period, taxes and duties applicable, freight, insurance and other charges and the compliance to the specification before a purchase decision is taken. One of the important responsibilities of the CFA to ensure proper ranking of all offers so that the decision making process is totally transparent. The financial implication should be considered as the all-inclusive cost to the User on delivery to the designated consignee(s). Conditional offers and those with specifications not in conformity with the tendered specifications (Essential QRs) should not be considered. Before according sanction, concurrence of integrated finance should be taken wherever the powers are exercisable subject to such concurrence.

5.7.2 **Compliance with Procedures:** While taking the purchase decision, the CFA needs to satisfy himself that proper procedures have been followed at various stages of procurement, purchase policies of the Government have been complied with and capacity and financial status of the firm have been checked. Purchase decisions should be taken through a formal order in a written form.

5.7.3 **Accountability:** The decentralization of decision making mechanism and delegation of financial powers are aimed at facilitating faster decision making and obtaining best value for money. However, the delegation of powers also implies 'authority with accountability'. The CFA approving the expenditure must ensure financial propriety and probity, transparency and fair play as well as optimum utilization of resources. The designated CFA and all members of committee CFA are accountable for all decisions taken by them while approving any measure involving Government funds. This accountability is unconditional and absolute.

## **5.8 Time frame**

5.8.1 **Need for Expeditious Processing:** It is imperative that the procurement process is fully responsive to the need of the Defence Services and other departments and facilitates expeditious procurement so that requirements are met on time. It is, therefore, essential that all prescribed activities are undertaken expeditiously and advice rendered within a specified time frame.

5.8.2 **Time Frame:** The time frame as given in Appendix 'A' is suggested for all activities in the procurement process to ensure that the bids are finalized within validity period. In case the prescribed time frame cannot be adhered to in any specific case, suitable extension of validity of the bids should invariably be asked for well in time.

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## **CHAPTER 6**

### **CONTRACT**

#### **6.1 Law**

- 6.1.1 **Elementary Law:** The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are contained in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. The law relating to redressal of disputes is laid down in the Arbitration and Conciliation Act, 1996. Some of the salient principles relating to contracts are set out briefly in this chapter.
- 6.1.2 **Applicability to Defence Procurement:** Government contracts, including those for defence procurement, are governed by the same laws which are applicable to contracts between private parties.

#### **6.2 Elementary Legal Practices**

- 6.2.1 **What is a Contract?:** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.
- 6.2.2 **Proposal or Offer:** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.
- 6.2.3 **Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.
- 6.2.4 **Which agreements are Contracts?:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable.
- (a) Competency of the parties
  - (b) Freedom of consent of both parties
  - (c) Lawfulness of consideration
  - (d) Lawfulness of object

### **6.3 Competency of Parties**

6.3.1 **Who Can Enter Into Contract?:** 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 contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

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

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

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

6.3.4 **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

6.3.5 **Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person, which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in

excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

6.3.6 **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Cooperative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one of such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said associations.

6.3.7 **Parties to Defence Contracts:** The parties to the defence contracts are the President of India as the purchaser acting through the authority signing the Contract/Agreement/Purchase Order etc., and the supplier named in the contract.

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

6.4.1 **Consent of Both Parties:** Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement may occur in the following cases: -

- (a) When the misunderstanding relates to the identity of the other party to the agreement;
- (b) When it relates to the nature or terms of the transactions;
- (c) When it related to the subject matter of the agreement.

6.4.2 **Free Consent of the Parties:** The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a

contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

6.4.3 **Consent Given Under Mistake:** In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

6.4.4 **Mistake of Fact and Law:** Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

## **6.5 Consideration**

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

## **6.6 Lawfulness of Object**

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

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

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

6.7.2 **Communication of Acceptance:** A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of

validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

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

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

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

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

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

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

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

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

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

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

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

- (a) Purchase order for items of stores, spares or equipment.
- (b) Rate Contract.
- (c) Price Agreement.
- (d) Service Contract.
- (e) Annual Maintenance Contract (AMC)/Comprehensive Maintenance Contract (CMC)

- (f) Consultancy Contract.
- (g) Development Contract.
- (h) Works Contract/Project.

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

- (a) The terms of contract must be precise and definite and there must be no room for ambiguity or misconstruction therein.
- (b) Standard forms of contracts should be adopted, wherever possible, and the terms of the contract should be subjected to close prior scrutiny.
- (c) As far as possible and where mandated, particularly if standard format of contract is not to be adopted, legal and financial advice should be taken in drafting of contracts and before they are finally entered into.
- (d) The terms of a contract, once the contract is concluded, should not be materially varied without the previous consent of the authority competent to enter into the contract as so varied.
- (e) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent financial authority.
- (f) Whenever practicable and advantageous, contracts should be placed only after tenders have been openly invited.
- (g) In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.
- (h) Even in those rare cases where a formal written contract is not made, no order for supplies, etc., should be placed without at least a written agreement as to the price.
- (i) Adequate provision must be made in the contracts for safeguarding Government property entrusted to the service provider.

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

6.11.1 **Changes in the Terms of a Concluded Contract:** No variation in the terms of a concluded contract should normally be made, unless the contract specifically provides for it, in which case this can be done with the specific written consent of the parties to the contract.

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

## **6.12 Termination of Contract**

6.12.1 **Termination of a Concluded Contract:** A contract may be terminated in the following circumstances:

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

## **6.13 Contract Effective Date**

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

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## **CHAPTER 7**

### **CONDITIONS OF CONTRACT**

#### **7.1 Conditions of Contract**

- 7.1.1 **Conditions of Contract**: A contract is a legal document and must be governed by certain terms and conditions to protect the interest of both the parties to the contract. It is important that every purchase officer is not only thoroughly familiar with each conditions of a contract, but that he is also able to take appropriate and timely action to safeguard the rights and honour of the Purchaser. It is also desirable that the conditions of a contract are practical, fair and just for both the Purchaser and the Supplier. The conditions of contract become binding for both parties on signing/acceptance of the mutually agreed contract.
- 7.1.2 **Standard Conditions of Contract (SCoC)**: In order to facilitate clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms at the time of registration itself. It is desirable that the SCoC as given in part III of Appendix C are publicized on the Defence website also. The Request for Proposal format contains reference to the standard as well as special conditions in Part III & Part IV respectively of Appendix C that the bidders would be required to abide by. The contract must also include the standard as well as special conditions specific to a particular case, as mentioned in the RFP. The standard and special conditions of contract are included in the format of the RFP as well as the supply order and contract given in Appendices 'D' and 'E' respectively.
- 7.1.3 **Applicability of SCoC to Supply Orders**: The Standard and Special Conditions of Contract are applicable to Supply Orders also as given in Appendix D. Acceptance of Supply Order by the Firms/PSUs is essential to make the same as legally valid document.
- 7.1.4 **Special Conditions of Contract**: Special conditions of contract are supplementary conditions applicable to a specific tender and contract. Such conditions become essential particularly in cases of contract for supply of services or even equipment. Special conditions of contract are given in Part-IV of Appendix C, D, & E which can be included on case-to-case basis. In addition, there may be a need to stipulate conditions like stage inspection, acceptance trials, installation, setting to work, and commissioning or pre-defined stages of payment for services. Such conditions should be decided while processing the proposal for CFA's approval and mentioned in the Request for Proposal as well as the contract/supply order.

## **7.2 Applicability of Conditions of Contract**

7.2.1 **Applicability of all terms and conditions**: The formats of the RFP and the contract agreement contain all the standard and special conditions of contract. While the special conditions may be mentioned in the RFP and subsequently in the contract, as applicable in a particular case, all the standard terms and conditions should invariably be mentioned in the RFP and the contract. Minor changes in the text would be permissible, as long as such changes do not materially alter the context or import of the relevant article. CFAs would be competent to take a decision in this regard in consultation with Integrated Finance, wherever such consultation is required for sanctioning the proposal. Legal opinion may be sought, if considered necessary, before making any such alteration. However, wherever standard text of clause given in Part III of Appendix C, D & E are concerned, the text of such clauses should not be altered without seeking legal opinion.

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

## **7.3 Effective Date of Contract**

7.3.1 **Effective Date**: The effective date of commencement of contract should be invariably indicated in each contract as per agreed terms and conditions. Normally, the date of signing of the contract will be the effective date of contract as given in Para 2, Part III, Appendix C. However, except when specifically provided otherwise in the contract. Where specifically agreed to by the parties to the contract, effective date may be the date on which any or the last of the following conditions, as applicable, is complied with:

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

## **7.4 Payment of Advance:**

7.4.1 **Advance Payment to Suppliers:** Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. Therefore, no advance should be offered in the RFP. However, it may become necessary to make advance payments in the following types of cases:

- (a) Advance payments are demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipments, etc.
- (b) Advance payments demanded by firms against fabrication contracts, turnkey contracts, etc.

Where it is decided to provide advance payment, the quantum should be incorporated upfront in the RFP.

7.4.2 **Quantum of Advance:** Advance payment should not exceed fifteen percent of the contract value or the amount payable for six months in case of maintenance contracts.

7.4.3 **Relaxation of the Prescribed Ceilings:** The ceilings mentioned above may be relaxed only with the approval of the Secretary (Defence Finance) and the Secretary of the concerned Department of the Ministry of Defence.

7.4.4 **Stage/Part Payments:** If stage/part payments are proposed to be made on achievement of milestones, it should be clearly mentioned upfront in the RFP with the approval of CFA and the concurrence of the IFA, wherever required as per the delegation of financial powers.

7.4.5 **Securing the Advance:** While making any advance payment, adequate safeguards in the form of bank guarantee, etc., should be obtained from the firm. The format in which such guarantee is to be obtained is given in Form DPM-16.

## **7.5 Price Variation Clause/Price Adjustment Clause**

7.5.1 Normally a contract should be entered into on a fixed price basis. Nevertheless, in the fluctuating market conditions it may sometimes become necessary in the case of long term contracts to consider variable price quotes given by the suppliers. The following guidelines will be followed in cases where a price variation provision is sought to be included in the contract:

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

an amendment to the contract in cases of Force Majeure or defaults by Government.

(j) Where contracts are for supply of equipment, goods, etc., imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item.

The mode of calculation of variations in duties and taxes and Foreign exchange rates and the documents to be produced in support of claims for such variations should also be stipulated in the Contract.

(k) The clause should also contain the mode and terms of payment of the price variation admissible.

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

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

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

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

## **7.7 Performance Security Deposit**

7.7.1 **Performance Security:** Performance Security deposit payable to the Purchaser is furnished by the Supplier in the form of a Performance Bank Guarantee (PBG) issued by a public sector bank or a private sector bank authorized to conduct government business, in the prescribed format within thirty days from the date of contract. At present, ICICI Bank Ltd., Axis Bank Ltd. and HDFC Bank Ltd. are the three private sector banks authorized to carry out government transactions. The performance security deposit is meant to compensate the Purchaser for any loss suffered due to failure of the supplier to complete his obligations as per the contract. Preferably, performance security is payable by the supplier at the rate of 10% of the contract value. PBG should remain valid for a period of sixty days beyond the date of completion of contractual obligations, 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 grants extension of delivery period, with or without LD, the supplier must get the BG revalidated, if not already valid. The format of the PBG is given in Form DPM-15.

## **7.8 Payment**

7.8.1 **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 and corresponding part payment. Such requests can also be considered by the CFA for acceptance on merit of individual cases.

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

7.8.3 **E-payments:** It will be mandatory for the suppliers/vendors to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/NEFT/RTGS mechanism instead of payment through cheques. A copy of the model mandate form prescribed by RBI to be submitted by suppliers/vendor for receiving payments through ECS is given in Form DPM-11. The details given in the mandate form should also be incorporated in the supply order/contract.

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

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

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

**Note:**

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

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

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

- (iii) A copy of the Supply Order with UO No. and date of IFA's concurrence, where required under delegation of financial powers.
- (iv) CRVs in duplicate
- (v) Inspection note
- (vi) Relevant documents/proof of payment in support of the claim for statutory and other levies, such as Excise duty challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF / ESIC contribution with nominal roll of beneficiaries, etc., as applicable
- (vii) Exemption certificate for Excise duty/Customs duty, if applicable
- (viii) Bank Guarantee for advance, if any
- (ix) Guarantee/Warranty Certificate
- (x) Performance Bank Guarantee/indemnity bond, where applicable
- (xi) DP extension letter with CFA's sanction, UO No. and date of IFA's concurrence, where required, indicating whether extension is with or without LD
- (xii) Details for electronic payment as per mandate form given in Form DPM-11, if these details are not incorporated in the Supply Order/Contract or in case there is a change in these details
- (xiii) User acceptance
- (xiv) Any other document/certificate that may be provided for in the supply order/contract.

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

## **7.9 Delivery**

7.9.1 **Delivery:** Timely delivery as per the delivery period (DP) stipulation in the Contract/Purchase Order is one of the most important procurement objectives as timely availability of items is vital, particularly for the department of defence. The stores are considered to have been delivered only when these are handed over to the consignee after due inspection by the designated inspecting agency. Most contracts stipulate door delivery at the consignee's end by road. In some cases, the stores are also 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.

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

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

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

- (a) Extending the delivery date with imposition of LD and denial clause, which implies denial of increase in price, taxes, duties, etc. taking place during the extended period.
- (b) Re-fixing the delivery date.
- (c) Canceling the contract and repurchasing the non-supplied quantity.

7.9.4 **Deciding the Course of Action in the Event of Failure of Supply:** For deciding on these options the Procuring Authority has to balance the time factor required for making repurchase and whether the supply can be arranged earlier than the period of extension sought for at cheaper rates from alternative sources and in the latter case whether the indenter can reasonably wait to take advantage of lower trend in prices. Extension shall be granted only where the CFA is convinced that supplier would come forward during extended DP. Detailed instructions are contained in chapter 12 of DGS &D Manual 1999. Suggested format for correspondence/amendment on this issue has been given in Forms DPM-26, DPM-27, DPM-28 and DPM-29 for guidance.

7.9.5 **Maximum Period of Extension:** The maximum period of extension of delivery that can be granted by the CFA under delegated powers should be such that the total period - the original delivery period plus the extension – does not exceed twice the original delivery period. Extensions beyond this period would require sanction of the Ministry of Defence.

## **7.10 Liquidated Damages (LD)**

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

(a) Whatever the quantum of the loss sustained, the claim cannot exceed the sum stipulated in the contract.

(b) Only reasonable sum can be calculated as damages, which in given situation may be less than the sum stipulated.

(c) What is a reasonable sum would depend on facts.

(d) Court may proceed on the assumption that the sum stipulated reflects the genuine pre-estimates of the parties as to the probable loss and such clause is intended to dispense with proof thereof.

(e) The distinction between penalty and LD has been abolished by the Indian Contract Act and in every case, the Court is not bound to award more than 'reasonable compensation' not exceeding the amount so named.

7.10.2 **Quantum of LD:** As a general rule, if the contractor fails to deliver the stores/service 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 any other remedy for breach of contract, may recover from the contractor 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 10% of undelivered goods. The LD cannot exceed the amount stipulated in the contract.

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

Sr No	Circumstances	Quantum of LD
1	Delay in supplies resulted in actual/ demonstrable monetary loss and the Supplier was responsible for the delay	Full LD as per the provisions of paragraph 7.8.2, subject to the LD not exceeding 10% of the value of the contract
2	Delay in supplies resulted in actual/ demonstrable monetary loss but the Supplier was responsible only for a part of the delay and the remaining part was beyond Supplier's control	Full LD for the period for which the Supplier was responsible for the delay, subject to the LD not exceeding 10% of the value of the contract
3	Delay in supplies resulted in actual/ demonstrable monetary loss but the entire delay was due to circumstances beyond the control of the Supplier	LD may be waived in full
4	Actual/demonstrable monetary loss cannot be certified and no inconvenience has been caused	LD may be waived in full

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

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

### **7.11 Arbitration**

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

financial powers. The standard Arbitration clauses are given in Forms DPM-7, DPM-8 and DPM-9.

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

### **7.12 Force Majeure**

- 7.12.1 **Force Majeure:** Wherever considered necessary, this clause may be included in the RFP and in the Contract. In this context provisions of paragraph 10.9 of this Manual will apply, mutatis mutandis, to procurement from indigenous sources also, though this clause should be included in such contracts only if absolutely necessary. The standard format of the clause is given in Part-IV of Appendix C.

### **7.13 Option Clause and Repeat Order Clause**

- 7.13.1 **Repeat Order and Option Clauses:** Provision for repeat order and option clause should not be made as a matter of course in the RFPs as these clauses have an impact on price. Either or both these clauses may be provided in the RFP only in exceptional circumstances, where the consumption pattern is not predictable, with the stipulation that while exercising one or both these clauses the overall ceiling of fifty percent of the originally contracted quantity will not be exceeded. Repeat Order and/or Option Clause may be exercised more than once, provided altogether these orders do not exceed 50% of the original order quantity.
- 7.13.2 **Option Clause:** Under this clause, the Purchaser retains the right to place orders for additional quantity up to a maximum of 50% of the originally contracted quantity at the same rate and terms of the contract. Such an option is available during the original period of contract provided this clause had been incorporated in the original contract with the supplier. Option quantity during extended DP is to be limited to 50% of balance quantity after original Delivery Period. This clause may be exercised in case of procurement from single vendor/OEM also subject to there being no downward trend in prices. However, in multi vendor contracts, great care should be exercised before operating the option clause.
- 7.13.3 **Conditions governing Option Clause:** Against an outstanding indent for which acceptance of necessity has been approved by CFA, it may be advantageous to the Purchaser to exercise the option clause in accordance with the terms and conditions of contract. The option clause may be exercised on approval of the CFA, within whose powers total value of original supplies plus value of the option clause falls, in consultation with IFA, where applicable as per the delegation of financial

powers, during currency of the contract. It should be ensured that there is no downward trend in the market prices. No fruitful result will accrue by floating fresh RFP when items are urgently required. If the contract also contains the repeat order clause, it may be kept in mind while placing order under the option clause that the total quantity under the option clause and the repeat order cannot exceed fifty percent of the originally ordered quantity.

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

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

(a) Items ordered against the previous order had been delivered successfully.

(b) Original order should not have been placed to cover urgent/emergent demand.

(c) Repeat Order is not placed to split the requirement to avoid obtaining the sanction of the next higher CFA.

(d) The original order should have been placed on the basis of lowest price negotiated and accepted by CNC, and not on the basis of delivery or any other preference.

(e) There is no downward trend in the price of the item. (A clear certificate should be recorded to that effect.)

(f) The requirement is for stores of identical nature/ specifications, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence should not be precluded from the purview of repeat order but this aspect should be very carefully examined from the point of view of interchangeability of the product offered as an improved substitute.

(g) The repeat order is to be placed within six months from the date of completion of the supply against the previous order and it should be placed 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,

where the contract does not also include the option clause. In case of orders for small quantities (1 to 7), the Repeat Order quantity may be rounded off to the next whole number.

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

(j) Where the contract also includes an Option clause, Repeat Order may be placed only for such quantity, which, along with the quantity for which Option clause may have already been exercised, does not result in the total quantity under the Option clause and the Repeat Order exceeding 50% of the originally ordered quantity.

(k) The CFA will be decided taking into consideration the value of the originally ordered quantity and the Option clause/Repeat Order quantity.

#### **7.14 Risk and Expense Purchase**

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

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

7.14.3 **Alternative remedies to Risk & Expense Purchase Clause:** In case of foreign contracts, risk and expense clause is generally not applicable. The other remedies available to the purchaser in the absence of the Risk and Expense Clause 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] In case of foreign contracts, finally approach the Government of the Supplier's country through the Ministry of Defence, if needed.

### **7.15 Apportionment of Quantity**

7.15.1 **Apportionment of Quantity:** In global and limited tender enquiry cases, if there is an apprehension that the L<sub>1</sub> may not have the capacity to supply the entire requisite quantity, it should be mentioned in the RFP that the order may be placed on L<sub>2</sub>, L<sub>3</sub> and so on for the balance quantity at L<sub>1</sub> rates, provided this is acceptable to them. Even if there was no prior decision to split the quantities and it is discovered that the quantity to be ordered is far more than what L<sub>1</sub> alone can supply, the order may be distributed as above among L<sub>2</sub>, L<sub>3</sub>, etc. at the L<sub>1</sub> rate. Where it is decided in advance to have more than one source of supply ( due to vital or critical nature of the item) the ratio of splitting should be indicated in the RFP.

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

7.16.1 **Acceptance of Excess or Short Deliveries:** There may be occasions when excess or short supplies are made by the vendors due to various reasons like, exact multiples of the standard units of measure, or where it is difficult to mention exact weight in case of steel plates etc. A clear indication should be made in the RFP if this clause is to be applied in any particular case. These variations in supplies may be accepted with the approval of CFA, subject to the value of such excess/short supplies not exceeding 5% (five percent) of the original value of the contract. CFA will be determined with reference to the value of the original order plus excess/short supply.

### **7.17 Buy Back Offer**

7.17 **Buy Back Offer**: When it is decided to replace an existing old item(s) with a new item(s), a suitable clause should be incorporated in the RFP so that the prospective and interested bidders may formulate their bids accordingly. Depending on the value and condition of the old item(s) to be traded, the time as well as the mode of handing over of the old items to the successful bidder should be decided and relevant details in this regard suitably incorporated in the RFP. Suitable provision should also be made in the RFP to enable the Purchaser either to trade or not to trade the old item(s) while purchasing the new one(s).

### **7.18 Fall Clause**

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

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## **CHAPTER 8**

### **RATE CONTRACT**

#### **8.1 General**

- 8.1.1 **Objective:** The basic objective of a procurement agency is to provide the right items of right quality and in right quantity, at the right place and right price so as to meet the requirement of the users. One of the ways to ensure this is to conclude Rate Contracts for all common user items which are regularly required in bulk by the users and whose prices are likely to be stable and not subject to considerable market fluctuations. A Rate Contract (RC) enables procurement officers to procure indented items promptly and with economy of scale and also cuts down the order processing and inventory carrying cost. The RC system takes care of supply chain management and enables an efficient transaction both for the purchaser and the supplier.
- 8.1.2 **Definition:** A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum drawal guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser is/are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other, of not less than thirty days. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract that supply order becomes a valid and binding contract and the supplier is bound to supply the ordered quantity.
- 8.1.3 **Price Agreement:** While procuring goods and services, it may be expedient to enter into a Price Agreement (PA)/Fixed Price Quotation (FPQ) with the Original Equipment Manufacturers (OEMs). The PA/FPQ may be finalized after due negotiation and market survey. Such PA/FPQ may be normally valid for a period upto three years and may be extended further suitably with next higher CFA's sanction.
- 8.1.4 **Types of Items Suitable for RC:** The types of items which may be considered for RC are:
- (a) Items required by several users on recurring basis and having clear specifications.
  - (b) Fast moving items with short shelf life or storage constraints.

- (c) Items with minimum anticipated price fluctuation during the currency of the RC. Items with high probability of considerable price fluctuation should not be considered to be covered by RC except for short term contract.
- (d) Items that take long gestation period to manufacture and for which there is only one source for manufacturing.

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

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

8.2.1 **Authorities competent to conclude Rate Contracts:** Rate Contract or Price Agreement for goods and services should be concluded only by the authorized Central and local Procurement Agencies.

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

## **8.3 Period of Rate Contract**

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

8.3.2 **Fixing of the Termination Period:** As far as possible termination period of RC should be so fixed as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts.

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

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

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

- 8.5.1 **Estimate/Indent/Requisition:** A Rate Contract can be concluded based on estimated annual requirements of various users under the authority processing an RC proposal. The contract concluding authority must scrutinize the estimates for their completeness in terms of authority for raising the indent, specification of the item, desired delivery schedule, packing and preservation, etc. Adequate budget provisions must be made and confirmed in the normal manner.
- 8.5.2 **Selection of Firms:** Rate Contracts should be normally concluded only with the registered firms based on their capacity assessment by the designated Registering/Inspecting Agency. In respect of new items being bought on Rate Contract for the first time, RC can be awarded to unregistered firms also on the basis of favourable technical capacity and financial capabilities. Past performance of a firm will be a major consideration while awarding a Rate Contract. The following aspects should normally 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.
- 8.5.3 **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. All Rate Contracts and Price Agreements should be processed through the committee CFA or the CNC so as to ensure best value for money, quality assurance and transparency. Participation of finance member in all deliberations, particularly regarding the pricing and conditions of contract, is mandatory.
- 8.5.4 **Signing of Rate Contract:** RC concluded for various wings of the MOD will be signed for and on behalf of the President of India. RC itself may be signed by the authority to whom powers to enter into RC are delegated or

an officer authorized to sign financial documents on his behalf, after CFA's approval.

### **Conclusion of Parallel RC**

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

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

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

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

- i) Earnest Money Deposit (EMD) is not applicable.
- ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawal may be mentioned without any commitment.
- iii) The purchaser reserves the right to conclude more than one rate contract for the same item.
- iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally thirty days.
- v) The purchaser has the option to renegotiate the price with the rate contract holders.
- vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.

vii) Usually, the terms of delivery in rate contracts are FOR dispatching station. This is so, because the rate contracts are to take care of the users spread all over the country. However, wherever it is decided to enter into RCs which are FOR destination, the cost of transportation should be separately asked for.

viii) Supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the rate contract terms, are to be issued for obtaining supplies through the rate contract.

ix) The purchaser and the authorized users of the rate contract are entitled to place supply orders upto the last day of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms and conditions of the rate contract.

x) The rate contract will be guided by "Fall Clause".

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

8.7.3 **Performance Security:** Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the authority concluding the Rate Contract(s) may consider obtaining performance security of reasonable

amount from the Rate Contract holders. A suitable clause to this effect is to be incorporated in the tender enquiry documents. Performance Security shall, however, not be demanded in the supply orders issued against rate contracts.

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

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

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

## **8.9 Payment**

8.9.1 **Payment Terms**: Standard Payment terms, as indicated below, should be incorporated in all Rate Contracts:-

- (a) Upto 95 % 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, 90% payment can be released against proof of dispatch, i.e., copy of the RR and inspection note.
- (b) Balance 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.

8.9.2 **Paying authority**: The organization of the Principal Controller/ Controller of Defence Accounts concerned or an authority holding cash assignment/imprest and duly authorized to make payment for such procurements will be the paying authority.

### **8.10 Format of the Supply Order**

8.10.1 **Format of the Supply Order**: The format of the Supply Order on which the orders against Rate Contract could be placed by the Direct Demanding Officers is given in Appendix 'F'. For DGS&D RC cases, FORM-131 of DGS&D may be used with suitable changes.

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## **CHAPTER 9**

### **PROCUREMENT OF GOODS AND SERVICES FROM FOREIGN COUNTRIES**

#### **9.1 Introduction**

9.1.1. Import of spares and equipment from the revenue budget constitutes a sizeable portion of the overall defence expenditure. The Defence Services have been acquiring latest state-of-the-art equipment and weapon systems from various foreign countries. To ensure their serviceability at all times, it is essential that 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 with the process. While proposals for procurement of goods and services are also to be processed generally as per the procedure laid down in Chapter 5 of the Manual, some special features of procurements from abroad are explained in this Chapter.

#### **9.2 Indents**

9.2.1 **Information to be given in the Indents:** The process of procurement of stores commences only on receipt of indents, duly approved and authenticated by the competent authority. Every indent should contain the following information:-

- (a) Complete details like part numbers and specifications of the equipment indented.
- (b) A realistic estimate of the cost with basis of assessment so that back references to the indenter 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.

- (i) Desired Delivery Schedule.
- (j) Normally, items of similar or allied nature should be indented in one indent.

9.2.2 **Documents etc. to be furnished along with the Indents:** Every Indent should be accompanied by the following in the form of documents/records/inputs or endorsement in the case of automated inventory management system:

- (a) Schedule of Requirement of the indent
- (b) Complete Technical specifications of the items
- (c) A certificate of provision of funds to meet proposed expenditure
- (d) A copy of the financial concurrence to the indent
- (e) A copy of CFA's approval of the indent
- (f) A certificate of necessary import clearance, wherever applicable
- (g) Proprietary Article Certificate (PAC) given in the prescribed format, where applicable
- (h) Priority of the indent, i.e. whether normal or urgent.

### **9.3 Registration of Foreign OEMs and Vendors**

9.3.1 **Procedure for Registration:** At present foreign OEMs and vendors are being registered by the Service Headquarters and Headquarters of other Departments. Till such time as common guidelines are formulated, these Registering Authorities would continue to register foreign OEMs and vendors as per the existing procedure followed by them.

9.3.2 **Registration of Authorized Vendors/Stockists of Foreign OEMs by the Service Headquarters etc.:** Widening of the foreign vendor base is a multi-disciplinary and techno-commercial exercise. Registration of foreign OEMs and their authorized vendors/stockists is to be undertaken as per laid down guidelines, with the help of the Defence Attachés and Commercial Counselors in the Indian Embassies/High Commissions abroad.

### **9.4 Vendor Selection**

9.4.1 **Prospective vendor(s) to be indicated in the Indent:** Details of registered vendors and likely sources of supply are to be indicated in the

indent. Vendors already registered with Army, Navy, Air Force, Ordnance factories, DRDO, DGS&D and Defence PSUs for similar items will be treated as registered vendors and may be considered for issue of Limited Tender Enquiry. The registering agency should include all foreign vendors registered with different departments of MOD. However, specific needs of the departments/wings are to be kept in mind and complied with.

- 9.4.2 **Selection of vendor:** A careful selection of the authorized and registered vendors is to be made for the range of spares listed in the Schedule of Requirement by the Procuring Agency for the purpose of issuing the RFP. Widening of the foreign vendor base is a multi-disciplinary and techno-commercial exercise. Registration of foreign OEMs and their authorized vendors / stockists should be undertaken as per laid down guidelines with the help of our Defence Attaché and Commercial Counselors in our Embassies / High Commissions abroad.

## **9.5 Mode of Tendering**

- 9.5.1 The mode of tendering should 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 procurements, one of the following methods of inviting tenders can be adopted.

- (a) Global tenders Enquiry
- (b) Limited tenders Enquiry
- (c) Single tender Enquiry without Proprietary Article Certificate (PAC)
- (d) PAC Enquiry

- 9.5.2 **Global Tender Enquiry:** Global tendering, which is essentially the same as Advertised/Open tendering, is to be resorted 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 should be sent to respective Indian Embassies and High Commissions to seek offers through their liaison. The RFP should also be posted on the Defence web site and that of the organization so that it could be downloaded by the prospective bidders for participating in the tender process. In cases of procurement of highly sensitive nature, which has national security implications, the tender documents are not to be posted on the web site. In such cases, specific reasons for not putting the RFP on the web site should be recorded while seeking CFA's approval for the procurement proposal.

- 9.5.3 **Limited Tender Enquiry:** In all cases of foreign procurement, where the indenter has not furnished a PAC, Limited Tender Enquiry (LTE) should be the preferred mode of tendering as procurement is to be done from OEMs 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.

9.5.4 **Single Tender Enquiry without PAC**: Single Tender Enquiry without PAC may be adopted in the following circumstances:

- (a) Where different makes of any equipment are in use but it is preferred to procure only one specific make because of emergency/urgency of requirement,
- (b) For undertaking trials,
- (c) When there is only one known/established source, but the PAC status has not been approved by the CFA or
- (d) When there are operational or technical reasons for doing so, which should, however, be recorded.

9.5.5 **Certification by the Indentor**: The indentor should certify that only the particular make mentioned in the indent should preferably be procured, giving detailed justification for the same.

9.5.6 **PAC Tendering**: This mode of tendering may be resorted to when the items to be procured are proprietary items of a particular firm or for reasons of standardization of machinery/spare parts so that these are compatible with the existing sets of equipment. STE with PAC for reasons of standardization should be resorted to on the advice of the competent technical experts. A Proprietary Article Certificate will be accorded by the competent authority as per the delegation of powers, establishing the monopoly of the product of a single manufacturer.

9.5.7 **Single and Two Bid System**: The circumstances in which single bid system or two bid system should be followed are explained in paragraph 4.6 of this Manual.

## **9.6 (New) Processing of procurement proposals and CFA's approval**

9.6.1 **Processing of proposals**: The manner of processing of proposals for procurement of goods and services from foreign sources and the procedure for obtaining CFA's approval are the same as mentioned in Chapter 5 of this Manual. Special attention, however, needs to be paid to preparation of Request for Proposal (RFP) as mentioned in the following paragraph.

## **9.7 Request for Proposals (RFP)**

9.7.1 **RFP format:** The RFP is a very important document and should be a true and complete reflection of the indent. A standard format of RFP is given in Appendix 'C'. The goods/services required, bidding procedures and contract terms are prescribed in the RFP. Special attention should be paid to the following aspects while preparing the RFP, keeping in view the provisions of paragraphs 9.7.2 to 9.7.29 of this Manual:

- (a) Description of the required goods and services (Paragraph 9.7.2)
- (b) Date and time of opening of the tenders (Paragraph 9.7.3)
- (c) Desired period of validity of offers (Paragraph 9.7.4)
- (d) Technical specifications (Paragraph 9.7.5)
- (e) Inspection clauses (Paragraph 9.7.6)
- (f) Special Conditions of Contract (Paragraph 9.7.7)
- (g) Quality assurance requirements (Paragraph 9.7.8)
- (h) Source of supply in case of vendors/stockists (Paragraph 9.7.9)
- (i) Mode and terms of delivery (Paragraph 9.7.10)
- (j) Delivery Schedule (Paragraph 9.7.11)
- (k) Mode of payment and the paying authority (Paragraph 9.7.12)
- (l) Terms of payment and paying authority (Paragraph 9.7.13)
- (m) Evaluation parameters (Paragraph 9.7.14)
- (n) Performance bank guarantee, if applicable (Paragraph 9.7.15)
- (o) Arbitration Clause (Paragraph 9.7.16)
- (p) Liquidated damages clause (Paragraph 9.7.17)
- (q) Advance payments (Paragraph 9.7.18)
- (r) Installation, commissioning and AMC, if applicable (Paragraph 9.7.19)
- (s) Life time product support for spares, maintenance advice, defect investigation and information on product upgrade (Paragraph 9.7.20)
- (t) Repeat Order and Option Clause (Paragraphs 9.7.21 to 9.7.23)
- (u) Risk and Expense Clause (Paragraph 9.7.24)
- (v) Apportionment of Quantity (Paragraph 9.7.25)

- (w) Acceptance of excess or short deliveries (Paragraph 9.7.26)
  - (x) Force Majeure (Paragraph 9.7.27)
  - (y) Claims (Paragraph 9.7.28)
  - (z) Applicability of Laws (Paragraph 9.7.29)
- 9.7.2 **Details of Goods and Services:** It is of paramount importance that the details of the required goods and services are mentioned in the RFP in a manner which does not lend itself to varying interpretations by the prospective bidders in different countries. The description should be clear and precise.
- 9.7.3 **Deadline for Submission of Quotations:** Reasonable time should be allowed to the vendors to respond to the RFP and submit their bids. Normally, six to twelve weeks should be allowed to foreign vendors for submission of offers. In case of urgent procurements, this may be reduced to four weeks or even less.
- 9.7.4 **Period of Validity of Offers:** The validity period of the quotations mentioned in the RFP should be realistic. The period should be fixed keeping in view the nature and quantity of goods and services and the time anticipated in completing the post tender formalities. In case of foreign procurement, normally a period of ninety to one hundred and eighty days may be prescribed, as considered appropriate.
- 9.7.5 **Technical Specifications:** All verifiable technical parameters in terms of size, weight, performance, operating environment, power, utility life, storage and shelf life, etc., both in terms of 'essential' and 'desirable' levels, as applicable to the equipment being procured should be listed clearly and unambiguously.
- 9.7.6 **Inspection Clauses:** The RFP should clearly provide for Pre-Dispatch Inspection (PDI) and/or Joint Receipt Inspection (JRI), as required. In the case of Pre-Dispatch Inspection, to the extent possible, the RFP should mention the broad scope of such inspection, the likely number of such inspections, the composition of the team and duration of inspections.
- 9.7.7 **Special Conditions:** Any special conditions of contract which are applicable to the specific procurement or essential to the performance of a particular contract for justifiable reasons and/or are likely to have a financial bearing on the vendors' bids should be mentioned clearly in the RFP, e.g., any special payment terms, need for lifetime product support, etc.
- 9.7.8 **Quality Assurance:** The goods supplied under the contract should conform to the standards, which should be clearly mentioned as a part of the technical specifications in the RFP. The latest authoritative standards,

issued by the concerned institution, applicable in the country of origin, to the goods to be procured could also be considered as acceptable standards and, if so decided, it should be mentioned in the RFP. In such situations, the RFP should also state that the details of such standards would be submitted by the prospective bidder while submitting his bid. All the items should be supplied and accepted along with OEM certification only. The quality assurance requirements should be specified both in terms of testing norms and methodology.

9.7.9 **Source of Supply in Case of Vendors/Stockists:** In case the bidder is not the OEM, it would be necessary for the bidder to furnish the agreement certificate with the OEM from whom the spares are to be sourced by the bidder. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.

9.7.10 **Mode and Terms of Delivery and Transportation:** The mode of delivery could be either on CIF, CIP or FOB basis but it should be decided before floating the RFP and clearly indicated therein. The mode of transportation should also be invariably indicated.

9.7.11 **Delivery Schedule:** The prescribed delivery schedule should be firm and not open-ended. Normally the delivery schedule should be fixed in such a manner that it is completed within ninety to one hundred and eighty days of the signing of contract, unless the circumstances warrant a longer delivery schedule. A staggered delivery schedule may be laid down, if necessary. It should be clearly mentioned in the RFP that the delivery schedule shall be counted from the date of signing of *the* contract by both the parties and include a reasonable time (which should also be specified) for the supplier to affect the supplies and then claim the payment. The date of delivery of the goods will be the date of Freight Forwarder's receipt, Master AWB or Bill of Lading as applicable. As per the mode of payment, the normal delivery schedule for spares procurement should be indicated in the RFP as follows:

(a) **L/C Payments:** Six months from the date of signing of contract which will include:

(i) Obtaining export license and giving notification of readiness for opening of L/C by seller – 45 days.

(ii) Obtaining Foreign Exchange Release and opening of L/C through CDA by buyer – 45 days

(iii) Validity period of L/C – 90 days. The LC will be opened three months prior to the expiry of delivery period only.

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

9.7.12 **Mode of payment**: The normal mode of payment to foreign vendors is through irrevocable Letters of Credit or Direct Bank Transfer (DBT). The paying authority is the organization of the Principal Controller/Controller concerned. For contracts below USD 1,00,000.00, it should be specified in the RFP that the payment would be made through DBT. The format for Letter of Credit is given in Form DPM-12.

9.7.13 **Terms of Payment**:

(a) Where the payment is to be made through Letter of Credit, it should be opened within forty five days of receipt of notification of readiness of goods for delivery from the foreign vendor. The vendor should normally be given forty five days from the date of signing of contract for notifying such readiness. The period may be varied, as per requirement, but it should be decided while processing the proposal and indicated in the RFP. The period for notification of readiness of goods and opening of LC should be so fixed that LC is opened three months prior to the expiry of the delivery period. The period mentioned in the RFP should not be varied, particularly in Global Tender Enquiry and Limited Tender Enquiry cases.

(b) It should also be mentioned in the RFP that the LC would be valid for ninety days from the date of its opening, on extendable basis by mutual consent of both the buyer and the seller, unless it is a revolving LC. The period may also be varied, as per requirement, but it should be decided while processing the proposal and indicated in the RFP. All expenses related to Letters of Credit outside India should be borne by the foreign vendor.

(c) In case of extension of delivery period, both LC and delivery period should be extended and the LC charges borne by the supplier.

(d) Payment through Direct Bank Transfer (DBT) would be mandatory for all payments below USD one hundred thousand and such payments should be made within thirty days of receipt of clear payment documents or as specified in the contract.,

9.7.14 **Evaluation parameters**: Evaluation parameters should be clearly defined in the RFP. Wherever required, a detailed technical evaluation matrix should be enclosed with the RFP. [In a two-bid system, separate evaluation criteria should be laid down for technical evaluation and commercial-cum-price negotiation and only those offers should be evaluated which are found to be in compliance with the technical evaluation parameters as defined in the RFP. Technical evaluation should

be carried out by a Technical Evaluation Committee and approved by the competent authority. TEC procedure will be the same as laid down in Chapter 4 of this Manual.

- 9.7.15 **Performance Bank Guarantee (PBG):** Whenever considered appropriate in foreign procurement cases, especially of high value with long gestation period, performance security deposit in the form of bank guarantee should be taken from the supplier. The bank guarantee is to be issued in the prescribed format by an Indian Public Sector Bank or a Private Sector bank authorized to conduct government business or a First Class International bank of repute located abroad, acceptable to the purchaser within thirty days from the date of the signing of the contract. Guidelines on confirmation of Bank Guarantees of Foreign banks by Indian banks is given in Form DPM-14. This deposit is meant to compensate the purchaser for any loss suffered due to failure of the supplier to complete his obligation as per the contract. The PBG amount should preferably be five percent of the value of the contract, if there is a Risk Purchase clause in the Contract. However, where Risk and Expense Purchase is unenforceable because of single vendor situation and remote possibility of recovering from an alternative source, the PBG should be for ten per cent to act as a financial cover in the event of failure of the firm to perform/recession. [Provisions of Chapter 12 may also be referred to in respect of PBG.
- 9.7.16 **Arbitration:** There should be an Arbitration clause in the RFP. The provisions of Chapter 10 may be referred to in this regard.
- 9.7.17 **Liquidated Damages:** Provision should also be made in the RFP for payment of Liquidated Damages by the foreign supplier. The provisions of Chapter 10 may be referred to in this regard.
- 9.7.18 **Advance Payments:** Normally no advance should be offered in the RFP. However, if it is decided to provide advance payment, the percentage should be mentioned upfront in the RFP. As regards the quantum of advance and the bank guarantee to secure it, relevant provisions of Chapter 7 of this Manual may be referred to.
- 9.7.19 **Installation, Commissioning and AMC:** If the equipment/spare parts are required to be installed and/or commissioned, and training imparted relevant information in this regard should be provided in the RFP and concomitant modifications made in other clauses of the RFP. In case Annual/Composite Maintenance Contract is required, the period for which such contract is required and the scope of services expected of the vendor should be clearly spelt out.

- 9.7.20 **Life Time Product Support:** If there is a requirement for life time product support for spares, maintenance advice, defect investigation and information on product upgrade, etc., it should also be mentioned in the RFP.
- 9.7.21 **Repeat Order and Option Clauses:** As in the case of indigenous procurement, in the case of procurement from foreign sources also, provision for repeat order and option clauses should not be made as a matter of course in the RFP as these have a price implication. Either or both these clauses may be provided in the RFP only in exceptional circumstances, where the consumption pattern is not predictable with the stipulation that while exercising one or both these clauses, the overall ceiling of fifty percent of the originally contracted quantity will not be exceeded. The provisions of paragraph 7.13 of this Manual will be applicable in the case of foreign procurements also.
- 9.7.22 **Conditions Governing Repeat Order:** Repeat order against a previous order may be considered for approval by the CFA subject to the following conditions:
- (a) Items ordered against the previous order had been delivered successfully.
  - (b) Original order had not been placed to cover urgent/ emergent demand.
  - (c) There is no downward trend in the price of the item. A clear certificate should be recorded to that effect.
  - (d) The requirement is for stores of identical nature/specifications, nomenclature etc. Minor improvements in spec(s) or phasing out of products due to obsolescence may not be precluded from the purview of repeat order.
  - (e) The repeat order is placed within six months from the date of completion of the supply against the original order.
  - (f) The repeat order quantity is restricted to a maximum of fifty percent of last order quantity, where the contract does not also include the option clause. In case of small orders (quantity 1-7) the repeat order quantity may be rounded off to the next whole number.
  - (g) The original order was placed on the basis of lowest price negotiated and accepted by the CNC, and was not on delivery or any other preference.

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

(j) Where the contract also includes option clause, repeat order may be placed only for such quantity, which along with the quantity for which option clause may have already been exercised, does not result in the total quantity under option clause and the repeat order exceeding fifty percent of the originally ordered quantity.

(k) The CFA will be decided taking into consideration the value of the original order quantity **and** the option cause/repeat order quantity.

9.7.23 **Conditions Governing Option Clause:** Against an outstanding indent for which acceptance of necessity has been approved by CFA, it may be advantageous to the purchaser to have an option clause in the main contract if agreed to by the supplier that will allow exercising of option clause up to fifty per cent of original contracted quantity in accordance with the terms and conditions of contract. This option clause may be exercised on approval of the CFA, within whose powers total value of original supplies plus value of option clause falls, in consultation with IFA where applicable, during currency of the contract. It should be ensured that there is no downward trend in the market prices. No fruitful result will accrue by floating fresh RFP when items are urgently required. This clause may be exercised in single vendor OEM cases also. However, where multiple vendors are available, necessary care should be taken in exercising the option clause. If the contract also contains the repeat order clause, it may be kept in mind while placing order under the option clause that the total quantity under the option clause and the repeat order cannot exceed fifty percent of the originally ordered quantity.

9.7.24 **Risk & Expense Clause:** In case of foreign contracts, risk and expense clause is generally not applicable, though there could be some exceptions. If, in exceptional circumstances, it is decided to include this clause in the RFP, provisions of paragraph 7.14 of this Manual may be kept in view. In the absence of this clause, 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 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 Performance Bank Guarantee to cover such risks.
- (e) Approach the Government of the supplier's country through the Ministry of Defence if needed.
- (g) Consider deregistering the firm from the approved list of firms, if necessary.

9.7.25 **Apportionment of Quantity**: Provisions of paragraph 7.15 of this Manual will be applicable in the case of foreign procurement also.

9.7.26 **Acceptance of Excess or Short Deliveries**: Provisions of paragraph 7.16 of this Manual will apply in this regard.

9.7.27 **Force Majeure**: As mentioned in paragraph 7.12 of this Manual, wherever considered necessary, this clause may be included in the RFP and the contract relating to foreign procurements also as per the format given in Part-IV of Appendix C.

9.7.28 **Claims**: It should be clearly mentioned in the RFP that the purchaser shall promptly notify the supplier in writing of any claims arising under the warranty. The time period generally acceptable for notifying the claim, which may be indicated in the RFP, is as follows:

(a) **For quantitative discrepancy** - Within ninety days from the date of delivery of the consignment in case of delivery by Air or road and within one hundred and twenty days from date of delivery in case of delivery by Sea.

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

(c) **For quality claims on account of defects or deficiencies**: The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within forty five days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than forty five days after expiry of the guarantee period. The quantity and quality claims should be submitted to the seller in the prescribed format given in Forms DPM-22 and DPM-23 respectively.

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

## **9.8 Processing of Proposal after CFA's approval**

9.8.1 **Issue of Request for Proposal (RFP):** The decision regarding mode of tendering to be adopted in a particular case is required to be taken while seeking CFA's approval. The guidelines given in Chapter 4 of this Manual regarding publicity and dispatch of RFPs should be followed in foreign procurement cases also. As per those guidelines, the RFPs to foreign vendors can be sent by registered post. In addition, these may be sent by fax or e-mail also, which should, however, be followed by a copy by registered post. RFPs will not be given to Indian agents of foreign firms. However, if any foreign firm has its branch office in India, RFPs can be given to it. Meticulous records of mode of issue/dispatch of RFPs should be maintained.

9.8.2 **Extension of Tender Opening Date, Clarification/ Amendment of Tender Documents and Modification/Withdrawal of Bids:** The relevant provisions of Chapter 4 should be followed in this regard.

9.8.3 **Resultant Single Vendor Situation** – Provisions contained in para 4.15 of Chapter 4 will be applicable in the case of foreign procurements also.

9.8.4 **Comparative Statement of Tenders** - On receipt of all accepted tenders, the purchase cell should collate them in the form of a Comparative Statement of Tenders (CST). The CST should be exhaustive and must include all details given in the quotations. Deviation from the tender documents is to be brought out in the CST. Last Purchase Price (LPP), wherever available, should be indicated for a fair comparison of the offered prices. CST should be vetted by the IFA with reference to original quotations, indents and other supporting documents, where financial powers are to be exercised with the concurrence of integrated finance. The purchase officer should sign the CST.

9.8.5 **Exchange Rate:** Exchange Rate applicable for various currencies prevailing on the date of opening of commercial bid as indicated in the RFP for two bid cases and date of bid opening for single bids will be taken into account for working out the prices in Rupee Terms for comparison.

## **9.9 Commercial Negotiations and Conclusion of Contract/Supply Order**

- 9.9.1 **Commercial Negotiations:** The procedure laid down in Chapter 5 of this Manual for constitution of the CNC, commercial negotiations, determining price reasonableness and recording of minutes of CNC would be followed for foreign procurement also.
- 9.9.2 **Obtaining best offer through Fax:** In case of foreign firms, which do not have their regional offices in India, it may not be possible for their representatives to come for CNC meetings except for high value items. In such cases, CNC/CFA may obtain the best revised offer with all terms clarified from the lowest bidder through fax before finalizing the price.
- 9.9.3 **Action by the CNC:** CNC recommendation is to be clear and unambiguous. A counter offer may be made to the L<sub>1</sub> 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 CFA for conducting negotiations. The minutes of all CNC meetings should be meticulously maintained and signed by all members.
- 9.9.4 **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 the increased amount is within his delegated powers and after recording reasons for doing so. Whenever the increased amount exceeds the financial powers of the CFA, approval of next higher CFA, within whose delegated powers the case falls, should be taken.
- 9.9.5 **Acceptance of an offer other than L<sub>1</sub>:** In no case, an offer other than the lowest would be accepted.
- 9.9.6 **Determination of L<sub>1</sub> on Entire Package:** In case an RFP contains a large number of items of spares and it is indicated in the RFP that L<sub>1</sub> will be decided based on the package price, the L<sub>1</sub> offer should be determined on the basis of the cash outflow for the entire package. After determining L<sub>1</sub> in this manner, negotiations should be held with that firm in respect of items for which rates quoted by the firm are higher than those quoted by other vendors. In such cases, negotiation with L<sub>1</sub> vendor would have to be done with reference to the lowest bid for that item (items). In case the L<sub>1</sub> vendor does not reduce his price reasonably for high value item(s), possibility of concluding a fresh contract by issuing a separate RFP for such item(s) may be considered keeping in view the operational requirements.

- 9.9.7 **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 policies and procedure have been followed at various stages of procurement for determining L<sub>1</sub> firm. The financial implication should be considered as the all-inclusive cost to the user on delivery to the designated consignee. Purchase decisions should be taken through a formal written order.
- 9.9.8 **Signing of the Contract/Placement of Supply Order:** The draft contract, duly vetted by the IFA, where required as per delegation of financial powers, should be put up for CFA's approval before concluding the contract with the vendor. The contract/supply order should be signed by an officer authorized to do so. The contract /supply order should be signed on each page by the authorized representative of the vendor and duly acknowledged as accepted.
- 9.9.9 **Amendment to Contract:** All amendments to contracts, which have financial implications, including short closing and delivery period extensions with or without imposition of liquidated damages, should be invariably approved by the CFA, and also in consultation with the IFA, wherever the original contract was concluded with the concurrence of integrated finance. Amendments affecting delivery period should not be made as a matter of routine. All cases for extension of delivery period should be processed with imposition of liquidated damages and other penalties as per the contract, except for the cases where the contract provides for waiving off of the liquidated damages on account of justified reasons.
- 9.9.10 **Re-tendering:** Re-tendering may be recommended by the CNC with caution and approved by the CFA with the concurrence of the IFA, wherever applicable, under the circumstances mentioned in paragraph 4.16.1 of this Manual.
- 9.9.11 **Standard Conditions of Contract - Foreign Procurement:** The Standard conditions of contract will apply to all contracts made/supply orders placed as per the procedure laid down in this Manual, except to the extent that any clause thereof has been modified in any particular contract/supply order. The details of the standard conditions of contract are covered in Chapter 10. The specimen format of the RFP given in Appendix 'C' includes these standard conditions of contract. A few aspects of these standard conditions, which require special attention, are explained in paragraph 9.7 of this Chapter for better understanding.

## **9.10 PAC Tendering**

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

9.10.2 **Procurements governed by General Contracts:** In case of procurements under long term General/Umbrella contracts/Main agreements between the Government of India and the Government of the country concerned, provisions of the such contracts/agreements will prevail in respect of the format of the RFP, quotations, general terms and conditions, time of submission of quotations, LD Clause, etc. However, provisions of this Manual shall apply in respect of those aspects that are not covered by such contracts/agreements.

[Note: The authorities concerned should review such existing contracts/agreements and consider the possibility of amending them to bring them in conformity with the provisions of this Manual to the extent feasible.]

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

## **9.11 INCO Terms**

9.11.1 **INCO TERMS:** Since 1936 INCO terms are used in International Documentary Credits in respect of mode/style of delivery of goods, which have been recognized as practical, cost saving tools, used worldwide for smooth international trading practice. The RFP should indicate the

applicable INCO terms for delivery of goods and incorporate them in the contract to avoid disputes at a later date. The INCO terms are described in Form DPM-6.

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## **CHAPTER 10**

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

#### **10.1 Introduction**

10.1.1 **Standard Conditions of Contract (SCoC)**: In order to facilitate a clear understanding of the conditions of contract, a set of standard conditions, generally applicable to all contracts, is formulated and made available to all firms dealing with the department. The Standard Conditions of Contract (SCoC) are made available to the firm at the time of registration itself. It is desirable that the SCoC are publicized on the Defence web site also. The clauses pertaining to SCoC are given in Part-III of Appendix C. The Tender Enquiry should invariably make a reference to the applicability of SCoC and bidders are expected to conform to the SCoC. The contract must stipulate that the SCoC are applicable in addition to any special conditions specific to the contract, which might have been mutually agreed to between the parties. The terms and conditions that need special attention have been explained in Chapter 9 of this Manual. The provisions of this Chapter are supplementary to the provisions of Chapter 9 of this Manual.

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

10.1.3 **Commencement and validity of the contract**: A contract commences from the 'effective date' of the contract, which normally is the date on which the contract is signed, unless specified otherwise in the contract. A contract is valid from the date of its signing or as specified in the contract, till the fulfillment of all obligations under the contract by both the parties. Provisions of paragraph 7.3.1 of this Manual will be applicable in the context of foreign procurement cases also.

#### **10.2 Prices**

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

### **10.3 Terms of Payment**

10.3.1 **Letters of Credit and Direct Bank Transfer:** The payment should be arranged by way of Letter of Credit (LC)/ Direct Bank Transfer (DBT) through any Bank authorized by the Ministry of Defence to the bankers of the foreign supplier. The provisions of paragraph 9.7.13 of this Manual may be kept in view as regards opening of the Letters of Credit. DBT payment should be made within thirty days of receipt of clean Bill of Lading/AWB/Proof of shipment and such other documents as are provided for in the contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the contract. No advance payments should be made, unless specified in the RFP. If so specified in the RFP and the contract, advance payment, not exceeding fifteen percent of the total value of the contract, may be made against appropriate Bank Guarantee as per the terms of the contract. Payment against a contract, the value of which does not exceed USD one hundred thousand should be made by Direct Bank Transfer.

10.3.2 **Intimation regarding readiness of goods for dispatch:** The Seller will be required to notify the Buyer within a specified period about the readiness of goods for dispatch. Provisions of paragraph 9.7.13 may be kept in view in this regard.

### **10.4 Terms of Delivery**

10.4.1 **Standard Terms of Delivery:** Paragraph 9.7.10 of this Manual provides for the mode of transportation, which should be decided keeping in view that timely delivery is the essence of the contract. Standard terms governing delivery of goods are as follows:

(a) Delivery of Goods shall be effected within specified days from the date of signing of the contract.

(b) The date of delivery shall be the date of clean-on-board\_bill of lading/Air Way Bill.

(c) Where inspection by the Purchaser prior to delivery is provided for, no stores will be considered ready for delivery until the Purchaser or his authorized representative certifies in writing that the stores have been inspected and approved by him.

(d) Each contract will clearly specify the date of delivery/ date on which the items will be ready for inspection. The prescribed delivery schedule should be firm and not open-ended.

(e) The stores will be shipped by sea/air as specified in the contract, all costs of packing, internal transportation, fees of forwarding agents,

warehousing charges, port trust, dock and harbour dues and all other expenses, as may be incurred for the purpose and upto the point of delivery of the stores on board the nominated ship/air craft, shall be paid by the seller.

(f) The contract or any part thereof, if delivered in more than one installment, shall be deemed to be complete, and the contract price for the delivered goods would become payable to the seller, only when all terms and conditions relevant to that delivery as per the provisions of the contracts have been completed.

(g) The Goods are considered as delivered by the Sellers and accepted by the Buyer when they conform to the following:

(i) **In respect of quantity** – according to the number of packages in sound external condition and the weight shown in the shipping documents.

(ii) **In respect of quality** – according to the quality stated in logbooks/passports.

## **10.5 Inspection**

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

10.5.2 **Inspection by the Buyer**: However, where the contract specifies actual inspection by the Buyer, the Seller will arrange for the inspection, in consultation with the Buyer. Subject to the provisions of paragraph 9.7.6 of this Manual, the following guidelines will apply where inspection is required to be carried out:

(a) The stores shall be inspected in accordance with the provisions of the contract.

(b) Where inspection by the inspector is specified, the seller will give him sufficient advance notice of the date in writing on which the goods will be ready for inspection. The seller will also provide the inspector all the necessary facilities including appliances, tools, material and labour at no extra cost, to carry out the specified inspection. When independent tests and analyses, in addition to those made by the inspector on the seller's or sub-seller's premises, are considered necessary, the seller shall provide

testing at Seller's expense and deliver, free of charge, at such place as the purchaser may direct, such materials as he may require for tests or analysis.

(c) If any of the products whether finished or in the course of production, are rejected by the inspector, they shall be marked and segregated in such a distinctive manner, to the satisfaction of the inspector, so as to ensure that they are identified as rejected products.

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

(e) The Seller shall at his own expenses and within the period of delivery, as specified in the contract, replace or make good, to the satisfaction of the inspector, any articles rejected on inspection.

(f) The decision of the inspector regarding mode, method, rejection or acceptance of the specified items/ entire batch/ lot will be final.

(h) The Buyer reserves the right to inspect the stores on arrival in India and discrepancy or defects found shall be reported to the Seller within fifteen months. The seller shall rectify the same within ninety days of receiving the intimation.

## **10.6 Packaging and Despatch**

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

(a) The Seller shall be responsible for any loss or damage or expenses incurred by the Purchaser because of inappropriate packages.

(b) Packages containing articles classified as hazardous should be packed and marked in accordance with the requirements of the appropriate regulations governing their despatch by sea or air.

(c) The Seller shall also comply with the detailed packaging and despatch instructions, if specified in the contract.

(d) The responsibility of sending despatch documents will rest with the Seller. Detailed shipping instructions issued from time to time by the Buyer will apply.

## **10.7 Warranty and Claims**

- 10.7.1 **Warranty and Claims**: All stores to be supplied should be free from all defects and faults in material workmanship and manufacture. They should be of the 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 of the ultimate consignee in India not finding the stores in accordance with the order, the Seller will be required to replace them free of cost inclusive of all freight and handling charges. Such replacement will be done within ninety days of the claim report raised by the purchaser. These standard conditions will also apply in respect of replaced stores. This warranty shall remain valid for eighteen months after delivery or twelve months after their arrival at the ultimate destination in India, whichever is earlier, or as specified in the contract.
- 10.7.2 **Warranty for use and storage in Indian conditions**: The Warranty shall be applicable for use and storage of stores in Indian Climatic Conditions.
- 10.7.3 **Technical Life**: Technical life of the unit to be delivered for replacement will not be less than the remaining technical life of the faulty/defective/deficient unit being replaced, or the actual life of such a unit as specified in the contract, whichever is more.
- 10.7.4 **Time-frame for raising the claim**: The time frame for raising the claims for quantitative and qualitative claims, as well as quality claims on account of defects and deficiencies is given in paragraph 9.7.28 of this Manual.

## **10.8 Liquidated Damages**

- 10.8.1 **Liquidated Damages**: 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 a maximum of 10% of the contract price of the undelivered goods. But if the delay is on account of any cause, which the Seller promptly notifies to the Buyer and the Buyer admits as a reasonable ground for extending the time for delivery, no liquidated damages will be leviable during the additional time thus agreed to by the Buyer. In this context, provisions of paragraph 7.10 of this Manual may also be referred to.

## **10.9 Force Majeure**

- 10.9.1 **Force Majeure**: Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earthquake and other acts of God, as well as War, Military operations, blockade, Acts or Actions of State Authorities or any other circumstances beyond the control of the parties that might arise after the conclusion of the contract.
- 10.9.2 **Intimation regarding Force Majeure**: The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than ten days from the moment of their beginning.
- 10.9.3 **Certification of Force Majeure**: Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances.
- 10.9.4 **Extension of Time**: In such circumstances, the time stipulated for the performance of an obligation under the contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
- 10.9.5 **Right to terminate contract**: If the impossibility of complete or partial performance of an obligation lasts for more than six months, either party to the contract reserves the right to terminate the contract totally or partially upon giving prior written notice of thirty days to the other party of the intention to terminate without any liability, other than reimbursement on the terms provided in the agreement/contract for the goods received.
- 10.9.6 **Standard format of the clause**: The standard format of the clause to be included in the RFP and the contract is given in Part-III of Appendix C.

## **10.10 Termination Of Contract**

- 10.10.1 **Termination of Contract**: The Buyer, 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 Buyer.

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

(c) If the Supplier becomes bankrupt or otherwise insolvent.

(d) If the Supplier, in the judgment of the Buyer, 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 misrepresentation of facts in order to influence the procurement process or the execution of a contract to the detriment of the Buyer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Buyer of the benefits of free and open competition.

### **10.11 Arbitration**

10.11.1 **Arbitration**: As mentioned in paragraph 7.11.1 of this Manual, parties to a contract may opt for arbitration if any dispute arising between them does not get resolved through mutual discussion. The standard format of the Arbitration clause to be included in the RFP and the contract is given in Form DPM-8. It may be noted that there is a slight difference in the formats to be used for indigenous and foreign contracts.

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

10.12.1 **Undertaking by the Seller**: The Seller would be required to sign an undertaking to refrain from use of undue influence. Breach of the undertaking would attract penal action. The standard text of the undertaking is given in Part III of the draft RFP given in Appendix C.

### **10.13 Access to Books of Accounts**

10.13.1 **Access to documents/information**: If it is found, to the satisfaction of the Buyer, that the Seller has engaged an agent or paid commission or influenced any person to obtain the contract as described above, the Seller on a specific request of the Buyer will be required to provide necessary information and inspection of the relevant documents/information.

10.13.2 **Integrity Pact**: This is to be signed by the Buyer and Seller for purchases exceeding Rupees one hundred crores as per the format given in Form DPM-10.

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

10.14.1 **Quoted prices to be inclusive of charges on account of copy right etc.**: The prices stated in the contract shall be deemed to include all amounts payable for the use of patents, copy right, registration charges, trade marks and any other industrial property rights.

10.14.2 **Indemnity**: The Seller shall indemnify the Buyer against all claims, including claim by any third party at any time on account of the infringement of any or all the rights mentioned in the previous subparagraph, whether such claims arise in respect of manufacture or use. It shall be the responsibility of the Seller to complete the supplies irrespective of the fact of infringement of any such rights.

#### **10.15 Government Regulations**

10.15.1 **Export licenses**: The Seller shall be responsible for obtaining and maintaining export licenses and permits, as also for complying with all the laws, orders, regulations or other instructions issued by the Government in the country of the manufacturer/supplier.

10.15.2 **Passing on of the obligation to a third party**: The Seller shall not give, bargain, sell, assign or sublet or otherwise dispose of the contract or any part thereof, or the benefit or advantage of the contract or any part thereof, to any third party.

#### **10.16 Customs Duty Drawback**

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

#### **10.17 Nondisclosure Of Contractual Documents-Information**

10.17.1 **Nondisclosure of specifications etc.**: Except with the written consent of the Buyer, the Seller shall not disclose the contract or any provision, specification, plan, drawing, pattern, sample or information thereof, to any person, other than a person employed by the seller for executing the contract.

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

10.17.3 **Nondisclosure of information given by the Buyer**: Except with the written consent of the Buyer, the Seller shall not make use of any information supplied by the Buyer for purposes of the Seller or any specifications or other details mentioned in above clause otherwise than for the purpose of manufacturing the articles and the Seller shall not use any such information to make any similar article or part thereof for any other purpose.

### **10.18 Training**

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

### **10.19 Law**

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

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## CHAPTER 11

### REPAIR CONTRACTS WITH FOREIGN AND INDIGENOUS FIRMS

#### 11.1 Introduction

- 11.1.1 **Peculiarity of Repair Contracts With Foreign/Indigenous Firms:** The contracts for repair of equipment by foreign/indigenous firms are generally formulated and processed in the same manner as the contracts for procurement of stores from foreign/indigenous sources. However, in some respects, repair contracts are different from procurement contracts as they have some unique features related to their processing, as also the terms and conditions of contracts, as set out in this chapter.
- 11.1.2 **Applicability of this Chapter to Repair Contracts With Indian Firms:** The provisions of this chapter would also apply to repair contracts with indigenous firms.
- 11.1.3 **Terms used in this Chapter:** The term “Customer” used in this Chapter shall mean the President of India acting through the officer signing the contract and the term “Contractor” would mean the firm undertaking the repair as per the contract.

#### 11.2 Unique features related to processing of repair contracts

- 11.2.1 **Preparation of Indents:** The repair indent, to be sent by the Indentor to the Procuring Agency, should clearly specify the type of equipment, Quantity, type of repairs, history of previous major repair, name of the manufacturer, Total Technical Life (TTL), assessed cost of the repair, etc.,. The amount should preferably be assessed or, if such assessment is not feasible, obtained through a non-obligatory budgetary quote from all the possible sources, including the OEM.
- 11.2.2 **Selection of Vender:** The repair should be carried out by the original equipment manufacturer only. In case the original equipment manufacturer expresses inability to undertake the repairs, any agency authorized by the OEM may be approached. In the event of the OEM expressing difficulty to undertake repairs and there being no OEM authorized agency to undertake repairs, other possible sources may be approached. The contractor has to be made accountable for the performance of the equipments. There should be suitable PBG and Warranty Guarantee provisions in the contract. In the case of Local Repair Contracts the repairs may be got done directly through trade, if considered feasible, within the delegated powers of the CFAs.

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

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

### **11.3 Terms and Conditions Unique to Repair Contracts**

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

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

(d) The Customer shall not dispatch for repair incomplete or damaged equipment, which requires additional repair by the same Contractor and not provided for in the contract.

(e) If available, the Customer shall provide the spares for replacement along with the equipment, as per the terms of the Contract.

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

(a) If during the process of repair it is found that the equipment is incomplete, damaged or cannot be repaired in terms of the contract, the Contractor shall, if possible, install missing parts of the equipment or change parts of the equipment which cannot be repaired only in consultation with the Customer.

(b) The Customer shall pay additional cost to the Contractor for the new/changed spare parts (units, sub modules, PCBs, etc). The cost of such parts shall be mutually agreed upon by both the parties to the contract and an Additional Agreement shall be signed by the Customer within sixty days after the date of handing over of the equipment to the Contractor. If there is no possibility of installing missing parts, the Contractor shall inform the Customer about this within thirty days from determination of the technical condition of the equipment but not later than sixty days after receipt of the equipment for repair.

#### **11.4 Delivery**

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

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

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

## **11.5 Terms of Payment**

- 11.5.1 **In the Case of Contracts with Foreign Firms**: Payment for repair of the equipment should be effected by the Customer by opening irrevocable divisible Letter of Credit or by Direct Bank Transfer in favour of the Contractor for the full contracted cost of repair, or for such other amount(s) linked with clearly identifiable milestones as is agreed upon and provided for in the contract. The Letter of Credit should be opened within the period specified in the contract after the receipt of equipment by the Contractor for repair.
- 11.5.2 **In the case of Contracts with Indian firms**: Payment to indigenous firms should be made as per the terms of the contract through the paying authorities concerned.

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

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

## **11.7 Claims**

- 11.7.1 **Claim of the Customer**: It should be specifically provided for in the RFP and included in the contract that the Customer has the right to make claim on the Seller for:
- (a) **Quality of the Repaired Equipment** – in case of its nonconformity to the quality specified in the Customer's Quality Assurance norms for repairs/overhaul/storage of the equipment, as specified in the Contract;
  - (b) **Quantity of the Repaired Equipment** – in case of nonconformity of quantity to those specified in the packing list (shortage inside packing) on condition that the repaired equipment arrived at the place of destination in undamaged packing or in case

the responsibility of the Carrier has not been specified/provided in this regard.

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

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

## **11.8 Guarantees**

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

(a) Technical life period of the repaired equipment shall be stated in passports, logbooks and other technical documents submitted by the Contractor to the Customer.

(b) All the breakdowns and deficiencies which may occur within the warranty period without a fault of the Customer shall be set right within ninety days, all the expenses being paid by the Contractor.

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

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## **CHAPTER 12**

### **BANKING INSTRUMENTS**

#### **12.1 General**

12.1.1 **Import Regulation:** Import is regulated by the Directorate General of Foreign Trade (DGFT) under Ministry of Commerce and Industry, Department of Commerce, Government of India. Authorized dealers, while undertaking import transactions, should ensure that the imports into India are in conformity with the Foreign Trade Policy in force (as decided and framed by DGFT) and Foreign Exchange Management (Current Account Transactions) Rules, 2000 framed by Government of India vide Notification No G.S.R. 381(E) dated 03 May 2000 and the directions issued by Reserve Bank of India under Foreign Exchange Management Act from time to time.

12.1.2 **Uniform Customs and Practices for Documentary Credits:** 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.

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

12.2.1 A letter of credit is a written understanding given by the buyer's bank (the issuing bank) on behalf of and at the request of its customer (the applicant) routed through the agency of a bank in the seller's country (advising bank) to the seller that it (issuing bank) guarantees to pay the seller for the goods within a specified time provided that the conditions laid down in documentary credit are fully satisfied. While an LC can be established in any of the 27 Public Sector banks besides SBI, it has been decided after careful consideration that for the present LCs may be opened only through the State Bank of India, Bank of Baroda and Canara Bank. The format for LC is given in Form DPM-12.

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

- (a) A Seller would want:
  - (i) To be paid as soon as he ships the goods.

- (ii) An assurance that he will be paid by the buyer or his bank as per contractual obligations.
  - (iii) Convenience of receiving payments in his own country.
- (b) A Buyer would want:
- (i) To pay for the goods only after they are shipped by the seller.
  - (ii) An assurance that the seller will ship the goods ordered for and deliver them in time.

### **12.3 Forms of Letter of Credit**

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

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

12.3.2 **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, the notice of amendment or cancellation is effective only upon receipt of such notice by the advising bank. If the advising 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 receiving notice of amendment/cancellation, the issuing Bank is bound to reimburse the advising bank. If the letter of credit is silent as to whether it is revocable or irrevocable, the credit is deemed to be irrevocable.

12.3.3 **Irrevocable Letter Of Credit:** When the issuing Bank gives a definite, absolute and irrevocable undertaking to honour its obligations, provided the beneficiary complies with all the terms and conditions, such a credit is known as an irrevocable letter of credit. It means that the letter of credit cannot be amended, cancelled or revoked without the consent of the parties to the letter of credit. This gives the beneficiary a definite protection.

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

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

12.3.6 **Divisible and non-divisible LCs**: The above mentioned Letters of Credit could be divisible or non-divisible. Divisible Letters of Credit could be opened when more than one beneficiary is allowed and payment has to be made as per the consignment.

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

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

(a) **Step-1**: Receipt of PBG and intimation from the Supplier\_regarding readiness of goods for dispatch by the contract concluding authority as per contractual terms from the supplier.

(b) **Step-2**: The contract concluding authority seeks FFE release from the appropriate authority.

(c) **Step-3**: On release of FFE the contract concluding authority forwards the case for opening of LC to the-Principal Controller/Controller of Defence Accounts concerned, who after proper scrutiny of all details for correctness, authorizes the bank to open the LC. The bank establishes the LC and intimates the Principal Controller/ Controller of Defence Accounts concerned and the contract concluding authority.

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

(a) The Buyer requests the issuing bank to open an LC.

(b) The Issuing Bank conveys LC through the Advising bank.

(c) The Advising bank advises the credit to the beneficiary.

(d) The Beneficiary, after complying with terms and conditions against stipulated documents, gets the value either from the Advising bank or the Nominated bank as per the terms of the LC.

(e) After passing on the value, the negotiating advising Bank claims reimbursement from the issuing Bank or nominated bank as per the terms of LC.

- (f) Ultimately, the issuing Bank recovers the amount from the applicant. It is the definite commitment of the issuing Bank to reimburse to the negotiating advising bank whether applicant provides the value of negotiation or not.

## **12.5 Essential Elements of LC**

12.5.1 The format of the Letter of Credit is given in Form DPM-12. Following essential elements are to be clearly stipulated while opening a Letter of Credit:

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

## **12.6 Documents to be provided by the Seller**

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

- (a) Clean on Board Airway Bill/Bill of Lading
- (b) Original Invoice
- (c) Packing List
- (d) Certificate of 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.
- (i) Phyto-sanitary/Fumigation Certificate, if applicable
- (j) Performance Bond/Warranty Certificate
- (k) Authenticated signature of the supplier or his authorized representative should be available with the bank and verified by them before releasing LC payment.

## **12.7 Extension of LC**

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

- (a) 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.

12.7.2 **Approvals Required**: An LC may be extended only with the prior concurrence of the IFA, where the LC was originally opened with the concurrence of integrated finance, and approval of the CFA.

## **12.8 Direct Bank Transfer**

12.8.1 **Direct Bank Transfer (DBT)**: A transferable credit is a credit under which the Beneficiary may request the bank authorized to pay, incur a deferred payment undertaking, accept or negotiate or in the case of a freely negotiable credit, the bank specifically authorized in the credit as a transferring bank to make the credit available in whole or in part to one or more than one beneficiaries. Direct Bank Transfer shows high degree of

trust between parties. Buyer ensures that the payment is released only after receipt of the documents listed in paragraph 12.6.1 and confirmation from the Supplier that one set of the documents has been sent to the port consignee immediately after dispatch of the stores.

12.8.2 **Advice to the Principal Controller/Controller:** After obtaining the above mentioned documents, the details of which should form part of the contract, the contract concluding authority advises the Principal Controller/Controller of Defence Accounts concerned to effect Direct Bank Transfer. The Principal Controller/Controller concerned, in turn, authorizes the Buyer's bank to make direct transfer of funds to the Seller's bank account.

12.8.3 **Advantages of DBT:** In comparison with payments through Letters of Credit, payment through DBT has the following advantages:

- (a) Payment is released only after receipt of goods.
- (b) Payment is made only after full satisfaction to the quality, quantity etc.
- (c) It is cost-effective as compared with LCs.

12.8.4 **DBT for Contracts below USD 1,00,000:** For contracts below USD 100,000 DBT payment terms should be insisted upon at the time of concluding the contract.

## **12.9 Delivery Schedules**

12.9.1 **Delivery of goods:** The normal schedule for delivery of goods in case of LC and DBT payment terms should be as follows:

- (a) **L/C Payments:** Six months from the date of signing of the contract which will include:
  - (i) Obtaining export license and giving notification of readiness for opening of L/C by the seller – 45 days.
  - (ii) Obtaining Foreign Exchange Release and opening of L/C through the Principal Controller/Controller by the buyer – 45 days
  - (iii) Validity period of L/C – 90 days. The LC will be opened three months prior to the expiry of the 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, the LC shall be opened for more than one quarter as per the terms of the contract.

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

### **12.10 Performance Bank Guarantee (PBG)**

12.10.1 **Definition**: PBG is a written undertaking obtained from the Supplier through his bank as a guarantee that he would perform the promise/terms and conditions of the contract and to ensure the discharge of liability of the Supplier in case of his default. The guidelines and format of performance bank guarantee are given in Forms DPM-14 and DPM-15 respectively.

12.10.2 **Essential Elements of PBG**: The essential elements of PBG are as follows:

- (a) Amount
- (b) Address of the Beneficiary, Applicant and the Bank
- (c) Validity date
- (d) Contract Number and Date

### **12.11 Guarantees**

12.11.1 The salient features of Guarantees are as follows:

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

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

- (a) The claim/intimation should reach the issuing Bank on or before the expiry date

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

**Confirmation of various types of Guarantees:**

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

- (a) **Indigenous Vendors:** Bank guarantee issued by any of the Public Sector Banks or private banks duly authorized to conduct government transactions would be accepted.
- (b) **Foreign Vendors:** Advice of the SBI should be taken 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 any Public Sector Bank or private bank duly authorized to conduct government transactions.

\* ICICI Bank Ltd., Axis Bank Ltd and HDFC Bank Ltd are at present the private sector banks authorized to conduct government transactions. IDBI Bank Ltd has been converted into a Public Sector Bank.

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## **CHAPTER 13**

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

#### **13.1 Introduction**

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

#### **13.2 Costing of Procurement Proposals**

13.2.1 **Need for costing**: The first stage at which costing needs to be done is when the proposal is initiated by the Procuring Agency. It is necessary to work out the complete cost of a procurement proposal to determine availability of funds to meet the expected cash outflow and the level at which it would need to be approved. It is, therefore, essential that the cost is assessed realistically and comprehensively. The entire, all inclusive assessed cost should be the basis for determining the CFA.

13.2.2 **Basis of costing**: The cost of a procurement proposal may be assessed on the basis of the Last Purchase Price (LPP), Professional Officers' Valuation (POV), Budgetary Quote (BQ) to be obtained from one or more prospective sellers, Market Survey (MS), or any other method as may be appropriate in the context of a particular purchase proposal. These methods are not mutually exclusive. The method of costing should be clearly recorded while seeking CFA's approval.

13.2.3 **Cost to be worked out in INR**: Wherever applicable, the assessed cost should be converted into the common denomination of Indian Rupees (INR) and shown both in terms of the foreign currency and INR while seeking CFA's approval. The exchange rate adopted should be as on the date of opening of the price bids. The conversion factor should be clearly indicated. The method of conversion is given in this Chapter.

### **13.3 Evaluation of Quote**

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

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

(a) When the competition is only among the Indian Suppliers, the F.O.R Prices at destination (Consignee's premises) should be the basis for ranking of quotations.

(b) If the competition is amongst foreign suppliers, the basis for comparison should be the landed price at the destination (designated port) only.

(c) When the competition is amongst indigenous and foreign suppliers, the basic cost (CIF) quoted by the foreign suppliers should be the basis for comparison with the basic cost offered by the indigenous suppliers, after offloading the Excise Duty (ED), Central Sales Tax/VAT and other local taxes and levies. The term 'indigenous supplier' would include Defence PSUs and the Indian Ordnance Factories (OFs).

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

- 13.3.4 **Comparative Statement of Tenders:** On receipt of all accepted tenders, the Procuring Agency should collate them in the form of a Comparative Statement of Tenders (CST). The prices quoted in foreign currencies should be converted into INR indicated in the CST. The rate of conversion of foreign currency into INR prevailing on the date of opening of the price bid may be taken into account for converting the quoted price into INR. The rate can be obtained from SBI Parliament Street, New Delhi. The CST should be exhaustive and it must include all details given in the quotations. Any deviation from the tender documents is to be brought out in the CST. LPP, wherever available, should be indicated in the CST for a fair comparison of the offered prices. The purchase officer should sign the CST and it should be vetted and countersigned by the IFA/IFA's representative with regard to original quotations, indents and other supporting documents, where financial powers are to be exercised with the concurrence of integrated finance.
- 13.3.5 **Determination of lowest acceptable offer:** What would be done on the file is the preparation of comparative statement, checking of calculations, the premises on which the comparative statement of tenders has been prepared and prima facie determination of L<sub>1</sub> offer. However, it would be the CNC only which will finally determine the lowest acceptable offer (L<sub>1</sub> vendor).
- 13.3.6 **Negotiations and benchmarking:** In multi-vendor cases, on opening of commercial offers, once L<sub>1</sub> 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 L<sub>1</sub>. The exceptional situations include procurement of proprietary items, items with limited sources of supply and items where there is suspicion of cartel formation. The justification and details of such negotiations should however be duly recorded and documented without loss of time and convincing reasons must be recorded by the authority recommending the negotiation. Negotiations through a CNC/PNC should be conducted in case of single tender situations including PAC cases. Negotiations may also have to be conducted in multi-vendor cases where the offered price is considered high with reference to the assessed reasonable price taking into account inter alia, the competition observed from the response of the trade to the inquiry. In each case the CNC/PNC should record its recommendations regarding the reasonableness of the price offered by the L<sub>1</sub> bidder and the need for negotiation or otherwise with detailed justification. Based on the recommendation of TPC/CNC/PNC, negotiation may be undertaken in consultation with the Integrated Finance and approval of the CFA. In cases where a decision is taken to go for re-tendering, but the

requirements are urgent, negotiations may be undertaken with L<sub>1</sub> bidder(s) for the supply of a bare minimum quantity in accordance with para 3 of CVC instructions dated 3<sup>rd</sup> March 2006 (not reproduced in this Manual).

13.3.7 **Bench Marking:** Before scheduled negotiation, (wherever considered necessary), it would be advisable to work out the estimated reasonable rate or the benchmark, to judge acceptability of the L<sub>1</sub> offer based on available information. The approach to be adopted for assessing reasonability in different contingencies is given below.

### **13.4 Reasonableness of Prices in Competitive Tendering**

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

(a) Evaluation of tenders is to be made on the basis of the ultimate cost to the user.

(b) As a general principle, no offer involving any uncertain or indefinite liability or any condition of unusual character should be considered.

(c) The reasonableness of the price proposed has to be established by taking into account the competition observed from the response of the trade to the enquiry, last purchase price, estimated value as given in the indent, database maintained on costs based on the past contracts entered into, market price, wherever available and changes in the indices of various raw materials, electricity, whole sale price index, and statutory changes in wages, rates etc.

(d) For procurement of spare parts, consumables and small value contracts which are supplied in the past, the price reasonableness can be determined after comparing with last purchase price and factoring in changes in price indices published by the Government sources.

(e) The reasonableness of price may also be examined by resorting to Cost Analysis in situations where there is a wide variance over the LPP, not explained by corresponding changes in indices.

(f) Effort should be made to check cost break up details as per format of cost-analysis given in Form DPM-25, to the extent possible.

### **13.5 Last Purchase Price (LPP)**

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

- (a) LPP of more than three years vintage is not a real scale for comparison. However, such LPP could be used as an input for assessing the rates by adding yearly escalation, if considered necessary. The rate of escalation may differ from case to case depending on the type of goods being procured. This escalation factor should be carefully worked out on the basis of data of past purchases of the same/similar items or as per the Pricing Policy Agreements, if any. The escalation factor should be worked out by Procuring Agencies of the Services after mutual consultation so that different escalation factors are not applied by different Procuring Agencies for the same/ similar items and in respect of the same source or should be worked out as per pricing policy where such pricing IGA is in place.
- (b) LPP should pertain to a past successfully executed order of similar magnitude and scope of supply.
- (c) Factors like basket price and bulk discount offered need to be taken into account while using LPP as a scale for comparing prices.
- (d) Price variation clause, if any, and the final cost paid by the user in respect of last purchase to which LPP pertains needs to be considered.
- (e) Factors like items supplied against LPP being of current production or ex-stock supply need to be taken into account.
- (f) Market conditions and other factors like re-starting production lines due to obsolescence may also have to be considered.
- (g) Where no other option to assess reasonable rate is feasible, LPP of more than three year vintage may also be taken into account but such situations should be rare.

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

13.6.1 **Discounted Cash Flow:** The Discounted Cash Flow is defined in the Glossary of Management Accounting Terms, published by the Institute of Cost and Works Accountants of India, as “the method of evaluation by which cash flow of the future are discounted to current levels by the application of a discount rate with a view to reducing all cash flow to common denomination and make comparison”. DCF is also defined as “a

method of investment appraisal under which today's cash outflows are compared with today's cash inflows”

- 13.6.2 **Net Present Value Analysis**: The Net Present Value (NPV) is a variant of DCF method, which is to be used for evaluation of tender. The NPV of a contract is equal to the sum of the present values of all the cash flows associated with it. The following formula is to be used for calculating NPV of a tender bid:

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

Where:

- NPV = Net Present Value  
A = Expected cash flow for the period mentioned by the subscript  
I = Rate of interest or discounting factor  
T = The period after which payment is done  
N = Payment Schedule as per the payment terms and conditions

When choosing among the various bids for the contract, the bid with the lowest NPV should be selected.

- 13.6.3 **Steps involved in NPV**: The application of NPV analysis in defence procurement would involve the following five steps:

Step 1: Selection of the discount rate

Step 2: Identifying the cash out flows to be considered in the analysis

Step 3: Establishing the timing of the cash outflow

Step 4: calculating the NPV of each alternative

Step 5: Selecting the offer with the least NPV

- 13.6.4 **Discounting Rate**: Discounting rate to be used under the method is to be the lending rate of the Government of India on loans given to the State Governments. These rates are notified by the Budget Division of Ministry of Finance annually.

- 13.6.5 **Models for structuring cash flows**: Following are the suitable models for structuring cash flows for tenders/bids:

**(a) Structuring cash flows for tenders/bids received in the same currency**

(i) The first step would be to exclude the unknown variables like escalation factors etc while determining the cash flows.

(ii) Thereafter the cash out flow expected as per the contract schedule from different tenders should be taken into consideration and where the cash out flows are not available from the tender documents, the same should be obtained from the vendors.

(iii) Once the out flows of different tenders become available, NPV of different tenders is to be calculated using the formula given above and the one with the lowest NPV is to be selected.

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

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

(ii) Any standard software, pre-loaded as part of a personal computer could be used for NPV analysis.

13.6.6 **When is the DCF to be used?** The alternative with the smallest payment of net present value in the procurement is the obvious choice. The DCF may be made use of to facilitate determination of L<sub>1</sub> in following procurement situations:

(a) To compare different payment terms of the vendors to a common denomination for determining L<sub>1</sub> 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 L<sub>1</sub> status.

13.6.7 **Determination by adding Arithmetic Values:** Determination of L<sub>1</sub> 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 L<sub>1</sub> and the correct procedure would be to reduce cash out flows into present values through the DCF technique, for which the discount rate to be adopted should form part of the RFP.

### **13.7 Analysis of offers from Foreign Suppliers**

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

(a) The price fixation procedure/methodology prevailing in the country of the vendor.

(b) The prices of similar products, systems and subsystems wherever available should be referred. The database maintained in the respective division connected with the procurement of such type of stores should be accessed.

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

### **13.8 Data Base to be maintained**

13.8.1 **Data Base on Cost & Prices**: Each service HQrs, should ideally have a costing expert who would advise on reasonableness of price, escalation clauses, cost verification where prices are fixed subject to a ceiling price. Service HQrs, OFB and DRDO should maintain data base on past contracts showing details of items procured, their essential spec(s), unit rate, quantity, total value, mode of TE, number of tenders received, number of tenders considered acceptable, reasons for exclusion of overlooked tenders, un-negotiated rates of L<sub>1</sub> and contract rates in order to help in ascertaining reasonability of prices of future procurements.

13.8.2 **Price Indices**: For price indices, internet should be accessed by officers dealing with purchases/associated with CNC from important sites. In regard to price indices of indigenous items, website of Ministry of Industry **[www.eaindustry.nic.in](http://www.eaindustry.nic.in)** should be accessed for the latest indices/trends. For metals and other minerals access **[www.mmr.online.com](http://www.mmr.online.com)** for updates. The other useful sites are **[www.tradintelligence.com](http://www.tradintelligence.com)** and **[www.cmie.com](http://www.cmie.com)**. The monthly report of CMIE (Centre for Monitoring Indian Economy). PROWESS Package of CMIE giving updates on performance of listed Indian companies, RBI monthly bulletin, Economic survey and its Appendix containing statistical tables are excellent reference material for market trends. The World Economic Outlook – a monthly report from IMF, gives inputs on price trends of different countries. LME (London Metal Exchange) gives price trends of nonferrous details, which often show volatile trends. Indices of electronic items often show lower trends. Instructions issued by Ministry of Finance on its web

site [www.finmin.nic.in](http://www.finmin.nic.in) should be assessed as also CVC's site [www.cvc.nic.in](http://www.cvc.nic.in). Important publications like RBI Monthly Bulletin, CMIE'S monthly report, business/commercial newspapers, MMR etc should be subscribed to.

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

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## CHAPTER 14

### OFFLOADING OF PARTIAL/ COMPLETE REFITS/REPAIRS OF SHIPS/ SUBMARINES/CRAFTS/ASSETS TO INDIAN PSU/PRIVATE SHIP YARDS/TRADE

#### 14.1 General

14.1.1 A ship/submarine is a platform that consists of an assortment of weapons, sensors and support systems, along with propulsion, power generation and auxiliary systems, facilities for crew and fuel and provisions. All the surveillance and weapon systems are interlinked and integrated through an elaborate data management system. The platform as a whole or a part thereof is required to be refitted/repared from time to time, including *inter alia*, disassembly, docking, inspection/survey, repair/overhaul followed by trials in harbour and at sea. As an integral part of the refit process, approved modifications to structure, equipment, machinery and systems including installation of new equipment are also carried out. Overall, the partial /complete refit of a ship/submarine/ yard craft is a complex activity, wherein concerted planning is required much before the commencement of the repairs/refit and also during the course of the repairs/refit to ensure completion in a time bound manner and make the platform seaworthy and battle worthy. Repair of Marine Assets/Service Assets also involve the same kind of planning as required for undertaking repairs/refits of Ships/Submarines. The entire activity is different from other revenue procurement activity, such as, procurement of goods and stores or even other services, since a number of technical issues are required to be addressed, including visits by the bidders to the ship/submarine /assets to be repaired/ refitted. For the purpose of clarity, the following definitions would be used in respect of ships/submarines/crafts/assets and their associated repairs/refits:-

(a) **Refit**: Includes all activities towards servicing of equipment/refurbishment/ renovation/modification including *inter alia* planned dry docking to attain designed/stated performance.

(b) **Repair**: Includes all activities, where a defect/anomaly in performance/degradation in performance of equipment necessitates remedial measures on the stated equipment.

(c) **Marine Assets**: All assets including yard crafts, boats, barges (both dumb and self propelled), Battle Practice Targets (BPTs), Pontoons, Catamarans, Floating Dry Docks, Dock Gates, Caissons, Flap Gates, etc which come in direct contact with the Marine Environment are Marine Assets.

(d) **Service Assets**: All assets other than Marine Assets including Jetty Cranes, Mobile Cranes, Listers, Trailors, Mobile Generators, Mobile Chilling Plants, Forklifts, Workshop Machinery, etc, non-availability of which either directly or indirectly affect the productivity of a unit are Service Assets.

(e) **Competent Technical Authority(CTA)**: The CTA is the head of the Service Repair Agency under the relevant CFA.

(f) **Service Repair Agency**. The agency of the Navy/Coast Guard whose job is to execute the maintenance and/or the maintenance policy of the ship/submarine/yard craft

(g) **Post Defectation Demand (PDD) Spares**. The spares required for completion of repairs/refit, which are evident only upon opening up/dismantling of the equipment/system and can normally not be foreseen at the time of formulation of scope of work.

## **14.2 Aim**

14.2.1 The aim of this chapter is to lay down guidelines for offloading of partial/complete repairs/refits of ships/submarines/ assets to Indian PSU/Private ship repair yards/trade owing to the unique nature of repairs/refits necessitating a distinct procedure. The succeeding paragraphs enumerate the detailed guidelines to be followed in the refits/repairs of ships/submarines/crafts and the procedure for repair of all Marine/Service assets.

## **14.3 Preamble**

14.3.1 **Refits of Ships/Submarines**. Refits of ships/submarines are scheduled in accordance with the Ops-cum-Refit cycles promulgated for each class of ship. The refit schedules for a Two – Three year period (as the case may be for CG and Navy, respectively) are decided during the Annual Refit Conference (ARC) chaired by COM (Navy) and PDFM (CGHQ), respectively. The proposals for off loading of refits due to constraint of capacity/expertise are discussed and approved during the ARC.

14.3.2 **Tendering**: All partially/ fully off loaded refits/repairs may be undertaken on OTE/LTE basis. To save hidden costs on fuel consumption, administrative expenses, support infrastructure requirements, etc in offloading the refit/repair work to shipyards located away from the base port, LTE to the shipyards in the immediate geographical vicinity of the ship's base and those shipyards willing to undertake the refit in such vicinity, may be considered. In case, the response from these shipyards is poor, quotes may be invited from other shipyards to undertake the repairs/refits at the location specified by the Customer.

#### **14.4 Off loading of Partial/Complete Refits/Repairs of Ships/Submarines**

14.4.1 **Procedure.** The stages involved in offloading of partial/ complete repairs/refit of ships/submarines are enumerated in the succeeding paragraphs.

14.4.2 **Consolidated AON.** The Service Repair Agency would put up a comprehensive plan for offloading that will include the following:-

- (a) Cases approved for off-loading during ARC.
- (b) Schedule of Refits being off-loaded.
- (c) Rough Indicative Cost (RIC) of approved cases.

14.4.3 **Offloading Plan.** The cases for off-loading will be consolidated into the offloading plan with the under mentioned parts. The off loading plan (Roll-On Basis) would serve as an indicator of the estimated spread of expenditure and anticipated budget requirement for the next two to three years.

**Part A.** Consolidated cases that would individually be processed under delegated powers of ASDs/CSY/COMDISs for the ensuing year.

**Part B.** Consolidated cases that would individually be processed under delegated powers of CinCs/COMCGs for the next two years.

**Part C.** Consolidated cases that would individually be processed under delegated powers of VCNS/DGICG for the next two/three years.

**Part D.** Consolidated cases that would individually be processed under delegated powers of MoD for the next two/three years in respect of Coast Guard and Navy respectively.

14.4.4 **RIC.** The RIC for approved cases would be roll-on in nature and under the following heads:-

- (a) Major Engineering Work Package
- (b) Major Electrical & Weapon Work Package
- (c) Major Hull Work Package
- (d) Major Equipment Replacement/upgradation
- (e) Services
- (f) Material and Spares

- 14.4.5 The AON for the offloading plan would be accorded by the CFA based on the financial implication of the individual cases. For instance, the AON for Part B of the offloading plan would be accorded by the respective CinC/COMCG (even if the consolidated financial implications exceed the delegated financial powers). The financial consultation for each part of the offloading plan would be given by the concerned IFA of respective CFA. The AON would be accorded for the cases to be processed at the indicated cost and valid for the period of consolidation on a roll-on basis. On accord of AON for the entire offloading plan, the same would be forwarded to all concerned CFAs and IFAs for record by Navy/Coast Guard. The AON would be accorded for the Standard RFP and SCOC placed at Appendix G and Appendix H. The work package should be firmed up prior to issuance of the RFP, in order to incorporate a realistic estimate of Scope of Work.
- 14.4.6 After the accord of AON, the RFP for individual cases, with firmed up work package, would be issued by the respective Service Repair Agencies, as and when due. The Scope of Work (SOW) would be enclosed with the RFP. The RFP would be issued by the CFA or by the agency (which may be NDs/NSRYs in the case of Navy) and (BMUs/Station HQs/DHQs/RHQs in the case of Coast Guard) duly authorised in writing by the CFA.
- 14.4.7 In case of any deviation from the standard RFP or upward revision of the estimated cost, the case along with the revised draft RFP would be forwarded for vetting and approval of CFA in consultation with IFA where required as per delegation of financial powers. Variations from Standard RFP and SCOC for individual cases can still be part of the Roll-On Plan, in which case, those specific cases are to be accorded separate AONs along with the variations in the RFP and SCOC.
- 14.4.8 All emergent cases due to service exigencies may be taken up for AON of the CFA separately. In such cases, if the financial implication of the offloading case is beyond the powers of the immediate CFA, then the SOC along with the draft RFP will be sent directly to the next higher CFA duly recommended for vetting and approval. Concurrence of the intermediate IFA is not required, as the case would be dealt with exclusively by the next higher IFA.

## **14.5 Receipt and Processing of Bids**

- 14.5.1 **Pre Bid Conference.** Pre-bid discussions may be held prior to submission of bids for clarification of issues related to the SOW. However where the repair/refit project involves firming up of technical issues prior to issue of RFP, in such cases, a Request for Information (RFI) Conference may be held with prospective Tenderers followed by issue of a formal RFP.

The RFP would be issued only to those vendors who satisfy the pre-qualification criterion.

14.5.1 **TEC.** On submission of the bids, the TEC would be conducted by the agency nominated by the CFA and the TEC report is to be forwarded to the CFA. 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. While IFA need not participate in the TEC, CFA may, if considered necessary, evolve a system of associating the IFA or his representative in examination of the TEC report in regard to compliance with the commercial terms and conditions before opening of price/ 'Q' Bids.

14.5.2 **Processing of 'T' Bid.** The off loading case will thereafter be processed concurrently for the following:-

- (a) Approval of TEC Report.
- (b) Composition of Tender Opening Committee (TOC) for opening 'Q' Bids.

14.5.3 **Processing of Price Bid.** The TOC will open the Q Bids and prepare the Comparative Statement of Tenders (CST). The case along with the CST is to be re-submitted to the CFA for approval in consultation with IFA for the following:-

- (i) Vetting of CST by IFA
- (ii) Composition of CNC

14.5.4 **CNC.** The L<sub>1</sub> firm would be invited to the CNC meeting. All aspects of Contract and Financial implications thereof would be discussed and finalised during the CNC.

14.5.5 **Approval by CFA.** Thereafter, the case is to be processed for concurrent approval of CNC minutes/report, Draft Contract and Sanction Letter by the CFA in consultation with IFA.

## **14.6 Offloading of Marine / Service Assets**

14.6.1 **Repairs/Refit of Marine Assets.** The procedure for complete/partial repairs of Marine/Service assets is the same as given in Paras in 14.4 to 14.5 above, except that the offloading plan in the case of Marine/Service assets would be annual.

## **14.7 Characteristic Features of Refits/Repair**

14.7.1 **Growth of Work.** The SOW in refits of ships/submarines are usually non-deterministic and dynamic in nature with regard to resources required for completion. The growth of work, a feature typical of refits/repairs, is dependent *inter alia* on factors such as Age of Ship/Submarine, Condition of onboard Equipment/machinery, Condition of Hull, role and exploitation pattern, duration between formulation of work package and actual execution of work, modifications and Additions & Alterations. Additional financial sanction up to 15% of Contract Value would be catered for such Growth of Work. Payment in all such cases will be made at actuals subject to the respective ceiling stipulated for the Navy and Coast Guard. A Post Refit Report would be drawn up for distribution to all concerned including the IFA.

**Note:** In case of Coast Guard, the present practice is to allow a component up to 15% of Contract Value towards Growth of Work and up to 20% of Contract Value towards Non-available Spares. This practice may continue for the present.

Growth of work would be costed on pro-rata costs quoted by the Bidder and accepted during CNC. Wherever, pro-rata rates are not available, the prices would be negotiated by the COA in consultation with the IFA.

## **14.8 Payment Terms**

14.8.1 **Stages of Payment.** The Stage Payments are to be specified in the RFP for complete/partial offloading of repairs/refit and are to be commensurate with the work undertaken by the yard. The number of stages and payment terms would vary from case to case depending on duration of the project and cost involved and are to be incorporated in the RFP. The recommended stage payment terms for complete refit may be as follows:-

(a) **Refit Cost**

- (i) **Stage – I.** 10% advance of basic contracted refit cost against bank guarantee / indemnity bond (in case of DPSUs) on placement of order/contract.
- (ii) **Stage – II.** 10% of the basic contracted refit cost on docking (excluding taxes and Growth of Work)
- (iii) **Stage – III.** 20% of the basic contracted refit cost on final undocking and completion of all under water works

(iv) **Stage IV.** 20% of the basic contracted refit cost on satisfactory completion of Basin Trials and harbour trials of major machinery/ equipment (such as Main Propulsion Plant, Shafting and equipment related to Habitability)

(v) **Stage – V.** 20% of the basic contracted refit cost minus cost of all incomplete work on satisfactory completion of post refit Sea trials and departure of the ship from the shipyard. Cost of incomplete work will be withheld till completion of work.

(vi) **Stage VI.** Balance along with cost for Growth of Work and taxes on submission of final bill within sixty (60) days on satisfactory completion of Refit. Shipyard to provide a bank guarantee equal to 10% of the final cost of refit/repair (indemnity bond in case of DPSUs), which should be valid till the completion of the guarantee/warranty period.

**Note:-** All stage and final bill payments are to be vetted and cleared by COA.

(b) **Material and Spares.** Advance on signing of Contract of up to 10% of cost of spares, against Bank Guarantee may be permitted. The remaining payment for spares would be made along with the stage payments during refit duration, on submission of proof of Purchase order, Material receipt and Inward inspection. Handling charges, if any, are to be restricted to a maximum of 7.5%.

14.9 **Loading in Case of Defect List Items “Not Quoted”.** In order to ensure that all offers are compared in an equitable and fair manner, loading would be resorted to for determining the L<sub>1</sub>. During this process the bids with unresponsive sections/sub-sections would be loaded by the amount quoted by the highest bidder for that particular section/sub-section for preparing CST. The Bid shall be deemed to be responsive only if the firm accepts the loading in writing.

14.10 **Criterion for Determination of L<sub>1</sub> Firm.** The L<sub>1</sub> Firm would be determined as follows:-

(a) **Navy.** The Cost of Refit, Services and Budgetary Cost of Spares listed in the work package would be taken into account for determination of L<sub>1</sub>. Payment for such mandatory spares shall not exceed the budgetary cost given in the ‘Q’ bid.

(b) **Coast Guard.** In case of Coast Guard, since mandatory spares are not part of Refit Package, determination of L<sub>1</sub> Firm would be considered on account of Cost of Refit inclusive of Services.

- 14.11 **Request for Proposal**. The repairs/refits of ships/submarines/assets are distinct from other procurement cases and warrant a separate standardised RFP (placed at **Appendix G**).
- 14.12 **Standard Conditions of Contract**. Standard Conditions of Contract (SCoC) owing to distinct nature of such contracts is placed at **Appendix H**.
- 14.13 **PCM**. Approval of CFA and concurrence of IFA where required as per delegation of financial powers will be taken in all cases of post contractual changes/amendments to the Contract.

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## **CHAPTER 15**

### **DESIGN, DEVELOPMENT AND FABRICATION CONTRACTS**

#### **15.1 Introduction**

15.1.1 **General**. This Chapter lays down the procedures to be followed by the Defence authorities and Departments for conclusion of contracts for design, indigenous development (including indigenization) and fabrication of stores, equipment and spares required by the Defence Services. The general instructions contained herein have been made as flexible as possible to avoid time delays and to encourage the industry to come forward and undertake the design, development and fabrication of items, equipment, plant and machinery required by the Defence Services. Detailed Instructions on Procedures to be followed in-house for processing orders for items of a developmental nature/indigenisation may be drawn by the Services HQrs/ other development agencies like DRDO, CPOs etc. in consultation with the MoD (Finance) in broad consonance with the guidelines contained herein.

15.1.2 **Decision for Indigenous Development**. The Technical Directorate/ Directorate of Indigenisation /Committee for Indigenisation of the concerned Service/ Department/ Command HQ should assess the economic viability of indigenous manufacture of a defence item in the civil sector in terms of volume, likelihood of future requirement and economies of scale, residual life of the equipment/item and a clear indication of requirement over a long period (of say 3-5 years). For this purpose necessary systemic changes in planning and provisioning may be carried out by the Services. In case the above conditions are not fulfilled, the feasibility of indigenising a package of similar range of items may be considered / decided by the CFA in consultation with the IFA keeping in view the volume, future requirement and economies of scale so as to make the package commercially viable. If it is not feasible to work out a package but the item is still required to be indigenised for strategic reasons, the requirement may be projected to the Department of Defence Production and Supplies for development by the OFB/Defence PSUs etc. where feasible.

15.1.3 **Partnership with Private Sector**. The Indian private sector Industry today offers scope for their greater involvement in the Defence Sector and possesses the requisite skills and infrastructure for undertaking defence production or may be willing to invest/share the cost of setting up of such infrastructure. The industry should be encouraged to make such investment by working out the Minimum Order Quantity to maintain the financial viability of development within the desired time

schedules. As regards high technology complex systems, projects under this category should be identified, to be undertaken by Raksha Udyog Ratnas (RURs) /Indian Industry /DPSUs /OFB/ Consortia on a level playing field. This procedure may also be followed for all upgradations of equipment/parts under the 'Make' category. Outsourcing of development of equipment /systems having high technology content should be considered on the lines of parallel development for which the cost should be shared with the vendor.

## **15.2 Principles and Policy**

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

- (a) Exploration of sources for placement of development order should be as wide as possible, both in the public and private sector, to encourage competition.
- (b) Ability of the contractor to execute work of the desired quality to the required time schedule should be evaluated by a Technical Committee.
- (c) Development contracts may, as far as feasible, be concluded with two or more contractors in parallel, subject to the other vendor/s agreeing to match the price of L<sub>1</sub>. In case of higher deviation the full / Economic Order Quantity (EOQ) order may be placed on the L<sub>1</sub> firm, subject to price being found reasonable.
- (d) Placing of parallel contracts on two parties is particularly necessary/desirable to have more than one source of supply at bulk production stage and also, apart from competition, to ensure successful completion of development if one of the contractors fails to develop the equipment in time.
- (e) The ratio of splitting of the supply order between various development agencies/firms in cases of parallel development, including criteria thereof, must be pre-disclosed in the RFP itself.
- (f) However, in case the requirement is meager and complex technology is involved, a single source having expertise in the requisite field may be considered with appropriate justification and due approval of the CFA in consultation with IFA where required as per delegation of financial powers.

(g) The contractor or the firm should be such that it can, if so desired, take up bulk production orders subsequently.

(h) During the developmental stage, 20% of the total order quantity may be earmarked for development. This would, however, not be considered as a case of dual procurement.

(i) The information available with the DGS&D and the Defence Inspection Organisation (DGQA, DGNAI and DGAQA) may be availed of in selecting the firms to be entrusted with the development/fabrication contracts.

(j) Items indented by the indenting authority through indents/Final Depot List/ Special Requisition should be the basis to proceed with the development after requisite quantity vetting has been done, as per laid down procedure.

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

(a) Identification/Selection of stores/items for indigenous development.

(b) Generation of the Paper Particulars / drawings.

(c) Identification of vendors/firms.

(d) Framing and Issue of RFP.

(e) Technical evaluation of bids and holding of CNC/PNC.

(f) Conclusion of Contract/ Supply Order.

(g) Post Contract Management.

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

(a) When OEM is closing down or has closed down the production line and spares are not available ex-import for equipment which has adequate residual life and population.

(b) Items for which TOT has been taken.

(c) Items including those which are low tech and the sample is available and which it would be economic to develop.

- (d) Spares which are fast moving and the requirement is recurring in nature.
- (e) Goods for which the import price is exorbitant.
- (f) Items short-listed from MRLS and import list depending upon their criticality, technological processes involved and consumption rate.
- (g) Where an Indian firm offers to develop an item on 'No Cost : No Commitment' basis.
- (h) In special cases, where it is considered in the interest of the State to indigenize or for any other strategic reason to be recorded, e.g. Secrecy devices.

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

### **15.3 Paper Particulars and Design Aspects**

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

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

15.3.2 **Design Aspects.** In the case of contracts as at Para 15.3.1(a) above, the development contract would always be based on a draft technical / design specification and other information to be provided by the Establishment / Dte of Indigenisation/ Laboratory / Workshop / Depot. In

case of contracts as at Para 15.3.1 (b) above, the contract should contain a provision for the development of industrially engineered models/equipment and supply of models/equipment at various stages with relevant types of drawing and other documents by the contractor, as required by the contracting authority. The design material, workmanship and performance of the equipment for a specific period should also be guaranteed by the contractor.

#### **15.4 Vendor Identification / Development**

15.4.1 **Identification of Vendors**. Identification of appropriate vendors is a vital step and must be well considered. Wherever possible, the vendors who are registered with DGAQA/DGQA/DRDO/OFs/ DPSUs/Services indigenisation agencies/ NSIC should be approached. Suitable vendors can also be identified by the developing agency in consultation with other developing agencies apart from firms registered with DGQA or any other defence establishment. Unregistered firms may be considered taking into account their infrastructural facilities, capacity, technical competence and financial standing. A format for this purpose is enclosed at Form DPM - 5. Firms of national repute may also be considered based on self-certification, with the approval of the Defence Secretary.

#### 15.4.2 **Development of Source by Inviting Applications for Enlistment.**

The following procedure will be followed:-

- a) Open advertisement will be placed on the internet and advertised in leading newspapers every year, in respect of different products/components, for enlisting firms willing to participate in tenders issued by the Department/Organisation. The minimum number of products/components required to be submitted by the vendor for evaluation and likely demand for those products/components for the next two to three years will be indicated in the advertisement.
- b) Interested firms may visit the factory/workshop/depot as indicated in the tender to see the product/ component required to be developed. Thereafter, the firms showing interest in developing the product/component should be asked to submit the details of infrastructure available with them, as per the documents prescribed for vendor registration;
- c) The infrastructure details submitted by the firms should be studied by a team of officers constituted to assess their manufacturing capability to verify their genuine potential for developing the product/ component.

d) Firms found capable of developing the product/component should be asked to submit the required number of samples (as advertised) of the identified product(s). On acceptance of samples, the firm will be eligible for participating in the LTEs for the said component / product.

e) A firm may not be willing to submit a sample due to requirement of a heavy investment. In such cases, the indigenisation agency / Directorate may place a development order on the firm as follows :-

(i) The cost of the sample will be assessed through a Board of Officers having representation from Finance.

(ii) The firm will be asked to offer a quotation and if the price is found to be equal to or lower than the assessed cost, the development order will be placed on the firm at the price quoted.

(iii) If the firm quotes a price higher than the assessed cost, the price will be negotiated with the firm and development order placed at the assessed cost.

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

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

cycle of the equipment. Both the foreign and the Indian firms would be jointly responsible for providing the maintenance facilities and support for that equipment.

## **15.5 Framing and Issue of RFP**

15.5.1 **Request for Proposal (RFP)**. Development/ indigenisation of an item may require design, generation of drawings, manufacturing, development of prototype equipment and system, quality assurance during development process, tests and trials and inspections at various stages. RFP is to be floated to firms who have the required infrastructure for the proposed development. In order to save on development time and in case of the classified nature of stores to be developed, quotations may normally be invited on limited tender basis from firms/contractors who are known to be capable of undertaking the particular development work. However, depending upon the specific requirements of the case, the developing agency may justify issue of RFP either on OTE, LTE or STE basis, as required.

15.5.2 **Pre-bid Conference**. In case of turnkey contracts or for development of sophisticated and complex equipment, a suitable provision is to be made in the bidding documents for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specification and other technical details of the plant, machinery and equipment projected in the bidding document. The date, time and place of the Pre-bid Conference must be indicated in the bidding document and should be sufficiently ahead of the bid opening date.

## **15.6 Receipt and Evaluation of Bids**

15.6.1 **Bid Opening/Technical Evaluation and CNC**. The firms submitting their quotation will be intimated the place, date and time for opening of the quotation and the bids will be opened at the appointed time by the Board of Officers in the presence of the representatives of the firm, if present. The procedure for tender opening, technical evaluation, preparation of CST and convening of TPC/CNC for commercial evaluation thereof will be as per modality given elsewhere in the relevant Chapters of this DPM.

15.6.2 **Resultant Single Vendor Situation**. In case of LTE/Open Tender invitation if only one firm responds or if only one firm is found by the TEC to meet all the specifications, the following aspects will be examined:-

- (a) Whether all necessary requirements such as Standard Tender Enquiry conditions, wide publicity, and sufficient time for formulation of tenders had been taken care of while issuing the RFP;

(b) Whether the RFP was properly dispatched and duly received by the prospective vendors;

(c) Whether SQRs could be re-formulated to generate wider competition.

(d) Whether the price quoted in the bid is considered reasonable.

15.6.3 **Examination.** If the examination reveals that requirements from (a) to (d) have been fulfilled the proposal may be processed further as a case of OTE/LTE as applicable, with the approval of the CFA, for placement of the development order. However, if the quoted price is not borne out as reasonable based on benchmarking prior to opening of the commercial bid or if the offer is not technically feasible or firm not considered capable of developing the item, the bid should be retracted with the approval of the CFA

15.6.4 **Reasonableness of Price.** It would be mandatory for the vendor to submit the detailed break-up of cost under the headings materials (indigenous/ imported, quantity, cost), labour (number of man hours, man hour rates, etc.), design and development, drawings and details of overheads which will be vetted by a technical team of the Department /Organisation. The last purchase price (LPP) of imported item will be taken as the base price to arrive at the reasonableness of the quoted rates. In case LPP is not available the base price will be arrived at by the process of benchmarking which will be done prior to opening of the Commercial bid as per the procedure given in Chapter 13 of the DPM. L<sub>1</sub> will be determined with reference to the development cost, including the cost of prototype and the total quantity for which the initial orders are placed. An indication of the quantities that would be required during the next two to three years should also be given in the RFP.

## **15.7 TYPES OF CONTRACTS**

15.7.1 **Adoption of Contract Type.** Various types of contracts can be adopted depending upon the nature, complexity and time span of the development work /project. These are described below. However, normally Firm-Fixed-Price contracts, Fixed Price Contracts with escalation clause and Fabrication Contracts will be concluded. Contracts other than these three will be adopted only with the prior approval of Service Headquarters/ Head of Organisation /Department /Service / HQ Maintenance Command IAF in consultation with the respective IFA.

- 15.7.2 **Firm-Fixed-Price Contract**. Firm fixed price contract means a contract in which a lump sum amount is agreed upon for development/indigenisation and supply of the equipment based on data/specifications supplied and which is not subject to any adjustment during the performance of the contract due to any reasons whatsoever. The firm or the contractor assumes full financial responsibility in the form of profit or loss. This type of contract is best suited when reasonably definite design or performance specification is available and when Government can estimate reasonable price of development/indigenisation.
- 15.7.3 **Fixed Price Contract with Escalation**. This is the same as the firm-fixed-price contract, except that upward or downward revision of contracted price can be allowed on occurrence of certain contingencies beyond the control of the firm/contractor such as increase/decrease in wages or cost of material. An escalation formula must be included in such contracts and a ceiling of escalation should also be fixed in the case of long term contracts. Price variation clause can be provided only in long term contracts where the delivery period extends beyond 18 months. The conditions prescribed for price variation clause elsewhere in the DPM will apply whenever such a clause is included in the developmental contracts.
- 15.7.4 **Fixed Price Contract providing for Re-determination of Price**. This type of contract is intended to eliminate the impact of contingencies due to causes other than those foreseen in the case of fixed price contract with escalation. These contingencies may be due to the contractor's/firm's unfamiliarity with the raw materials or manufacturing processes, to long term contracts, lack of specifications or the use of performance rather than product specifications. In such cases prospective re-determination could be done -
- (i) On request by either party
  - (ii) At stated intervals
  - (iii) At a determinable time.
- 15.7.5 **Fixed Price Incentive Contract**. This type of contract is designed to provide a greater incentive to the firm / contractor to reduce the contract costs by providing higher profits if costs are reduced and lower profits when costs rise. These costs, the ceilings on target cost, target profit, a price ceiling and the formula for arriving at final cost are all settled before the execution of the contract. This contract type will only be applicable for ab-initio development contracts.
- 15.7.6 **Cost Plus Contract**. Cost Plus contracts should ordinarily be avoided. Where such contracts become unavoidable as no vendor is willing to undertake the development, full justification should be recorded before

entering into the contract. In this type of contract the firm/contractor is reimbursed the costs incurred and also receives a negotiated profit for performing the contract, i.e., the profit of the firm/contractor and not the cost of development is fixed. Contractor's responsibility towards cost of the item is minimum except that he has to use the same care and prudence as is expected under fixed price contracts. This type of contract should be concluded only when the uncertainty which is involved in the contract performance is of such a magnitude that the cost of performance cannot be estimated with sufficient reasonableness to permit the type of fixed price contract. It is also necessary to ascertain that the firms/contractors have cost accounting machinery and that the cost is clearly defined. A strict R&D surveillance has got to be provided by the Dept to ensure that costs incurred by the firm are reduced to the minimum. The RFP should provide for the firm's books of accounts to be checked by the Order Placing Agency to verify the costs by inclusion of a book examination clause as per standard format. Where supplies or works have to continue over a long duration, efforts should be made to convert future contracts on a firm price basis, after allowing a reasonable period to the supplier/contractor to stabilise their production methods.

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

## **15.8 Conclusion of Development Contracts**

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

(a) Contracts in writing should be placed after calling for quotations from a number of firms/contractors unless STE is resorted to for which detailed justification would be necessary. The two bid system should be followed in design/development/fabrication contracts of a complex nature. In other cases, a single bid may be invited. A Pre bid conference may be held prior to submission of the tenders to clarify any doubtful areas and also to firm up the SQRs/QRs prior to submission of bids.

(b) When the statement of case for sanctioning of various phases of the project or the indent is put up, the Head of Service or Establishment /Director/Purchase Dept concerned should mention the amount that is intended to be spent on development/fabrication contracts out of the total cost of the project. At this stage detailed

particulars regarding the inquiries made with firms, if any, the number of prototypes intended for manufacture and the intention to get the prototype manufactured by one or more firms must be mentioned.

(c) The financial status and technical capability verification reports as well as compliance with the techno commercial requirements will be taken into account at the TEC stage itself. 'Q' bids of only those firms will be opened who are cleared by the TEC.

(d) Ordinarily advance payments need not be agreed to in the payment terms. If, however, advance payments have to be made, these should be made against a Bank Guarantee executed on proper stamp paper. If stage payments are to be made to the firm/contractor, the stages should be clearly defined and it should be ensured that the payments are in consonance with the work actually performed by the firm/contractor as per each stage, viz. Preliminary, Design Review, Detailed Design Review and Realisation of Prototype. The quantum of payment will generally not exceed 50% of the estimated expenditure incurred by the contractor upto that stage. The yardsticks for work measurement will be laid down in the contract.

(e) Once a contract has been concluded, the terms and conditions thereof will generally not be varied. However where this becomes necessary/inescapable any modification will be carried out with the prior concurrence of the appropriate CFA and the respective IFA, within whose powers the revised contract value falls.

(f) Whenever stores are required to be issued to the firm/contractor for fabrication or prototypes or sub-assemblies are issued for guidance in fabrication, these should be issued against appropriate Bank Guarantee. In addition to the Bank Guarantee, appropriate insurance may be asked only where it is considered necessary.

15.8.2 **Standard and Special Conditions.** Standard conditions, as in Part III of Appendix 'C', which are applicable to the contract will only be given to the contractor Any special conditions of contract considered necessary shall also be drawn out by the Establishment/ Indigenisation Directorate / Laboratory / Developing agency/Department concerned and issued to the tenderers along with other documents. The successful bidder will conclude an Agreement as per the draft at Appendix I.

15.8.3 **Fabrication Contracts.** The acceptance of quotation in this case would take the form of a supply order. Format given in Appendix J for fabrication orders will be annexed thereto.

## **15.9 Placement of Order**

15.9.1 In case of items considered economically viable for indigenous development, the first order may be placed for the Economic Order Quantity (EOQ) only, The balance number of items in the indent over and above the EOQ may be returned to the indenter and the latter may be asked to re-certify the funds for the EOQ only. The indenter may obtain his balance requirement, if any through import route or through any other sources. Generally a period of two to three years may be provided for indigenous development of a defence item.

15.9.2 In case the quantity of the equipment/ spares is limited/small and may become uneconomic (Non - EOQ) if distributed between two vendors, the entire order would be placed upon the L<sub>1</sub> vendor only.

15.9.3 If the indented quantity is found to be less than the assessed EOQ, the Indigenization Agency should first float the RFP and in case there is no response, it will not be taken up for indigenization unless its' development is considered essential for strategic reasons.

## **15.10 Development of Second/New Sources**

15.10.1 **Procedure.** With a view to speeding up development of additional indigenous sources, the question of earmarking a prescribed quantity of the indent for developing a new source has been considered, and the following procedure may be adopted for procurement of items of a development nature, particularly for high value indents of Rs 10 Crs and above:-

(a) Where there is only a single developed source, or where there is a felt need for development of more than two sources, 20% only of the second indent should be earmarked for placement as an educational order on the new source to be developed. The percentage may however be modified to ensure that the quantity covered is viable for economic production. This order for the earmarked 20 % should be placed by inviting tenders (OTE/LTE) as per the normal procedure laid down, and the source already developed will not participate in this.

(b) The balance 80% of the indent is to be procured from the sources already developed. The firms that execute the source development orders within 5% tolerance clause will be considered

as established source subject to submission of bid for at least 50% quantity of the source development tender.

(c) Pending successful development of a new source, the order should be placed on the developed source(s) for the required quantity as indented by the Services by following the usual procedure laid down in this regard in order to ensure that the requirement of Services and of Production are met fully and without any delay.

(d) In case the new source on which the order for 20% of the indent was placed fails to develop the item, the order should be placed on another new source to be selected by following the usual procedure laid down.

(e) A second order to an undeveloped source which has secured one order will not be issued unless:-

(i) A Bulk Production Clearance (BPC) has been accorded to it for the subject item against the first order; and

(ii) It has made at least 50% of the supplies of the first Supply Order placed on it, which have been duly accepted.

15.10.2 **Acquiring Manufacturing Drawings** In order to rapidly develop alternative sources of supply of an item after this has been developed and productionised by one contractor, it is essential that the manufacturing drawings are passed on by the contractor to the Govt. Since the manufacturing drawings are evolved and finalised by the contractor who has initially developed the item, it is likely that the contractor would claim his rights on such drawings and not agree to part with them. Accordingly, a clause should be included in the Tender Enquiry clarifying that the manufacturing drawings /tools/ jigs/ fixtures / dyes/moulds prepared by the contractor for manufacture of the store required shall be the property of the Ministry of Defence and as such shall be passed on to the Purchaser and shall not be used by the contractor for any purpose other than this contract, without the written consent of the Competent Financial Authority, in consultation with the IFA.

15.10.3 **Items Developed by Defence PSUs/OFB.** The cases in which DRDO/ Defence PSUs/OFB /RURs have successfully developed an item for the Deptt of Defence or have taken Transfer of Technology (ToT) for Department of Defence would not be taken as single vendor cases and only a commercial RFP should be issued to them directly. Instead, they would be treated at par with the proprietary firms for any subsequent procurement, except that no PAC certificate is required. Further, the delegated financial powers of CFAs for PAC purchases will be exercised

for such procurements. It will, however, be checked prior to placing of orders that the technology absorption levels agreed to while concluding the ToT contract have been achieved.

### **15.11 Terms of Payment**

- 15.11.1 **General** . The normal terms of payment are 100% payment within 30 days time after receipt and acceptance of the materials in good condition or the date of receipt of supplier's bill, whichever is later. However, an amount of 10% may be withheld as performance guarantee (where Security Deposit has not been taken) during the warranty period as mutually agreed with the contractor.
- 15.11.2 **Optional**. Alternatively, payment upto 90% against proof of dispatch taking into consideration aspects like the reputation and past performance of the suppliers and pre-inspection of the goods at the suppliers' premises may be considered where necessary. Such payments for dispatch by road will be made only if the goods are at suppliers' cost.
- 15.11.3 **Advance Payment to Suppliers**. Generally no advance should be paid to the firms/contractors and payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary in the case of development and fabrication contracts or in case of turnkey projects to give an advance. In such cases it should be ensured that only a minimum reasonable amount, upto 15%, is given as advance at the time of placement of the order. Such advance payments will be made only against furnishing of a proper bank guarantee by the firm from a public sector bank or private sector bank duly authorized by RBI to handle Government transactions. Format for the Bank Guarantee is given in Form DPM-16.
- 15.11.4 **Intermediate Payments**. The initial advance paid should be adjusted against the successive stage payments due to the supplier. The intermediary payments, if any, should be spread over the period of execution of the projects/contract and made in suitable installments keeping in view various stages of development/manufacture. These stages should be pre-determined and it should be ensured that the payments made are in consonance with work actually performed by the firm/contractor and linked to verifiable milestones viz. Preliminary Design Review, Detailed Design Review, purchase of raw materials and realisation of prototype etc. The quantum of payment will generally not exceed 50% of the estimated expenditure incurred by the contractor upto that stage. About 20 to 25% amount as last installment should be released only after the completion of the project or rendering of the services/supplies to the entire satisfaction of the authority placing the order.

15.11.5 **Deviations.** Cases of advance payment over and above the limits prescribed above would require the approval of the Defence Secretary and concurrence of FA (DS)/Secy Def (Finance).

## **15.12 Post Contract Management**

15.12.1 **Forwarding of Contract Documents.** Once a project has been sanctioned and a contract is concluded for development/fabrication, a copy of the contract will be forwarded to the Heads of Technical Directorates/Services at Headquarters / AHSP. Two copies of the contract (one for the CDA and the other for the LAO concerned) will be forwarded to CDA and IFA concerned for such action as may be considered necessary by them.

15.12.2 **Responsibility for Technical Matters.** The responsibility in technical matters relating to the development shall rest with the Head of the Service/ Establishment / Directorate of Indigenisation / Laboratory/ Workshop / Depot / Institution concerned.

15.12.3 **Inspections.** There may be two to three inspections during the development stage and firms may be made more accountable for their product. They may be asked to furnish reports of various tests from the various laboratories as required by the Purchaser, The requirements are to be indicated in the approved Quality Assurance Plan (QAP). A clause should be provided that in case it is subsequently found that the firm has used fraudulent means to obtain the report/s and the item developed is not as per specifications indicated in the RFP the firm will be blacklisted for a minimum period of three years from any future tender. Once an item has been declared as free flow, for further procurement the inspection will be done by the DGQA/DGAQA as per normal procedure.

15.12.4 **Monitoring Progress.** Responsibility to monitor the progress and operation of the Development/Fabrication contract will rest with the authority that has entered into such contract. The customer will provide necessary guidance to the firm as required from time to time and will maintain close liaison with them to clarify any doubts. The progress of development will be monitored closely and in case the progress is not found to be satisfactory, suitable action will be taken as provided for in the contract.

15.12.5 **Return of Documents.** Documents, specifications, drawings issued to the firms/contractors or prepared by them should be taken over as these belong to the Govt. A provision to this effect should be made in the contracts. Loss or damage to these documents shall be recoverable from the contractors.

### **15.13 Declaration of Free Flow**

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

(a) When the initial quantity is not large enough to be split and/or the equipment/ system / item is a high tech complex one requiring substantial investment even at the time of development in terms of plant and machinery, the development of a single source and successful delivery against the order placed may be considered sufficient to declare the item as developed.

(b) In all other cases, when at least one successful purchase is made and at least two sources are fully established, which would not only ensure price competition but also avert Government's dependence on any single source.

(c) Completion of codification of the item / equipment by the AHSP (applicable in all cases).

(d) If a second source for the item is not developed under clause at serial (b) above within five years from the date of completion of the first supply order, the item may be declared as "free flow" i.e as developed thereafter; however, there could be exceptions with full justification where an item is declared free flow even earlier.

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

(a) There should be a reservation of quantity not exceeding 50% of the initial order quantity for production agency (ies) associated with the development of the product.

(b) Where the initial quantity is not large enough to be split and / or the item is a high-tech one, requiring substantial investment even at the time of development in terms of plant and machinery, the ordered quantity shall be covered on such production agency (ies).

(c) In the case of (a) above, the price will be settled on the basis of competitive quotations by issuing a tender enquiry to other agencies who, though not associated with the development of the product, are considered competent to productionise the item. In

such a case if the production agency associated with the development of the product quotes a price higher than the lowest acceptable offer, such agency shall be asked to match the lowest price, failing which they can be considered, for a price preference not exceeding over the lowest acceptable offer.

(d) In the case of (b) above, the quotations would be obtained only from the production agency associated with the development and price will be settled through a study of the various elements of cost, the data for which will be furnished by the concerned agency.

(e) The dispensation as indicated above shall be given to the production agency associated with the development only where their association is with regard to the development of an item which can be separately procured.

(f) Even in case the source is not already registered, the latest bulk order can be placed on them. However, their continuance as an established supplier of the item will be subject to their capacity verification and registration by the competent authority/ Department.

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

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# **APPENDICES**



**APPENDIX 'A'****TIME FRAME FOR PROCUREMENT  
[UNDER SINGLE AND TWO-BID SYSTEMS]****RECEIPT OF INDENT**

Sr. No.	Activity	Under	
		Single Bid	Two-Bid
1	Vetting and Registration of Indent	1 week	1 week
2	Vendor Selection and preparation of RFP	1 week	1 week
3	IFA's concurrence, CFA's approval and floating of RFP	2 weeks	2 weeks

**PROCUREMENT ACTION**

4	Time allowed for submission of offers	1 to 3 weeks*	1 to 3 weeks*
5	Opening of technical bid and technical evaluation by TEC	NA	3 weeks
5 A	Opening of commercial bids, preparation of CST and vetting etc.	2 weeks	2 weeks
6	Submission of proposal for procurement or making counter offer or for holding negotiations with the concurrence of the IFA and approval of the proposal by the CFA	2 weeks	2 weeks
6	Preparation of brief for the CNC, issuing notice for the CNC and actual conduct of CNC meeting	4 weeks	4 weeks
7	Preparation of the minutes of the CNC meeting and obtaining of signatures of the members/chairman of the CNC	1 week	1 week
8	IFA's concurrence and CFA's approval of the purchase proposal	2 weeks	2 weeks
9	Preparation and dispatch of the Supply Order/signing of the contract	1 week	1 week
	Total	17 to 19 weeks	20 to 23 weeks

\* This may vary as per the requirement. See Chapter 4 of the Manual.

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

**Case Title**

1. Unit/ Directorate/ Office initiating the SOC

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

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

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

3. Justification for procurement

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

b. If it is a scaled item –

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

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

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

ii. How the present proposal will serve the purpose?

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

d. Broad purpose of items being procured

e. Detailed Justification from user

i. Category of proposal –

- Fresh purchase
- Up gradation
- Replacement

- Maintenance
  - Repair
  - Any other (to be specified)
- ii. If it is a fresh purchase, the following information to be provided:
- How was the purpose being served till date?
  - Why it can't be served with up-gradation of the existing items?
- iii. If it is a case of up-gradation, the following information to be provided:
- Details of original purchase *viz.*, year, cost, quantity, residual life left, residual life after upgradation, etc.
  - Confirmation that issues of standardization and compatibility have been taken care of
- iv. If it is a case of replacement, the following information to be provided:
- What will be done with the items being replaced?
  - Details of proposal for disposal of existing items (BER certificate, etc. to be enclosed)
  - Possibility of buy-back or otherwise, along with reasons

#### 4. Quantity

- (a) Basis for working out the quantity against each item – (formula, methodology, etc.)
  - (b) Details like authorized holdings, existing holdings, Dues-in, Dues-out, etc.
  - (c) Calculation sheets / PR documents to be enclosed with the SOC (Net Quantity to be shown in Annexure A)
  - (d) Proposed distribution of items being bought with justification
5. Estimated cost of proposal – various elements of cost, such as the basic cost, taxes, transportation cost, training cost, AMC, etc., should be shown separately and the grand total should also be indicated)

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

- (a) Last Purchase Price – Year, Escalation factor, source, quantity to be mentioned.

- (b) Budgetary quotes – Source, period, etc to be mentioned along with copy of budgetary quotes.
- (c) Market Intelligence – Source, period, etc to be mentioned along with relevant enclosures.
- (d) Rates obtained from other Organizations – Source, period, quantity, etc to be mentioned along with relevant enclosures.
- (e) Professional Officers' Evaluation – Detailed reasoning and inputs used to be enclosed.
- (f) Any other method adopted (to be specified and explained, along with the reasons)

#### 6. Details of the last purchase

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

#### 7. Availability of funds

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

8. Competent Financial Authority

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

9. Mode of Tendering

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

10. Draft RFP

- (c) Draft RFP to be enclosed
- (d) Special conditions applicable to the proposal, which have been proposed in draft RFP, to be highlighted in the SOC

(\_\_\_\_\_)  
Officer initiating the proposal

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

**Annexure 'A'**

**Format for Quantity and Cost of proposal**

1	2	3	4	5	6	7	8	9	10
SI No	Name of items	Qty	LPP	POV	Market survey	Rates of other Org	Budgetary quotes	Estimated cost	Total cost 3 X 9

Basic cost =

Taxes, etc. =

Transportation =

**Note**

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

**Format for Certificate regarding availability of funds**

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

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

1. The draft RFP is divided into five Parts, each Part dealing with a different aspects.
2. Part I contains General Instructions to the bidders. Generally, all these instructions should be mentioned as it is, though minor changes can be done to suit a particular case. The para on EMD is applicable only for cases covered under Para 4.7 of Chapter IV.
3. In Part II, the Technical Details would be different for various types of equipment. As such only the broad guidelines for formulating this aspect have been stated here. The information may contain the following –
  - a. The purpose for which the items are needed or broadly outlines the capabilities that are required. It should be ensured that user requirements are laid down in a comprehensive, structured and concrete manner in terms of functional characteristics and are broad-based.
  - b. Relevant technical parameters like size, weight, performance, operating environment, power, torque, preservation, utility life, storage, shelf life etc, can be specified as applicable. Examples are as under –
    - i. User requirements in terms of functional characteristics
    - ii. Specifications / Drawings, if applicable
    - iii. Technical details along with Essential Technical parameters
    - iv. Compliance chart for Technical evaluation
    - v. Requirement of training / on-job training
    - vi. Requirement of installation, Commissioning
    - vii. Requirement of FATs, HATs and SATs.
    - viii. Requirement of technical documentation.
    - ix. Type of future assistance on completion of warranty.

- x. Earliest Acceptable Year of manufacture
  - c. In case of Two-Bid system, the essential performance parameters should be mentioned, fulfilment of which would be the basis for Technical Evaluation.
  - d. In Para 5 pertaining to INCOTERMS, only the applicable Term of Delivery may be mentioned as decided for that particular case.
4. Part III contains Standard clauses which might have a legal implication. Therefore, no deviation from the text given in the clauses nor deletion of any of these clauses has to be allowed. In case a deviation from these clauses has to be considered/allowed due to insistence of the Seller, then approval of Raksha Mantri will be required. Para 15 on Pre-Integrity clause may be included only in cases above Rs. 100 crores.
  5. Part IV contains several Commercial clauses, which may or may not be relevant for a particular type of RFP. Hence the title is given as Special Conditions of Contract. A conscious decision may be taken to incorporate the relevant clauses from this list based on the guidelines given in the concerned Chapters of DPM-2009. The wordings of these clauses can also be appropriately modified to suit a particular case.
  6. In Part V, the Evaluation Criteria can be suitably amplified/modified to suit the specific requirements of a particular case. Similarly, the Format of the Price Bid can be amended to include / exclude items as per requirements.
  7. The draft RFP applies both to indigenous and foreign procurement cases. The main difference will be in the selection of relevant 'Special Condition Clauses' from those given in Part-IV of the draft RFP. This in turn will depend upon the guidelines contained in corresponding paras of various chapters. In particular, the provisions of Chapters 4 & 7 would be relevant for indigenous procurements and Chapters 9 & 10 for foreign procurements must be examined by the Buyer for appropriate selection of commercial clauses.

**REQUEST FOR PROPOSAL FORMAT**  
**(Particulars of the Buyer issuing the RFP)**

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

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

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

## **Part I – General information**

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

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

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

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

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

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

### **4. Location of the Tender Box:**

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

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

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

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

### **7. Forwarding of Bids –** Bids should be forwarded by Bidders under their original memo / letter pad inter alia furnishing details like TIN number, VAT/CST number, Bank address with EFT Account if applicable, etc and complete postal & e-mail address of their office.

- 8. Clarification regarding contents of the RFP:** A prospective bidder who requires clarification regarding the contents of the bidding documents shall notify to the Buyer in writing about the clarifications sought not later than 14 (fourteen) days prior to the date of opening of the Bids. Copies of the query and clarification by the purchaser will be sent to all prospective bidders who have received the bidding documents.
- 9. Modification and Withdrawal of Bids:** A bidder may modify or withdraw his bid after submission provided that the written notice of modification or withdrawal is received by the Buyer prior to deadline prescribed for submission of bids. A withdrawal notice may be sent by fax but it should be followed by a signed confirmation copy to be sent by post and such signed confirmation should reach the purchaser not later than the deadline for submission of bids. No bid shall be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity specified. Withdrawal of a bid during this period will result in Bidder's forfeiture of bid security.
- 10. Clarification regarding contents of the Bids:** During evaluation and comparison of bids, the Buyer may, at its discretion, ask the bidder for clarification of his bid. The request for clarification will be given in writing and no change in prices or substance of the bid will be sought, offered or permitted. No post-bid clarification on the initiative of the bidder will be entertained.
- 11. Rejection of Bids:** Canvassing by the Bidder in any form, unsolicited letter and post-tender correction may invoke summary rejection with forfeiture of EMD. Conditional tenders will be rejected.
- 12. Unwillingness to quote:** Bidders unwilling to quote should ensure that intimation to this effect reaches before the due date and time of opening of the Bid, failing which the defaulting Bidder may be delisted for the given range of items as mentioned in this RFP.
- 13. Validity of Bids:** The Bids should remain valid till \_\_\_\_\_(Date)\_\_\_\_\_ from the last date of submission of the Bids.
- 14. Earnest Money Deposit:-** Bidders are required to submit Earnest Money Deposit (EMD) for amount of \_\_\_\_ along with their bids. The EMD may be submitted in the form of an Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the public sector banks or a private sector bank authorized to conduct government business as

per Form DPM-16 (Available in MoD website and can be provided on request). EMD is to remain valid for a period of forty-five days beyond the final bid validity period. EMD of the unsuccessful bidders will be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30<sup>th</sup> day after the award of the contract. The Bid Security of the successful bidder would be returned, without any interest whatsoever, after the receipt of Performance Security from them as called for in the contract. EMD is not required to be submitted by those Bidders who are registered with the Central Purchase Organization (e.g. DGS&D), National Small Industries Corporation (NSIC) or any Department of MoD or MoD itself. The EMD will be forfeited if the bidder withdraws or amends, impairs or derogates from the tender in any respect within the validity period of their tender.

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

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

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

.....

.....

2. **Technical Details:**

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

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

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

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

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

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

TERMS OF DELIVERY	DATE OF DELIVERY
(a) Local Delivery at Site	The date on which the delivery is made at the consignee's site mentioned in the contract.
(b) Ex-works	The date the Seller delivers the goods to the Buyer at Seller's factory / premises.
c) F.O.R Station of Dispatch	The date on which the goods are placed by the Seller on rail with clear Rail Receipt.
d) By Post Parcel	The date of postal receipt.
e) Dispatch by Air	The date of Air-way Bill.
f) F.O.R. Destination	the date on which the goods reach the destination railway station specified in the contract, unless otherwise stated.
g) C.I.P. Destination	The date on which the delivery is effected at the destination mentioned in the contract.
h) F.A.S. Port of Shipment	The date on which the Seller deliver the goods alongside the vessel at the specified port of shipment. This date is reflected in Bill of Lading.
g) F.O.B. Port of Shipment	The date on which the Seller delivers the goods on vessel's board at the specified port of shipment. This date is reflected in Bill of Lading.
h) C.I.F. Port of Destination	The date on which the goods actually arrived at the Destination Port.

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

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

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

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

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

1. **Law:** The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.
2. **Effective Date of the Contract:** The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.
3. **Arbitration:** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms DPM-7, DPM-8 and DPM-9 (Available in MoD website and can be provided on request).
4. **Penalty for use of Undue influence:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offers by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on

the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

5. **Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.
6. **Access to Books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.
7. **Non-disclosure of Contract documents:** Except with the written consent of the Buyer/ Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

8. **Liquidated Damages**: In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.
9. **Termination of Contract**: The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-
- (a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (\_\_\_\_ months) after the scheduled date of delivery.
  - (b) The Seller is declared bankrupt or becomes insolvent.
  - (c) The delivery of material is delayed due to causes of Force Majeure by more than (\_\_\_\_months) provided Force Majeure clause is included in contract.
  - (d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.
  - (e) As per decision of the Arbitration Tribunal.
10. **Notices**: Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.
11. **Transfer and Sub-letting**: The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.
12. **Patents and other Industrial Property Rights**: The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

- 13) **Amendments**: No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract.
- 14) **Taxes and Duties**
- a) **In respect of Foreign Bidders**: All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present contract in their respective countries.
- b) **In respect of Indigenous bidders**
- i) **General**
1. If Bidder desires to ask for excise duty or Sales Tax / VAT extra, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
  2. If reimbursement of any Duty/Tax is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax will be entrained after the opening of tenders.
  3. If a Bidder chooses to quote a price inclusive of any duty/tax and does not confirm inclusive of such duty/tax so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax included in the price. Failure to do so may result in ignoring of such offers summarily.
  4. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. Stipulations like, the said duty/tax was presently not applicable but the same will be charged if it becomes leviabale later on, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax

which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.

5. Any change in any duty/tax upward/downward as a result of any statutory variation in excise taking place within contract terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax, the actual quantum of reduction of such duty/tax shall be reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Seller.

**ii) Customs Duty –**

1. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F. prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer contract number..... dated.....
2. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
3. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

### **iii) Excise Duty**

1. Where the excise duty is payable on advalorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
2. Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the contract. In case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the contract or any other pending Government Contract and that no disputes on this account would be raised by them.
3. The Seller is also required to furnish to the Paying Authority the following certificates:
  - (a) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill.
  - (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any.
  - (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals.
  - (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover

such amounts from the Seller's outstanding bills against that particular contract or any other pending Government contracts and that no dispute on this account would be raised by the Seller.

4. Unless otherwise specifically agreed to in terms of the contract, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract.

**iv) Sales Tax / VAT**

1. If it is desired by the Bidder to ask for Sales tax / VAT to be paid as extra, the same must be specifically stated. In the absence of any such stipulation in the bid, it will be presumed that the prices quoted by the Bidder are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
2. On the Bids quoting sales tax extra, the rate and the nature of Sales Tax applicable at the time of supply should be shown separately. Sales tax will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the contract.

**v) Octroi Duty & Local Taxes**

1. Normally, materials to be supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against contracts placed by this office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.
2. In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or by-laws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

15. **Pre-Integrity Pact Clause:** An “Integrity Pact” would be signed between the Ministry of Defence/Buyer and the Bidder for purchases exceeding Rs.100 crores. This is a binding agreement between the Buyer and Bidders for specific contracts in which the Buyer promises that it will not accept bribes during the procurement process and Bidders promise that they will not offer bribes. Under this Pact, the Bidders for specific services or contracts agree with the Buyer to carry out the procurement in a specified manner. The Format of Pre-Integrity Clause will be as per Form DPM-10 (Available in MoD website, and can be provided on request). The essential elements of the Pact are as follows:
- a. A pact (contract) between the Government of India (Ministry of Defence) (the authority or the “principal”) and those companies submitting a tender for this specific activity (the “Bidder”);
  - b. An undertaking by the Principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
  - c. A statement by each Bidder that it has not paid, and will not pay, any bribes;
  - d. An undertaking by each Bidder to disclose all payments made in connection with the Contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of submission of Bids or upon demand of the Principal, especially when a suspicion of a violation by that Bidder emerges;
  - e. The explicit acceptance by each Bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning Bidder until the contract has been fully executed.
  - f. Undertaking on behalf of a Bidding company will be made “in the name and on behalf of the company’s Chief Executive Officer”.
  - g. The following set of sanctions shall be enforced for any violation by a Bidder of its commitments or undertakings:
    - i. Denial or loss of contracts;
    - ii. Forfeiture of the Bid security and performance bond;
    - iii. Liability for damages to the principal and the competing Bidders; and
    - iv. Debarment of the violator by the Principal for an appropriate period of time.

- h. Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behaviour and compliance program for the implementation of the code of conduct throughout the company).

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

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

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

- a. **Indigenous cases:** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a sum equal to 10% of the contract value within 30 days of receipt of the confirmed order. Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty.—The specimen of PBG is given in Form DPM-15 (Available in MoD website and can be provided on request).
  - b. **Foreign cases:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the Government of India, Ministry of Defence to be confirmed by public sector bank or a private sector bank authorized to undertake government transactions (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) equal to 10 (five percent) of the total value of this contract i.e. for US \$ ..... (US Dollars (in words) ..... only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the Seller. The specimen of PBG is given in Form DPM-15 (Available in MoD website and can be provided on request).
2. **Option Clause:** The contract will have an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original contracted quantity in accordance with the same terms & conditions of the

present contract. This will be applicable within the currency of contract. The Bidder is to confirm the acceptance of the same for inclusion in the contract. It will be entirely the discretion of the Buyer to exercise this option or not.

3. **Repeat Order Clause** – The contract will have a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present contract within six months from the date of supply/successful completion of this contract, the cost, terms & conditions remaining the same. The Bidder is to confirm acceptance of this clause. It will be entirely the discretion of the Buyer to place the Repeat order or not.
4. **Tolerance Clause** – To take care of any change in the requirement during the period starting from issue of RFP till placement of the contract, Buyer reserves the right to \_\_\_% plus/minus increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the Seller. While awarding the contract, the quantity ordered can be increased or decreased by the Buyer within this tolerance limit.
5. **Payment Terms for Indigenous Sellers -** It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/EFT mechanism instead of payment through cheques, wherever feasible. A copy of the model mandate form prescribed by RBI to be submitted by Bidders for receiving payments through ECS is at Form DPM-11 (Available in MoD website and can be given on request). The payment will be made as per the following terms, on production of the requisite documents:
  - a. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

OR

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

OR

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

OR

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

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

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

OR

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

OR

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

OR

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

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

OR

- a. Advance payments may be made upto 15% against appropriate Bank guarantee or any authorised guarantee, as acceptable to the Buyer.

8. **Paying Authority:**

- a. Indigenous Sellers: (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

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

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

- b. **Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:
    - i. Clean on Board Airway Bill/Bill of Lading
    - ii. Original Invoice
    - iii. Packing List
    - iv. Certificate of Origin from Seller's Chamber of Commerce, if any.
    - v. Certificate of Quality and current manufacture from OEM.
    - vi. Dangerous Cargo certificate, if any.
    - vii. Insurance policy of 110% if CIF / CIP contract
    - viii. Certificate of Conformity & Acceptance Test at PDI, if any.
    - ix. Physio-sanitary / Fumigation Certificate, if any.
    - x. Performance Bond / Warranty Certificate
9. **Fall clause** - The following Fall clause will form part of the contract placed on successful Bidder -
- a. The price charged for the stores supplied under the contract by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate contract is completed.
  - b. If at any time, during the said period the Seller reduces the sale price, sells or offer to sell such stores to any person/organisation including the Buyer or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to:--

- i. Exports by the Seller.
  - ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
  - iii. Sale of goods such as drugs which have expiry dates.
  - iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.
- c. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate contract – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Contract at price lower than the price charged to the government under the contract except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below - .....

10. **Exchange Rate Variation Clause:**

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

Year wise and major currency wise import content break up

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

(b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the contract. Base exchange rate of each major currency used for calculating FE content of the contract will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.

(c) The base date for ERV would be contract date and variation on the base date will be given upto the midpoint manufacture unless Bidder indicates the time schedule within which material will be exported by them. Based on information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.

(d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be refixed /extended.

(e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the vendor in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

#### **11. Risk & Expense clause –**

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

4. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed \_\_\_\_% of the value of the contract.”

**12. Force Majeure clause**

- a. Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the present contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earth Quake and other acts of God as well as War, Military operation, blockade, Acts or Actions of State Authorities or any other circumstances beyond the parties control that have arisen after the conclusion of the present contract.
  - b. In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
  - c. The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case not later than 10 (Ten) days from the moment of their beginning.
  - d. Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances.
  - e. If the impossibility of complete or partial performance of an obligation lasts for more than 6 (six) months, either party hereto reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.
- 13. Buy-Back offer - Buyer is interested to trade the existing old goods while purchasing the new ones. Bidders may formulate and submit their tenders accordingly. Interested Bidders can inspect the old goods to be traded through this transaction. Buyer reserves its right to trade or not to trade the old goods while purchasing the new ones and the Bidders are to frame their bids accordingly covering both the options. Details for buy-back offer are as under –**
- a. Details of Items for buy-back scheme – Make/Model, Specs, Year of Production/Purchase, Period of Warranty/AMC, etc.

- b. Place for inspection of old items – Address, Telephone, Fax, e-mail, Contact personnel, etc.
  - c. Timings for Inspection – All weekdays between \_\_\_\_ to \_\_\_\_\_.
  - d. Last date for inspection – 1 day before the last date of submission of bids.
  - e. Period of handing over old items to successful bidder – Within 15 days of placement of order.
  - f. Handling charges and transportation expenses to take out the old items will be on account of the successful bidder.
14. **Specification:** The following Specification clause will form part of the contract placed on successful Bidder - The Seller guarantees to meet the specifications as per Part-II of RFP and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques alongwith necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (\_\_\_\_) days of affecting such upgradation/alterations.
15. **OEM Certificate:** In case the Bidder is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.
16. **Export License:** The Bidders are to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.
17. **Earliest Acceptable Year of Manufacture:** \_\_\_\_\_ Quality / Life certificate will need to be enclosed with the Bill.
18. **Buyer Furnished Equipment:** The following equipment will be provided by the Buyer at his expense to the Seller:  
 .....  
 .....
19. **Transportation:** The following Transportation clause will form part of the contract placed on successful Bidder –

a. **CIF/CIP** – The stores shall be delivered CIF/CIP \_\_\_\_\_(Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer's risk of loss of or damage to goods during the carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by Indian ships only. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:

- i. Name of the Ship
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
- iv. Number of Packages and weight.
- v. Nomenclature and details of major equipment.
- vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

b. **FOB/FAS** -- The stores shall be delivered FOB ..... (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. In case of FOB/FAS contracts, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least eight weeks in advance for finalizing the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and

on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the Seller may arrange for such transport on alternative carriers with the prior written consent of the Buyer. Where the Seller is required under the contract to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the Buyer for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the Seller may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the Buyer. Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the Buyer was obtained), the Seller will be liable for all payments and expenses that the Buyer may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the Buyer. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The Seller may contact 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).

OR

- a. **FCA** - The delivery of the goods shall be FCA \_\_\_\_\_ Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.
20. **Air lift:** The following Airlift clause will form part of the contract placed on successful Bidder - Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of an intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed.
  21. **Packing and Marking:** The following Packing and Marking clause will form part of the contract placed on successful Bidder –

- a. The Seller shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. Each spare, tool and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.
  - i. Part Number :
  - ii. Nomenclature :
  - iii. Contract annex number :
  - iv. Annex serial number :
  - v. Quantity contracted :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
  - i. EXPORT
  - ii. Contract No. -----
  - iii. Consignee -----
  - iv. Port / airport of destination -----
  - v. Ultimate consignee -----
  - vi. SELLER -----
  - vii. Package No. -----
  - viii. Gross/net weight : -----
  - ix. Overall dimensions/volume : -----
  - x. The Seller's marking.

- f. If necessary, each package shall be marked with warning inscriptions: <Top>, “Do not turn over”, category of cargo etc.
  - g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.
22. **Quality:** The quality of the stores delivered according to the present Contract shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller’s country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Contract shall be new i.e. not manufactured before (Year of Contract), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.
23. **Quality Assurance:** Seller would provide the Standard Acceptance Test Procedure (ATP) within \_\_\_ month of this date of contract. Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The details in this regard will be coordinated during the negotiation of the contract. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.
24. **Inspection Authority:** The Inspection will be carried out by \_\_\_\_\_. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.
25. **Pre-Dispatch Inspection -** The following Pre-dispatch Inspection clause will form part of the contract placed on successful Bidder -
- a. The Buyer’s representatives will carry out Pre-Dispatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPM-21 (Available in MoD website and can be given on request).

- b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
  - c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least \_\_\_\_\_(No of days) in advance to apply for the necessary authorisations and clearances to be granted.
  - d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.
  - e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
  - f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
  - g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Contract.
26. **Joint Receipt Inspection**: The following Joint Receipt Inspection clause will form part of the contract placed on successful Bidder –
- a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by

the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of

- i. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
  - ii. Complete functional checking of the stores/equipment as per specifications in the contract and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
  - iii. Check proof and firing, if required.
- b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.
- c. Upon completion of each JRI, JRI proceedings and Acceptance Certificate will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the contract. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

27. **Franking clause** – The following Franking clause will form part of the contract placed on successful Bidder –

- a. **Franking Clause in the case of Acceptance of Goods** “The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the contract”.

- b. **Franking Clause in the case of Rejection of Goods** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the contract.”
28. **Claims:** The following Claims clause will form part of the contract placed on successful Bidder –
- a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the contract.
  - b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPM-22 (Available in MoD website and can be given on request).
  - c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPM-23 (Available in MoD website and can be given on request) .
  - d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller’s office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
  - e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller’s arrangement.
  - f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.

- g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

29. **Warranty** –

- a. The following Warranty will form part of the contract placed on the successful Bidder –
  - i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.
  - ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
  - iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.

- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**OR**

- b. The following Warranty will form part of the contract placed on successful Bidder –

- i. The Seller warrants that the goods supplied under the contract conform to technical specifications prescribed and shall perform according to the said technical specifications.
- ii. The Seller warrants for a period of \_\_\_\_\_ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the contract and each component used in the manufacture thereof shall be free from all types of defects/failures.
- iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.
- iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within \_\_ % of the warranty period.
- v. The Seller shall associate technical personnel of the Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.
- vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds \_\_\_\_% of the warranty period, the

complete equipment shall be replaced free of cost by the Seller within a stipulated period of \_\_\_ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.

- vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this contract, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- viii. The Seller will guarantee the shelf life of ( \_\_\_\_\_) years under the Indian tropical condition as given below:
  - 1. Minimum temperature - -
  - 2. Maximum temperature ---
  - 3. Average Humidity ---
- ix. For procurement of oils and lubricants, the following will be applicable –
  - 1. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
  - 2. The penalty amounting to (\_\_\_\_\_ %) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
  - 3. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

30. **Product Support:** The following Product Support clause will form part of the contract placed on successful Bidder –

- a. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipments (STE) subcontracted from other agencies/ manufacturer by the Seller for a maximum period of \_\_\_\_\_years including \_\_\_\_\_ years of warranty period after the delivery of \_\_\_\_\_ (name of equipment).

- b. The Seller agrees to undertake Maintenance Contract for a maximum period of \_\_\_\_\_ months, extendable till the complete Engineering Support Package is provided by the Seller.
  - c. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.
  - d. Any improvement/modification/ up gradation being undertaken by the Seller or their sub suppliers on the stores/equipment being purchased under the Contract will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.
  - e. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this contract for a period of \_\_\_\_\_ years as maintenance contract as specified or provision of complete Engineering Support Package to the Buyer whichever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.
31. **Annual Maintenance Contract (AMC) Clause** - The following AMC clause will form part of the contract placed on successful Bidder -
- a. The Seller would provide comprehensive AMC for a period of \_\_\_\_ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Contract. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:
    - i. **Preventive Maintenance Service:** The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating base to carry out functional check ups and minor adjustments/ tuning as may be required.
    - ii. **Breakdown maintenance Service:** In case of any breakdown of the equipment/system, on receiving a call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.

- b. Response time: The response time of the Seller should not exceed \_\_\_\_\_ hours from the time the breakdown intimation is provided by the Buyer.
- c. Serviceability of \_\_\_% per year is to be ensured. This amounts to total maximum downtime of \_\_\_days per year. Also unserviceability should not exceed \_\_\_days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.
- d. Maximum repair turnaround time for equipment/system would be \_\_\_\_\_ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.
- e. Technical Documentation:All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.
- f. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.
- g. The Buyer reserves its right to terminate the maintenance contract at any time without assigning any reason after giving a notice of \_\_\_ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the Seller for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms.

32. **Engineering Support Package (ESP) clause** - The following ESP clause will form part of the contract placed on successful Bidder –

- a. **Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:
  - i. Unit level repairs - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any

sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-

1. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
2. Scaling of special tools and spares as mentioned above including Maintenance manual.

ii. **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-

1. Quantity and specification of spares that need to be stocked for a population of \_\_\_\_\_ equipment.
2. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).

iii. **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-

1. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
2. Quantity and specification of spares, sub assemblies as per population expected to be maintained.
3. Oils and lubricants necessary for overhaul.
4. All necessary technical literature.
5. Calibration facilities for test equipment.This level of repair defines stripping and rebuilding of equipment in a Base workshop.

b. **Manufacturers Recommended List of Spares (MRLS).** - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPM-19 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-

- i. Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
- ii. Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
- iii. High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for eg it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

c. **Special Maintenance Tools and Test Equipment** - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPM-17 (Available in MoD website and can be given on request) and is to be included in both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

d. **Technical Literature** - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPM-18 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

e. **Miscellaneous Aspects** (Applicable only when trials are required) - In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.

- f. **Maintainability Evaluation Trials (MET).** This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. MET details will be given as per format given at Form DPM-20 (Available in MoD website and can be given on request). To facilitate this process the Bidder is required to provide the following :-
- i. Technical Literature.
    1. User Handbook/Operators Manual in English and Hindi.
    2. Design Specifications.
    3. Technical Manuals.
      - a. Part I Tech description, specifications, functioning of various systems.
      - b. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
      - c. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
      - d. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
    4. Manufacturers Recommended List of Spares (MRLS).
    5. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
    6. Technical Manual on STE with drawing reference.
    7. Complete Equipment Schedule.
    8. Table of Tools & Equipment (TOTE) & carried spares.
    9. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.
  - ii. One set of Gauges
  - iii. One set of Special Maintenance Tools (SMTs).
  - iv. One set of Special Test Equipment (STEs).
  - v. Servicing Schedule.
  - vi. Condemnation limits.
  - vii. Permissive repair schedule.
  - viii. Packing specifications /instructions.
  - ix. Design Specifications.
  - x. Any additional information suggested by the OEM.
- g. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

33. **Price Variation (PV) Clause** – The following PV clause will form part of the contract placed on successful Bidder (Note - DGS&D Manual provides Standardised Price Variation Clauses. Any of those clauses could be considered for inclusion. A sample clause is indicated below) –

- a. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

$$P_1 = P_0 \left\{ F + a \left( \frac{M_1}{M_0} \right) + b \left( \frac{L_1}{L_0} \right) - P_0 \right\}$$

Where  $P_1$  is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

$P_0$  is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

$L_0$  and  $L_1$  are the wage indices at the base month and year and at the month and year of calculation respectively.

$M_0$  and  $M_1$  are the material indices at the base month and year and at the month and year of calculation respectively.

If more than one major item of material is involved, the material element can be broken up into two or three components such as  $M_x, M_y, M_z$ . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate *vis-a-vis* the wage rates.

- b. Following conditions would be applicable to Price Adjustment –
  - i. Base dates shall be due dates of opening of price bids.
  - ii. Date of adjustment shall be mid point of manufacture.
  - iii. No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
  - iv. Total adjustment will be subject to maximum ceiling of \_\_\_\_%.
  - v. No price adjustment shall be payable on the portion of contract price paid to the Seller as an advance payment.

## **Part V – Evaluation Criteria & Price Bid issues**

1. **Evaluation Criteria** - The broad guidelines for evaluation of Bids will be as follows:
  - a. Only those Bids will be evaluated which are found to be fulfilling all the eligibility and qualifying requirements of the RFP, both technically and commercially.
  - b. In respect of Two-Bid system, the technical Bids forwarded by the Bidders will be evaluated by the Buyer with reference to the technical characteristics of the equipment as mentioned in the RFP. The compliance of Technical Bids would be determined on the basis of the parameters specified in the RFP. The Price Bids of only those Bidders will be opened whose Technical Bids would clear the technical evaluation.
  - c. The Lowest Bid will be decided upon the lowest price quoted by the particular Bidder as per the Price Format given at Para 2 below. The consideration of taxes and duties in evaluation process will be as follows:
    - i. In cases where only indigenous Bidders are competing, all taxes and duties (including those for which exemption certificates are issued) quoted by the Bidders will be considered. The ultimate cost to the Buyer would be the deciding factor for ranking of Bids.
    - ii. In cases where both foreign and indigenous Bidders are competing, following criteria would be followed –
      1. In case of foreign Bidders, the basic cost (CIF) quoted by them would be the basis for the purpose of comparison of various tenders.
      2. In case of indigenous Bidders, excise duty on fully formed equipment would be offloaded.
      3. Sales tax and other local levies, i.e. octroi, entry tax etc would be ignored in case of indigenous Bidders.
  - d. The Bidders are required to spell out the rates of Customs duty, Excise duty, VAT, Service Tax, etc in unambiguous terms; otherwise their offers will be loaded with the maximum rates of duties and taxes for the purpose of comparison of prices. If reimbursement of Customs duty / Excise Duty / VAT is intended as extra, over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be

presumed that the prices quoted are firm and final and no claim on account of such duties will be entrained after the opening of tenders. If a Bidder chooses to quote a price inclusive of any duty and does not confirm inclusive of such duty so included is firm and final, he should clearly indicate the rate of such duty and quantum of excise duty included in the price. Failure to do so may result in ignoring of such offers summarily. If a Bidder is exempted from payment of Customs duty / Excise Duty / VAT duty upto any value of supplies from them, they should clearly state that no excise duty will be charged by them up to the limit of exemption which they may have. If any concession is available in regard to rate/quantum of Customs duty / Excise Duty / VAT, it should be brought out clearly. Stipulations like, excise duty was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that excise duty will not be charged by him even if the same becomes applicable later on. In respect of the Bidders who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of excise duty which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders. The same logic applies to Customs duty and VAT also.

- e. In import cases, all the foreign quotes will be brought to a common denomination in Indian Rupees by adopting the exchange rate as BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
- f. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price will be corrected. If there is a discrepancy between words and figures, the amount in words will prevail for calculation of price.
- g. The Buyer reserves the right to evaluate the offers received by using Discounted Cash Flow method at a discounting rate of \_\_\_\_%. In case cash flow involves more than one currency, the same will be brought to a common denomination in Indian Rupees by adopting exchange rate as BC Selling rate of the State Bank of India on the date of the opening of Price Bids.
- h. The Lowest Acceptable Bid will be considered further for placement of contract / Supply Order after complete clarification and price negotiations as decided by the Buyer. The Buyer will have the right to award contracts to different Bidders for being lowest in particular items. The Buyer also reserves the right to do Apportionment of Quantity, if it is convinced that Lowest Bidder is not in a position to supply full quantity in stipulated time.

- i. Any other criteria as applicable to suit a particular case.
2. **Price Bid Format:** The Price Bid Format is given below and Bidders are required to fill this up correctly with full details:

- a. Basic cost of the item/items:

	Item	Unit price	Qty	Total
i.	A			
ii.	B			
iii.	C			
iv.	Total of Basic Price			

- b. Accessories
- c. Installation / Commissioning charges
- d. Training
- e. Technical literature
- f. Tools
- g. AMC with spares
- h. AMC without spares
- i. Any other item
- j. Is Excise Duty extra?
- k. If yes, mention the following –
  - i. Total value of items on which Excise Duty is leviable:
  - ii. Rate of Excise duty (item-wise if different ED is applicable):
  - iii. Surcharge on Excise duty, if applicable?
  - iv. Total value of excise duty payable:
- l. Is Excise Duty Exemption (EDE) required:
- m. If yes, then mention and enclose the following:
  - i. Excise notification number under which EDE can be given:
- n. Is VAT extra?
- o. If yes, then mention the following:

- i. Total value on which VAT is leviable:
  - ii. Rate of VAT:
  - iii. Total value of VAT leviable:
- p. Is Service Tax extra?
- q. If yes, then mention the following:
  - i. Total value of Services on which Service Tax is leviable:
  - ii. Rate of Service Tax leviable:
  - iii. Total value of Service Tax leviable:
- r. Is Custom Duty Exemption (CDE) required:
- s. If yes, then mention the following:
  - i. Custom notification number under which CDE can be given(Enclose a copy):
  - ii. CIF value of stores to be imported:
  - iii. Rate of Customs Duty payable:
  - iv. Total amount of Customs Duty payable:
- t. Octroi / Entry taxes:
- u. Any other Taxes / Duties / Overheads / Other costs:
- v. Grand Total:
  - i. Excluding AMC and spares
  - ii. Including AMC with spares
  - iii. Including AMC without spares

## **APPENDIX 'D'**

### **Subsidiary Instructions to the Buyer for framing the Supply Order**

1. Part I contains the Preamble and it should be mentioned as it is.
2. Part II contains details of items being Supplied/Ordered and their finalized prices. Format of Price bid in Part-V of RFP should be the base for listing out the details. The information may also contain the following as mentioned in Part-II of the RFP and finalized by the Buyer -
  - a. Relevant technical parameters
  - b. User requirements in terms of functional characteristics
  - c. Specifications / Drawings, if applicable
  - d. Requirement of training / on-job training
  - e. Requirement of installation, Commissioning
  - f. Requirement of FATs, HATs and SATs.
  - g. Requirement of technical documentation.
  - h. Type of future assistance on completion of warranty.
  - i. Earliest Acceptable Year of manufacture
  - j. Delivery Period
  - k. Relevant INCOTERM for Delivery and Transportation
  - l. Consignee details
3. Part III contains Standard clauses which might have a legal bearing. Therefore, neither any deviation from the text given in these clauses nor deletion of any of these clauses should be allowed. In case a deviation from these clauses is required to be allowed due to insistence of the Seller during negotiations, then approval of Raksha Mantri will be required. Para 15 pertaining to Pre Integrity is to be included only for cases above Rs. 100 crores.
4. Part IV contains Special Conditions of the Supply Order as mentioned in Part-IV of RFP. Though major deviations from RFP should not be done as it will amount to denial of equal opportunity to unsuccessful bidders, minor changes in wordings of these clauses may be done if the Seller insists upon the same or to suit a particular case.
5. Part V contains the list of addresses and Signing formalities.



- h. Part V – It contains list of other addresses and other relevant details pertaining to this S.O.
- 3. Two copies of ink-signed Supply Order are being sent to you. Please acknowledge receipt within seven days of receipt of this Supply order, on your office letterhead duly signed by the authorized signatory. One copy of Supply Order duly signed and stamped on all pages should be returned to this office along with your acknowledgment letter. If such an acceptance or communication conveying any objection to certain part of this Supply Order is not received within seven days, then it would be deemed that this Supply Order is fully accepted by you and all obligations of Seller will be applicable to you under this S.O.

Thanking you,

Yours sincerely

Name and designation of Buyer  
On and behalf of President of India

## **Part II – Essential Details of Items/Services Supply Ordered**

1. **Schedule of Prices** – List of items / services Supply Ordered is as follows:

SI No	Denomination of items / services	Quantity	Unit price	Total price	Remarks
Grant Total					

2. **Technical Details:**

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

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

4. **INCOTERMS for Delivery and Transportation** – (“E” / “F” / “C” / “D” Terms). The definition of Delivery Period for this Supply Order will be \_\_\_\_\_

5. **Consignee details** - \_\_\_\_\_

### **Part III – Standard Conditions of Supply Order**

**1. Law:** The Supply Order shall be considered and made in accordance with the laws of the Republic of India. The Supply Order shall be governed by and interpreted in accordance with the laws of the Republic of India.

**2. Effective Date of the Supply Order:** The Supply Order shall come into effect on the date of its acknowledgment by the Seller and shall remain valid until the completion of the obligations of the parties under the Supply Order. The deliveries and supplies and performance of the services shall commence from the effective date of the Supply Order.

**3. Arbitration:** All disputes or differences arising out of or in connection with the Supply Order shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Supply Order or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The Arbitration is as per Form DPM-7 (for indigenous trade) / DPM-8 (for foreign supplies) / DPM-9 (for PSUs) enclosed to Part-III of this Supply Order.

**4. Penalty for use of Undue influence:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Supply Orders or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Supply Order or any other Supply Order with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Supply Order or any other Supply Order with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offers by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the Supply Order and all or any other Supply Orders with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other Supply Order, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the Supply Order, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

**5. Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Supply Order and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the Supply Order to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this Supply Order, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Supply Order with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Supply Order either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Supply Order along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any Supply Orders concluded earlier with the Government of India.

**6. Access to books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the Supply Order as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.

**7. Non-disclosure of Supply Order documents:** Except with the written consent of the Buyer/Seller, other party shall not disclose the Supply Order or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

**8. Liquidated damages:** In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this Supply Order, the Buyer may, at his discretion, withhold any payment until the completion of the Supply Order. The Buyer may also deduct from the Seller as agreed, Liquidated Damages to the sum of 0.5% of the Supply Order price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.

**9. Termination of the Supply Order:** The Buyer shall have the right to terminate this Supply Order in part or in full in any of the following cases :-

- (a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (\_\_\_\_ months) after the scheduled date of delivery.
- (b) The Seller is declared bankrupt or becomes insolvent.
- (c) The delivery of material is delayed due to causes of Force Majeure by more than (\_\_\_months).
- (d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this Supply Order and paid any commission to such individual/company etc.
- (e) As per decision of the Arbitration Tribunal.

**10. Notices:** Any notice required or permitted by the Supply Order shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.

**11. Transfer and sub-letting:** The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Supply Order or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Supply Order or any part thereof.

**12. Patents and Other Industrial Property Rights:** The prices stated in the present Supply Order shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

**13. Amendments:** No provision of present Supply Order shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Supply Order and signed on behalf of both the parties and which expressly states to amend the present Supply Order.

## **15. Taxes and Duties**

- a) **In case of Foreign Seller** All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present Supply Order in their respective countries.

**OR**

- b) **In case of Indigenous Seller**

i) **General**

1. If Bidder desires to ask for excise duty or Sales Tax / VAT extra, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
2. If reimbursement of any Duty/Tax is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax will be entrained after the opening of tenders.
3. If a Bidder chooses to quote a price inclusive of any duty/tax and does not confirm inclusive of such duty/tax so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax included in the price. Failure to do so may result in ignoring of such offers summarily.
4. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. Stipulations like, the said duty/tax was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.
5. Any change in any duty/tax upward/downward as a result of any statutory variation in excise taking place within Supply Order terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax, the actual quantum of reduction of such duty/tax shall be

reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Seller.

ii) **Customs Duty –**

1. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F. prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer Supply Order number..... dated.....
2. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
3. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

iii) **Excise Duty**

1. Where the excise duty is payable on advalorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
2. Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the Supply Order, they will pass on the credit to the Buyer immediately

along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the Supply Order. In case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the Supply Order or any other pending Government Supply Order and that no disputes on this account would be raised by them.

3. The Seller is also required to furnish to the Paying Authority the following certificates:
  - (a) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill.
  - (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any.
  - (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals.
  - (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover such amounts from the Seller's outstanding bills against that particular Supply Order or any other pending Government Supply Orders and that no dispute on this account would be raised by the Seller.
4. Unless otherwise specifically agreed to in terms of the Supply Order, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the Supply Ordered stores taking place during the pendency of the Supply Order.

iv) **Sales Tax / VAT**

1. If it is desired by the Bidder to ask for Sales tax / VAT to be paid as extra, the same must be specifically stated. In the absence of any such stipulation in the bid, it will be presumed that the prices quoted by the Bidder are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
2. On the Bids quoting sales tax extra, the rate and the nature of Sales Tax applicable at the time of supply should be shown separately. Sales tax will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the Supply Order.

v) **Octroi Duty & Local Taxes**

1. Normally, materials to be supplied to Government Departments against Government Supply Orders are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against Supply Orders placed by this office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.
2. In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or by-laws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

**15) Pre-Integrity Pact Clause** – A Pre-Integrity Pact is concluded between Buyer and Seller as per Form DPM-10 enclosed to Part-III of this Supply Order.

## **Part IV – Special Conditions of Supply Order**

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

- a. **In case of Indigenous Seller** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a sum equal to 10% of the Supply Order value within 30 days of signing of this Supply Order. Performance Bank Guarantee will be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this Supply Order.

**OR**

- b. **In case of Foreign Seller:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the Government of India, Ministry of Defence to be confirmed by public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) equal to 10(five percent) of the total value of this Supply Order i.e. for US \$ ..... (US Dollars (in words) ..... only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other Supply Order obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all Supply Order obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the Supply Order are not fulfilled by the Seller. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this Supply Order.
2. **Option Clause:** This Supply Order has an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original Supply Ordered quantity in accordance with the same terms & conditions of the present Supply Order. This will be applicable within the currency of Supply

Order. It will be entirely the discretion of the Buyer to exercise this option or not.

3. **Repeat Order Clause** – This Supply Order has a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present Supply Order within six months from the date of successful completion of this Supply Order, cost, terms & conditions remaining the same. It will be entirely the discretion of Buyer to place the Repeat order or not.
4. **Tolerance clause** – To take care of any change in the requirement during the period starting from issue of RFP till placement of the Supply Order, Buyer reserves the right to \_\_\_% plus/minus increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the Seller. While awarding the Supply Order, the quantity ordered has been increased or decreased by the Buyer within this tolerance limit.
5. **Payment terms for Indigenous Sellers** - The payment will be made as per the following terms, on production of the requisite documents:
  - a. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

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

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

OR
  - d. Quarterly payments on submission of User clearance certificate in respect of AMC Supply Orders.

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

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

OR

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

OR

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

OR

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

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

OR

- a. Advance payments will be made upto 15% against appropriate Bank guarantee or any authorised guarantee, as accepted by the Buyer. The specimen of PBG is given in Form DPM-16, enclosed to Part-IV of this Supply Order.

8. **Paying Authority:**

- a. **Indigenous Sellers** – (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

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

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

- b. **Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per Supply Orderual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:
- i. Clean on Board Airway Bill/Bill of Lading
  - ii. Original Invoice
  - iii. Packing List
  - iv. Certificate of Origin from Seller's Chamber of Commerce, if any.
  - v. Certificate of Quality and current manufacture from OEM.
  - vi. Dangerous Cargo certificate, if any.
  - vii. Insurance policy of 110% if CIF / CIP Supply Order
  - viii. Certificate of Conformity & Acceptance Test at PDI, if any.
  - ix. Physio-sanitary / Fumigation Certificate, if any.
  - x. Performance Bond / Warranty Certificate

9. **Fall clause** -

- a. The price charged for the stores supplied under the Supply Order by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate Supply Order is completed.
- b. If at any time, during the said period the Seller reduces the sale price, sells or offer to sell such stores to any person/organisation including the purchaser or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the Supply Order, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the Supply Order for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to:--

- i. Exports by the Seller.
  - ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
  - iii. Sale of goods such as drugs which have expiry dates.
  - iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Supply Orders as also under any previous Supply Orders entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.
- c. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate Supply Order – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the Supply Order herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Supply Order at price lower than the price charged to the government under the Supply Order except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below - .....

**10. Exchange Rate Variation Clause:**

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

**Year wise and major currency wise import content break up**

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

(b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the Supply Order. Base exchange rate of each major currency used for calculating FE content of the Supply Order will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.

(c) The base date for ERV would be Supply Order date and variation on the base date will be given upto the midpoint manufacture unless Seller indicates the time schedule within which material will be exported by them. Based on information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.

(d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be refixed /extended.

(e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the Seller in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

#### **11. Risk & Expense clause –**

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

12. **Buy-Back offer** - Buyer will be hand over the old items and the agreed prices will be adjusted in the final payment to the Seller. It will be the responsibility of Seller to carry away the old items from the Buyer's premises within 15 days of signing of this Supply Order. The expenditure on account of Handling charges and transportation expenses to carry away the old items will be borne by the Seller.
13. **Force Majeure**: Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within (\_\_\_ days) of its occurrence informs the other party in writing. Force Majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of the party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond the control of either party. A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this Supply Order. Format of this clause will be as per Form DPM-6, enclosed to Part-IV of this Supply Order.
14. **Specification**: The Seller guarantees to meet the specifications as per Part-II of this Supply Order and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques along with necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (\_\_\_) days of affecting such upgradation/alterations.
15. **OEM Certificate**: In case the Seller is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.
16. **Export License**: The Seller is to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.

17. **Earliest Acceptable Year of Manufacture:** \_\_\_\_\_ Quality / Life certificate will need to be enclosed with the Bill.

18. **Buyer Furnished Equipment:** The following equipment will be provided by the Buyer at his expense to the Seller:

.....  
.....

19. **Transportation:**

a. **CIF/CIP** – The stores shall be delivered CIF/CIP \_\_\_\_\_ (Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer's risk of loss of or damage to goods during the carriage. The Seller will Supply Order for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by Indian ships only. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Transshipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:

- i. Name of the Ship
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
- iv. Number of Packages and weight.
- v. Nomenclature and details of major equipment.
- vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

b. **FOB/FAS** -- The stores shall be delivered FOB/FAS ..... (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. In case of FOB/FAS Supply Orders, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least eight weeks in advance for finalizing the shipping arrangement,

through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the Seller may arrange for such transport on alternative carriers with the prior written consent of the Buyer. Where the Seller is required under the Supply Order to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the Buyer for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the Seller may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the Supply Order, with the prior written consent of the Buyer. Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the Buyer was obtained), the Seller will be liable for all payments and expenses that the Buyer may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the Buyer. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The Seller may contact 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).

OR

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

20. **Air lift:** Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed.

21. **Packing and Marking:**

- a. The Seller shall provide packing and preservation of the equipment and spares/goods Supply Ordered so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. Each spare, tools and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity Supply Ordered is less than six then tag shall be affixed to complete quantity Supply Ordered of the item. The cartons shall then be packed in packing cases as required.
  - i. Part Number :
  - ii. Nomenclature :
  - iii. Supply Order annex number :
  - iv. Annex serial number :
  - v. Quantity Supply Ordered :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
  - i. EXPORT
  - ii. Supply Order No. -----
  - iii. Consignee -----
  - iv. Port / airport of destination -----
  - v. Ultimate consignee -----
  - vi. SELLER -----
  - vii. Package No. -----

- viii. Gross/net weight : -----
- ix. Overall dimensions/volume : -----
- x. The Seller's marking \_\_\_\_\_

- f. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.
- g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.

22. **Quality:** - The quality of the stores delivered according to the present Supply Order shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Supply Order shall be new i.e. not manufactured before (Year of Supply Order), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.

23. **Quality Assurance:** After the Supply Order is finalized, the Seller would be required to provide the Standard Acceptance Test Procedure (ATP). Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.

24. **Inspection Authority:** The Inspection will be carried out by \_\_\_\_\_. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.

25. **Pre-Dispatch Inspection –**

- a. The Buyer's representatives will carry out Pre-Dispatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPM-21 enclosed as part of Part-IV.

- b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
- c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least \_\_\_\_\_(No of days) in advance to apply for the necessary authorisations and clearances to be granted.
- d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.
- e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
- f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
- g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Supply Order.

## **26. Joint Receipt Inspection:**

- a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of
  - i. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this Supply Order and the invoices.
  - ii. Complete functional checking of the stores/equipment as per specifications in the Supply Order and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
  - iii. Check proof and firing if required.
- b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.
- c. Upon completion of each JRI, JRI proceedings and Acceptance will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the Supply Order. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

## **27. Franking Clause**

- a. **In the case of Acceptance of Goods** "The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the Supply Order alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the Supply Order".

- b. **In the case of Rejection of Goods** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the Supply Order.”

**28. Claims:**

- a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the Supply Order.
- b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPM-22 (Available in MoD website and can be given on request).
- c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPM-23 (Available in MoD website and can be given on request) .
- d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller’s office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
- e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller’s arrangement.
- f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.

- g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

29. **Warranty** –

- a.
  - i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this Supply Order shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in Supply Order. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.
  - ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
  - iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.

- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**OR**

b.

- i. The Seller warrants that the goods supplied under the Supply Order conform to technical specifications prescribed and shall perform according to the said technical specifications.
- ii. The Seller warrants for a period of \_\_\_\_\_ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the Supply Order and each component used in the manufacture thereof shall be free from all types of defects/failures.
- iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.
- iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within \_\_\_ % of the warranty period.
- v. Seller shall associate technical personnel of Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.

- vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds \_\_\_\_% of the warranty period, the complete equipment shall be replaced free of cost by the Seller within a stipulated period of \_\_\_ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.
- vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this Supply Order, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- viii. The Seller will guarantee the shelf life of ( \_\_\_\_\_) years under the Indian tropical condition as given below:
  - 1. Minimum temperature - -
  - 2. Maximum temperature ---
  - 3. Average Humidity ---
- ix. For procurement of oils and lubricants, the following will be applicable –
  - 1. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
  - 2. The penalty amounting to (\_\_\_\_\_ %) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
  - 3. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

**30. Product Support:**

- a. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipments (STE) sub Supply Ordered from other agencies/ manufacturer by the Seller for a maximum period of \_\_\_\_\_years including \_\_\_\_\_ years of warranty period after the delivery of \_\_\_\_\_ (name of equipment).

- b. The Seller agrees to undertake Maintenance Supply Order for a maximum period of \_\_\_\_\_months, extendable till the complete Engineering Support Package is provided by the Seller.
- c. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.
- d. Any improvement/modification/ up gradation being undertaken by Seller or their sub suppliers on the stores/equipment being purchased under the Supply Order will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.
- e. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this Supply Order for a period of \_\_\_\_\_ years as maintenance Supply Order as specified or provision of complete Engineering Support Package to the Buyer which ever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.

**31. Annual Maintenance Supply Order (AMC) Clause -**

- a. The Seller would provide comprehensive AMC for a period of \_\_\_\_ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Supply Order. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:
  - i. Preventive Maintenance Service: The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating base to carry out functional check ups and minor adjustments/ tuning as may be required.
  - ii. Breakdown maintenance Service: In case of any breakdown of the equipment/system, on call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.
- b. Response time: The response time of the Seller should not exceed \_\_\_\_\_hours from the time the breakdown intimation is provided by the Buyer.

- c. Serviceability of \_\_\_% per year is to be ensured. This amounts to total maximum downtime of \_\_\_days per year. Also unavailability should not exceed \_\_\_days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.
- d. Maximum repair turnaround time for equipment/system would be \_\_\_\_\_ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.
- e. Technical Documentation: All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.
- f. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.
- g. The Buyer reserves its right to terminate the maintenance Supply Order at any time without assigning any reason after giving a notice of \_\_\_ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the Supply Order, if any payment is due to the Seller for maintenance services already performed in terms of the Supply Order, the same would be paid to it as per the Supply Order terms.

32. **Engineering Support Package (ESP) clause -**

a. **Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:

i. **Unit level repairs** - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-

1. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
2. Scaling of special tools and spares as mentioned above including Maintenance manual.

ii. **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-

1. Quantity and specification of spares that need to be stocked for a population of \_\_\_\_\_ equipment.
2. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).

iii. **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India

for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-

1. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
  2. Quantity and specification of spares, sub assemblies as per population expected to be maintained.
  3. Oils and lubricants necessary for overhaul.
  4. All necessary technical literature.
  5. Calibration facilities for test equipment.This level of repair defines stripping and rebuilding of equipment in a Base workshop.
- b. Manufacturers Recommended List of Spares (MRLS). - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPM-19 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-
- i. Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
  - ii. Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
  - iii. High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for e.g. it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

- c. Special Maintenance Tools and Test Equipment - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPM-17 (Available in MoD website and can be given on request) and is to be included in both Technical and

Commercial Proposals. The cost column may be left blank in the Technical Proposal.

- d. Technical Literature - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPM-18 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- e. Miscellaneous Aspects (Applicable only when trials are required) - In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.
- f. Maintainability Evaluation Trials (MET). This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. To facilitate this process the Bidder is required to provide the following :-
  - i. Technical Literature.
    1. User Handbook/Operators Manual in English and Hindi.
    2. Design Specifications.
    3. Technical Manuals.
      - a. Part I Tech description, specifications, functioning of various systems.
      - b. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
      - c. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
      - d. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
    4. Manufacturers Recommended List of Spares (MRLS).
    5. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
    6. Technical Manual on STE with drawing reference.

7. Complete Equipment Schedule.

8. Table of Tools & Equipment (TOTE) & carried spares.

9. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.

ii. One set of Gauges

iii. One set of Special Maintenance Tools (SMTs).

iv. One set of Special Test Equipment (STEs).

v. Servicing Schedule.

vi. Condemnation limits.

vii. Permissive repair schedule.

viii. Packing specifications /instructions.

ix. Design Specifications.

x. Any additional information suggested by the OEM.

g. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

33. **Price Variation (PV) Clause** –

a. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

$$P_1 = P_0 \left\{ F + a \left( \frac{M_1}{M_0} \right) + b \left( \frac{L_1}{L_0} \right) - P_0 \right\}$$

Where  $P_1$  is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

$P_0$  is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

$L_0$  and  $L_1$  are the wage indices at the base month and year and at the month and year of calculation respectively.

$M_0$  and  $M_1$  are the material indices at the base month and year and at the month and year of calculation respectively.

If more than one major item of material is involved, the material element can be broken up into two or three components such as  $M_x, M_y, M_z$ . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate *vis-a-vis* the wage rates.

- b. Following conditions would be applicable to Price Adjustment –
- i. Base dates shall be due dates of opening of price bids.
  - ii. Date of adjustment shall be mid point of manufacture.
  - iii. No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
  - iv. Total adjustment will be subject to maximum ceiling of \_\_\_\_%.
  - v. No price adjustment shall be payable on the portion of contract price paid to the Seller as an advance payment.

## Part V – Other Details

1. **Distribution** –
  - a. Paying Authority (Address) –Following details are given to enable internal audit to admit payments in connection with this Supply Order –
    - i. Head of Account for this Supply Order – Major Head\_\_\_\_\_, Minor Head\_\_\_\_\_, Code Head\_\_\_\_\_
    - ii. CFA for this Supply Order - \_\_\_\_\_
    - iii. Schedule of Powers applicable for this Supply Order - \_\_\_\_\_
    - iv. It is confirmed that concurrence of IFA has been taken.
  - b. IFA (Address) – This is with reference to IFA’s concurrence accorded vide U.O. number \_\_\_\_ dated \_\_\_\_\_.
  - c. Inspection Authority (Address) – Please endure timely inspection by the Inspecting officer.
  - d. Consignee (Address) – for information and necessary action.
  - e. Indentor (Address), if applicable –
  - f. User (Address), if applicable -
2. **Legal addresses of Buyer and Seller**

### SELLER

### BUYER

(Full Name and Designation)

Address, Telephone, Fax, e-mail details

(Full Name and designation)  
For and On behalf of  
President of India

Address, Telephone, Fax,  
e-mail details

## **APPENDIX 'E'**

### **Subsidiary Instructions to Buyer for framing Contract**

1. Part I contains Preamble and it should be mentioned as it is.
2. Part II contains details of items being contracted and their finalized prices. Format of Price bid in Part-V of RFP should be the base for listing out the details. The information may also contain the following as mentioned in Part-II of RFP and finalized by the Buyer -
  - a. Relevant technical parameters
  - b. User requirements in terms of functional characteristics
  - c. Specifications / Drawings, if applicable
  - d. Requirement of training / on-job training
  - e. Requirement of installation, Commissioning
  - f. Requirement of FATs, HATs and SATs.
  - g. Requirement of technical documentation.
  - h. Type of future assistance on completion of warranty.
  - i. Earliest Acceptable Year of manufacture
  - j. Delivery Period
  - k. Relevant INCOTERM for Delivery and Transportation
  - l. Consignee details
3. Part III contains Standard clauses which might have a legal bearing. Therefore, neither any deviation from the text given in these clauses nor deletion of any of these clauses should be allowed. In case a deviation from these clauses is required to be allowed due to insistence of the Seller during negotiations, then approval of Raksha Mantri will be required. Para 15 pertaining to Pre-Integrity clause may be included only for cases above Rs. 100 Crores.
4. Part IV contains Special Conditions of Contract as mentioned in Part-IV of RFP. Though major deviations from RFP should not be done as it will amount to denial of equal opportunity to unsuccessful bidders, minor changes in wordings of these clauses may be done if the Seller insists upon the same or to suit a particular case.
5. Part V contains the list of addresses and Signing formalities.

## CONTRACT FORMAT

### (Particulars of the Buyer signing the contract)

### FORMAT OF THE CONTRACT

CONTRACT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA, MINISTRY OF DEFENCE AND \_\_\_\_\_ (NAME OF THE SELLER) FOR \_\_\_\_\_(BRIEF PARTICULARS OF THE GOODS/SERVICES)

CONTRACT No. \_\_\_\_\_ DATED \_\_\_\_\_

### Part I

#### PREAMBLE

1. This contract is made on this day, \_\_\_\_ (date) day of the month of \_\_\_\_\_, \_\_\_\_ (Year) in New Delhi, between the President of India represented by the \_\_\_\_\_, Ministry of Defence, Government of India, South Block, New Delhi/ \_\_\_\_\_, hereinafter referred to as the 'Buyer' (which term, unless excluded by the context, shall be deemed to include his successor in office) on one part, and \_\_\_\_\_ (name of the company with address), duly represented by \_\_\_\_\_, and incorporated under the laws of \_\_\_\_\_ (name of the country), having its registered office at \_\_\_\_\_ (address of the registered office) (which term, unless expressly excluded by the context, shall be deemed to include its successors and assignees), hereinafter referred to as the 'Seller' on the other part.
2. The Seller undertakes to sell and deliver to the Buyer, and the Buyer undertakes to accept and pay for on the terms & conditions stipulated in this contract, the items/services, quantity, unit price and total value as specified in Part-II of this contract.
3. This Contract is divided into five parts. The Buyer and Seller agree for the following as mentioned in other four parts of this contract –
  - a. Part II –. Buyer agrees to buy and Seller agrees to sell items/services mentioned in Part II at the prices mentioned therein. This Part also contains essential details of the

items/services required, such as the Technical Specifications, Delivery Period, Place of Delivery and Consignee details agreed by the Seller.

- b. Part III – Buyer and Seller agree to abide by the Standard Conditions of Contract mentioned in Part III.
- c. Part IV - Buyer and Seller agree to abide by the Special Conditions of Contract mentioned in Part IV.
- d. Part V – It contains list of other addresses, other relevant details and signing formalities pertaining to this contract.

## **Part II – Essential Details of Items/Services contracted**

### **1. Schedule of Prices** – List of items / services contracted is as follows:

SI No	Denomination of items / services	Quantity	Unit price	Total price	Remarks
Grant Total					

### **2. Technical Details:**

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

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

**4. INCOTERMS for Delivery and Transportation** – (“E” / “F” / “C” / “D” Terms). The definition of Delivery Period for this contract will be \_\_\_\_\_

**5. Consignee details** - \_\_\_\_\_

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

**1. Law:** The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.

**2. Effective Date of the Contract:** The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.

**3. Arbitration:** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The Arbitration is as per Form DPM-7 / DPM-8 / DPM-9 enclosed to Part-III of this contract.

**4. Penalty for use of Undue influence:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

**5. Agents / Agency Commission:** The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services

referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.

**6. Access to books of Accounts:** In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.

**7. Non-disclosure of Contract documents:** Except with the written consent of the Buyer/Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

**8. Liquidated damages:** In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The Buyer may also deduct from the Seller as agreed, Liquidated Damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.

**9. Termination of the contract:** The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-

(a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (\_\_\_\_ months) after the scheduled date of delivery.

(b) The Seller is declared bankrupt or becomes insolvent.

(c) The delivery of material is delayed due to causes of Force Majeure by more than (\_\_\_ months).

(d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.

(e) As per decision of the Arbitration Tribunal.

10. **Notices:** Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.

11. **Transfer and sub-letting:** The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.

12. **Patents and Other Industrial Property Rights:** The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

**13. Amendments:** No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract.

## **14. Taxes and Duties**

a) **In case of Foreign Seller** 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.

**OR**

b) **In case of Indigenous Seller**

i) **General**

1. If Bidder desires to ask for excise duty or Sales Tax / VAT extra, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
2. If reimbursement of any Duty/Tax is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax will be entertained after the opening of tenders.
3. If a Bidder chooses to quote a price inclusive of any duty/tax and does not confirm inclusive of such duty/tax so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax included in the price. Failure to do so may result in ignoring of such offers summarily.
4. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. Stipulations like, the said duty/tax was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.
5. Any change in any duty/tax upward/downward as a result of any statutory variation in excise taking place within contract terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax, the actual quantum of reduction of such duty/tax shall be reimbursed

to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Seller.

**ii) Customs Duty –**

1. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F. prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer contract number..... dated.....
2. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
3. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

**iii) Excise Duty**

1. Where the excise duty is payable on advalorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
2. Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the contract. In

case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the contract or any other pending Government Contract and that no disputes on this account would be raised by them.

3. The Seller is also required to furnish to the Paying Authority the following certificates:
  - (a) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill.
  - (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any.
  - (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals.
  - (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover such amounts from the Seller's outstanding bills against that particular contract or any other pending Government contracts and that no dispute on this account would be raised by the Seller.
4. Unless otherwise specifically agreed to in terms of the contract, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract.

iv) **Sales Tax / VAT**

1. If it is desired by the Bidder to ask for Sales tax / VAT to be paid as extra, the same must be specifically stated. In the absence of any such stipulation in the bid, it will be presumed that the prices quoted by the Bidder are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
2. On the Bids quoting sales tax extra, the rate and the nature of Sales Tax applicable at the time of supply should be shown separately. Sales tax will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the contract.

v) **Octroi Duty & Local Taxes**

1. Normally, materials to be supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against contracts placed by this office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.
2. In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or by-laws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

**15 . Pre-Integrity Pact Clause** – A Pre-Integrity Pact is concluded between Buyer and Seller as per Form DPM-10 enclosed to Part-III of this Contract.

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

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

**a. In case of Indigenous Seller** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a sum equal to 10% of the contract value within 30 days of signing of this contract. Performance Bank Guarantee will be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this contract.

**OR**

**b. In case of Foreign Seller:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the Government of India, Ministry of Defence to be confirmed by public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) equal to 10(five percent) of the total value of this contract i.e. for US \$ ..... (US Dollars (in words) ..... only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the Seller. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this Contract.

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

**3. Repeat Order Clause** – This contract has 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. It will be entirely the discretion of Buyer to place the Repeat order or not.

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

**5. Payment terms for Indigenous Sellers** - The payment will be made as per the following terms, on production of the requisite documents:

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

OR

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

OR

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

OR

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

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

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

date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

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

OR

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

OR

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

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

OR

a. Advance payments will be made upto 15% against appropriate Bank guarantee or any authorised guarantee, as accepted by the Buyer. The specimen of PBG is given in Form DPM-16, enclosed to Part-IV of this Contract.

**8. Paying Authority:**

a. **Indigenous Sellers** – (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- i. Ink-signed copy of contingent bill / Seller's bill.
- ii. Ink-signed copy of Commercial invoice / Seller's bill.
- iii. Copy of Contract with U.O. number and date of IFA's concurrence, where required under delegation of powers.
- iv. CRVs in duplicate.

- v. Inspection note.
- vi. Claim for statutory and other levies to be supported with requisite documents / proof of payment such as Excise duty challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as applicable.
- vii. Exemption certificate for Excise duty / Customs duty, if applicable.
- viii. Bank guarantee for advance, if any.
- ix. Guarantee / Warranty certificate.
- x. Performance Bank guarantee / Indemnity bond where applicable.
- xi. DP extension letter with CFA's sanction, U.O. number and date of IFA's concurrence, where required under delegation of powers, indicating whether extension is with or without LD.
- xii. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in contract).
- xiii. Any other document / certificate that may be provided for in the contract.
- xiv. User Acceptance.
- xv. Xerox copy of PBG.

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

**b. Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:

- i. Clean on Board Airway Bill/Bill of Lading
- ii. Original Invoice
- iii. Packing List

- iv. Certificate of Origin from Seller's Chamber of Commerce, if any.
- v. Certificate of Quality and current manufacture from OEM.
- vi. Dangerous Cargo certificate, if any.
- vii. Insurance policy of 110% if CIF / CIP contract
- viii. Certificate of Conformity & Acceptance Test at PDI, if any.
- ix. Physio-sanitary / Fumigation Certificate, if any.
- x. Performance Bond / Warranty Certificate

**9. Fall clause -**

a. The price charged for the stores supplied under the contract by the Contractor shall in no event exceed the lowest prices at which the contractor sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate contract is completed.

b. If at any time, during the said period the contractor reduces the sale price, sells or offer to sell such stores to any person/organisation including the purchaser or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to:--

- i. Exports by the contractor.
- ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
- iii. Sale of goods such as drugs which have expiry dates R/C holders cannot reduce rates under pretext of fall clause in Drug and medicine contracts.
- iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Contracts as also under any previous

contracts entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.

- c. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate contract – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Contract at price lower than the price charged to the government under the contract except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below - .....”.

**10. Exchange Rate Variation Clause:**

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

**Year wise and major currency wise import content break up**

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

- (b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the contract. Base exchange rate of each major currency used for calculating FE content of the contract will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.

- (c) The base date for ERV would be contract date and variation on the base date will be given upto the midpoint manufacture unless Seller indicates the time schedule within which material will be exported by them. Based on

information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.

(d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be refixed /extended.

(e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the Seller in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

**11. Risk & Expense clause –**

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

**12. Buy-Back offer -** Buyer will be hand over the old items and the agreed prices will be adjusted in the final payment to the Seller. It will be the responsibility of Seller to carry away the old items from the Buyer's premises within 15 days of signing of this contract. The expenditure on account of Handling charges and transportation expenses to carry away the old items will be borne by the Seller.

**13. Force Majeure:** Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within (\_\_\_ days)

of its occurrence informs the other party in writing. Force Majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of the party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond the control of either party. A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this contract.

**14. Specification:** The Seller guarantees to meet the specifications as per Part-II of this contract and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques alongwith necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (\_\_\_\_) days of affecting such upgradation/alterations.

**15. OEM Certificate:** In case the Seller is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.

**16. Export License:** The Seller is to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.

**17. Earliest Acceptable Year of Manufacture:** \_\_\_\_\_ Quality / Life certificate will need to be enclosed with the Bill.

**18. Buyer Furnished Equipment:** The following equipment will be provided by the Buyer at his expense to the Seller:

.....  
.....

**19. Transportation:**

a. **CIF/CIP** – The stores shall be delivered CIF/CIP \_\_\_\_\_(Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer’s risk of loss of or damage to goods during the

carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by Indian ships only. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:

- i. Name of the Ship
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
- iv. Number of Packages and weight.
- v. Nomenclature and details of major equipment.
- vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

- c. **FOB/FAS** -- The stores shall be delivered FOB/FAS ..... (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. In case of FOB/FAS contracts, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least eight weeks in advance for finalizing the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the Seller may arrange for such transport on alternative carriers with the prior written consent of the Buyer. Where the Seller is required under the contract to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the Buyer for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the Seller may

arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the Buyer. Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the Buyer was obtained), the Seller will be liable for all payments and expenses that the Buyer may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the Buyer. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The Seller may contact Shipping Officer, Ministry of Surface Transport, Chartering Wing, Transport Bhavan, Parliament Street, New Delhi-110011 (Telegraphic Address: TRANSCHART, NEW DELHI-1, Telex "VAHAN" In 31-61157 OR 31-61158, Phone 2371 9480, Fax 2371 8614).

OR

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

**20. Air lift:** Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed.

**21. Packing and Marking:**

- a. The Seller shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.

- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. Each spare, tools and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.
  - i) Part Number :
  - ii) Nomenclature :
  - iii) Contract annex number :
  - iv) Annex serial number :
  - v) Quantity contracted :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
  - i. EXPORT
  - ii. Contract No. -----
  - iii. Consignee -----
  - iv. Port / airport of destination -----
  - v. Ultimate consignee -----
  - vi. SELLER -----
  - vii. Package No. -----
  - viii. Gross/net weight : -----
  - ix. Overall dimensions/volume : -----
  - x. The Seller's marking \_\_\_\_\_
- f. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.
- g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.

**22. Quality:** The quality of the stores delivered according to the present Contract shall correspond to the technical conditions and standards valid for the deliveries

of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Contract shall be new i.e. not manufactured before (Year of Contract), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.

**23. Quality Assurance:** After the contract is negotiated, the Seller would be required to provide the Standard Acceptance Test Procedure (ATP). Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.

**24. Inspection Authority:** The Inspection will be carried out by \_\_\_\_\_. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.

**25. Pre-Dispatch Inspection -**

a. The Buyer's representatives will carry out Pre-Despatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPM-21 enclosed as part of Part-IV.

b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities

by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.

c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least \_\_\_\_\_(No of days) in advance to apply for the necessary authorisations and clearances to be granted.

d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the

PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.

e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.

f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.

g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Contract.

## **26. Joint Receipt Inspection:**

a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of

- i. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
- ii. Complete functional checking of the stores/equipment as per specifications in the contract and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
- iii. Check proof and firing if required.

b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer

for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.

c. Upon completion of each JRI, JRI proceedings and Acceptance will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the contract. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

#### **27. Franking Clause**

**a. In the case of Acceptance of Goods** "The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the contract".

**b. In the case of Rejection of Goods** "The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the contract."

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

a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the contract.

b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPM-22 (Available in MoD website and can be given on request).

c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry

of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPM-23 (Available in MoD website and can be given on request) .

d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller's office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.

e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller's arrangement.

f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.

g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

## **29. Warranty –**

a. The following Warranty will form part of the contract placed on successful Bidder –

- i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the

Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.

- ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
- iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.
- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

**OR**

b. The following Warranty will form part of the contract placed on successful Bidder -

- i. The Seller warrants that the goods supplied under the contract conform to technical specifications prescribed and shall perform according to the said technical specifications.
- ii. The Seller warrants for a period of \_\_\_\_\_ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the contract and each component used in the manufacture thereof shall be free from all types of defects/failures.
- iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.

- iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within \_\_\_ % of the warranty period.
- v. Seller shall associate technical personnel of Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.
- vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds \_\_\_% of the warranty period, the complete equipment shall be replaced free of cost by the Seller within a stipulated period of \_\_\_ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.
- vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this contract, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- viii. The Seller will guarantee the shelf life of ( \_\_\_\_\_) years under the Indian tropical condition as given below:
  - 1. Minimum temperature - -
  - 2. Maximum temperature ---
  - 3. Average Humidity ---
- ix. For procurement of oils and lubricants, the following will be applicable:-
  - 1. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
  - 2. The penalty amounting to (\_\_\_\_\_ %) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
  - 3. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

**30. Product Support:** The following Product Support clause will form part of the contract placed on successful Bidder –

a. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipments (STE) subcontracted from other agencies/ manufacturer by the Seller for a maximum period of \_\_\_\_\_years including \_\_\_\_\_ years of warranty period after the delivery of \_\_\_\_\_ (name of equipment).

b. The Seller agrees to undertake Maintenance Contract for a maximum period of \_\_\_\_\_months, extendable till the complete Engineering Support Package is provided by the Seller.

c. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.

d. Any improvement/modification/ up gradation being undertaken by Seller or their sub suppliers on the stores/equipment being purchased under the Contract will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.

e. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this contract for a period of \_\_\_\_\_ years as maintenance contract as specified or provision of complete Engineering Support Package to the Buyer which ever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.

**31. Annual Maintenance Contract (AMC) Clause** - The following AMC clause will form part of the contract placed on successful Bidder -

a. The Seller would provide comprehensive AMC for a period of \_\_\_ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Contract. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:

i. Preventive Maintenance Service: The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating

base to carry out functional check ups and minor adjustments/ tuning as may be required.

ii. Breakdown maintenance Service: In case of any breakdown of the equipment/system, on call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.

b. Response time: The response time of the Seller should not exceed \_\_\_\_\_ hours from the time the breakdown intimation is provided by the Buyer.

c. Serviceability of \_\_\_% per year is to be ensured. This amounts to total maximum downtime of \_\_\_ days per year. Also unavailability should not exceed \_\_\_ days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.

d. Maximum repair turnaround time for equipment/system would be \_\_\_\_\_ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.

e. Technical Documentation: All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.

f. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.

g. The Buyer reserves its right to terminate the maintenance contract at any time without assigning any reason after giving a notice of \_\_\_ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the Seller for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms.

**32. Engineering Support Package (ESP) clause** - The following ESP clause will form part of the contract placed on successful Bidder –

**a. Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:

i. **Unit level repairs** - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-

1. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
2. Scaling of special tools and spares as mentioned above including Maintenance manual.

vi. **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-

1. Quantity and specification of spares that need to be stocked for a population of \_\_\_\_\_ equipment.
2. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).

vii. **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-

1. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
2. Quantity and specification of spares, sub assemblies as per population expected to be maintained.

3. Oils and lubricants necessary for overhaul.
4. All necessary technical literature.
5. Calibration facilities for test equipment. This level of repair defines stripping and rebuilding of equipment in a Base workshop.

b. **Manufacturers Recommended List of Spares (MRLS).** - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPM-19 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-

- i. Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
- ii. Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
- iii. High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for eg it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

c. **Special Maintenance Tools and Test Equipment** - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPM-17 (Available in MoD website and can be given on request) and is to be included in both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

d. **Technical Literature** - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPM-18 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

- e. **Miscellaneous Aspects (Applicable only when trials are required)** - In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.
- f. **Maintainability Evaluation Trials (MET)**. This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. MET details will be given as per format given at Form DPM-20 (Available in MoD website and can be given on request). To facilitate this process the Bidder is required to provide the following :-
- i. Technical Literature.
    1. User Handbook/Operators Manual in English and Hindi.
    2. Design Specifications.
    3. Technical Manuals.
      - a. Part I Tech description, specifications, functioning of various systems.
      - b. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
      - c. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
      - d. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
    4. Manufacturers Recommended List of Spares (MRLS).
    5. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
    6. Technical Manual on STE with drawing reference.
    7. Complete Equipment Schedule.
    8. Table of Tools & Equipment (TOTE) & carried spares.
    9. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.
  - ii. One set of Gauges
  - iii. One set of Special Maintenance Tools (SMTs).
  - iv. One set of Special Test Equipment (STEs).

- v. Servicing Schedule.
- vi. Condemnation limits.
- vii. Permissive repair schedule.
- viii. Packing specifications /instructions.
- ix. Design Specifications.
- x. Any additional information suggested by the OEM.

g. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

33. **Price Variation (PV) Clause** – The following PV clause will form part of the contract placed on successful Bidder (Note - DGS&D Manual provides Standardised Price Variation Clauses. Any of those clauses could be considered for inclusion. A sample clause is indicated below) –

- c. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

$$P_1 = P_0 \left\{ F + a \left( \frac{M_1}{M_0} \right) + b \left( \frac{L_1}{L_0} \right) - P_0 \right\}$$

Where  $P_1$  is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

$P_0$  is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

$L_0$  and  $L_1$  are the wage indices at the base month and year and at the month and year of calculation respectively.

$M_0$  and  $M_1$  are the material indices at the base month and year and at the month and year of calculation respectively.

If more than one major item of material is involved, the material element can be broken up into two or three components such as  $M_x$ ,  $M_y$ ,  $M_z$ . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate *vis-a-vis* the wage rates.

- d. Following conditions would be applicable to Price Adjustment –
- i. Base dates shall be due dates of opening of price bids.
  - ii. Date of adjustment shall be mid point of manufacture.
  - iii. No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
  - iv. Total adjustment will be subject to maximum ceiling of \_\_\_\_%.
  - v. No price adjustment shall be payable on the portion of contract price paid to the Seller as an advance payment.

## **Part V – Other details**

### **1. Distribution** –

- a. Paying Authority (Address) –Following details are given to enable internal audit to admit payments in connection with this contract –
  - i. Head of Account for this contract – Major Head\_\_\_\_\_, Minor Head\_\_\_\_\_, Code Head\_\_\_\_\_
  - ii. CFA for this contract - \_\_\_\_\_
  - iii. Schedule of Powers applicable for this contract - \_\_\_\_\_
  - iv. It is confirmed that concurrence of IFA has been taken.
- b. IFA (Address) – This is with reference to IFA’s concurrence accorded vide U.O. number \_\_\_\_ dated \_\_\_\_\_.
- c. Inspection Authority (Address) – Please endure timely inspection by the Inspecting officer.
- d. Consignee (Address) – for information and necessary action.
- e. Indentor (Address), if applicable –
- f. User (Address), if applicable -

2. **TESTIMONIAL AND SIGNATURES** - The authorized representative of the Seller should be shown to have been so authorized by the Resolution of the Board of Directors of the Company of the Seller or duly authorized by the Memorandum/Articles of Association of the Company along with supporting documents for the same.

### **3. LEGAL ADDRESSES OF THE CONTRACTING PARTIES**

#### **SELLER**

Signatures of the Seller

(Full Name and Designation)

Address, Telephone, Fax, e-mail details

#### **BUYER**

Signature of the Buyer

(Full Name and designation)  
For and On behalf of  
President of India

Address, Telephone, Fax,  
e-mail details

**APPENDIX 'F'**

**DRAFT SUPPLY ORDER AGAINST RATE CONTRACT**

Office of the                   : (Name and address of Buyer)

---

To  
\_\_\_\_\_

Dear Sir/Madam,

Sub - Placement of Supply order No \_\_\_\_\_ dated \_\_\_\_\_

Ref - (Name of Central agency) Rate Contract Number \_\_\_\_\_ dated  
\_\_\_\_\_, valid from \_\_\_\_\_ to \_\_\_\_\_

1. This order, which is intended for the supply of the stores detailed below, in accordance with the terms and conditions of the Rate Contract mentioned above and in the manner specified herein, shall operate to create a specific contract between the Seller (with whom the contract referred to and the requisition are placed) of the one part and President of India (represented by the Buyer) on the other part.

Item No.	Ref of Indent	Item No. of contract	Description of goods	Qty	Rate per Unit	Total amount
(a)	(b)	(c)	(d)	(e)	(f)	(g)
<b>Total</b>						

Taxes	Transport charges	Other charges	Total Cost
(h)	(j)	(k)	(l)

2. Total cost in words \_\_\_\_\_
3. Date of delivery \_\_\_\_\_ / days from the date of receipt of this order
4. Designation and address of Inspecting officer \_\_\_\_\_
5. Designation and full address of the Consignee \_\_\_\_\_
6. Designation and full address of Paying Authority \_\_\_\_\_
7. Head of Account to which the cost is debitable:
  - a. Major Head \_\_\_\_\_
  - b. Minor Head \_\_\_\_\_
  - c. Code Head: \_\_\_\_\_
8. Please acknowledge receipt of this Supply Order and arrange supply of stores.

(Name and designation of Buyer)  
For and behalf of President of India

**Copy to**

1. Paying Authority \_\_\_\_\_
  - a. Relevant Schedule of delegated powers - \_\_\_\_\_
  - b. The expenditure involved for the purchase has been approved by the \_\_\_\_\_ as Competent Financial Authority.
  - c. It is confirmed that concurrence of IFA has been obtained.
2. IFA \_\_\_\_\_ – This is with reference to their U.O. number \_\_\_\_\_ dated \_\_\_\_\_
3. Consignee \_\_\_\_\_
4. Inspection Agency \_\_\_\_\_

**REQUEST FOR PROPOSAL (RFP)**

**I N D E X of REQUEST FOR PROPOSAL**

**Enclosure I of RFP**

**RFP FOR OFFLOADING OF PARTIAL/ COMPLETE REFITS/REPAIRS OF SHIPS/ SUBMARINES/CRAFTS/ASSETS TO INDIAN PSU/PRIVATE SHIP YARDS/TRADE**

**INSTRUCTIONS TO BIDDERS FOR OF**

1. Quotations in sealed cover are invited for \_\_\_\_\_ (indicate nature of repairs/refit/part of refit to be offloaded) of \_\_\_\_\_ (Indicate name of ship/submarine/craft/asset) as per the work package 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 \_\_\_\_\_
3. The tender shall be submitted **in single stage two - bid system**, the Technical and Commercial bids. The following enclosures are forwarded along with this enquiry to assist you in preparing your technical and commercial offer: -
  - (a) Index of Tender Document -
  - (b) Schedule of Requirements - Enclosure
  - (c) Standard Conditions of Contract - Enclosure - III
  - (d) Guidelines for Preparation of Technical Bid - Enclosure - IV
  - (e) Guidelines for Preparation of Commercial Bid - Enclosure – V
  - (f) Summary Sheet for Costing - Enclosure - VI
  - (g) List of OEM/authorized rep addresses - Enclosure- VII
  - (h) List of Mandatory spares (Hull/Engg / Elec) - Enclosure- VII

4. Quotation shall remain valid up to \_\_\_\_ days (period to be specified, not exceeding 180 days) from the date of opening of Technical Bid. (**Note: Bid Validity period may be increased/decreased on a case to case basis with the approval of CFA**)

**Submission/Opening of Tenders**

5. PLEASE QUOTE OUR RFP NO AND DATE OF TENDER OPENING ON SEALED COVER. FAILURE TO DO SO WILL RENDER YOUR OFFER INVALID.
6. The Technical and Commercial bids are to be submitted in two separate sealed envelopes, duly marked as “Technical Bid for RFP No.\_\_\_\_ dated\_\_\_\_” and “Commercial Bid for RFP No. \_\_\_\_ Dated \_\_\_\_\_” . The quotes are to be super-scribed with your firm’s name, address, and official seal and ink signed by an authorised representative of the Tenderer. Sealed Bids addressed to \_\_\_\_\_ should be dropped in tender box marked as “TENDER BOX NO:\_\_\_\_” located at \_\_\_\_\_ ,or to be sent by registered post so as to reach this office by due date and time (to be specified in the RFP). No responsibility will be taken for postal delay or non-delivery/non-receipt of tender documents.
7. 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 customer. The date of opening of Commercial Bid will be intimated after acceptance of technical bids.
8. 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 office before due date. Late quotes will be rejected out right.
9. In case your firm is not willing to quote due to any reasons, your regret should be sent well before the due date, failing which your firm can be de-listed from the Contractor’s list.
10. Commercial offers will be opened only of those firms, who’s Technical Offers have been found suitable after technical evaluation. 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.
11. **Earnest Money Deposit.** The bidders are to furnish EMD for a sum of Rs.\_\_\_\_\_, with a validity of \_\_\_\_\_ days (normally 45 days) beyond the final bid

validity period, in the form of an Account Payee Demand Draft or Fixed Deposit Receipt or Banker's Cheque or Bank Guarantee from any of the public sector banks or a private sector bank authorized to conduct government business. The format in Form DPM-13 may be adopted.

**Evaluation Criteria**

12. **Loading of Cost for Items “Not Quoted”**. The bidder is to quote for all the sections/sub-sections mentioned in the SOR. Any omissions/deviations to the SOR are to be recorded in the Record of Deviations and submitted along with the ‘T’ Bid. ‘In case a bidder fails to quote for a certain item/Defect List Serial, their bid will be loaded by the amount quoted by the highest bidder for that particular Item/ Defect List serial and this loading will be considered for determining the L1. CUSTOMER reserves the right to determine the qualification of a firm on this account.

**Finalising of L<sub>1</sub> Firm.**

13. The L<sub>1</sub> firm will be decided on sum total of services, repair charges, budgetary cost of spares on not exceeding basis, applicable taxes and duties (including exemptions sought/granted) but exclusive of Octroi/Entry Tax. Payment for spares listed in the work package shall not exceed the budgetary cost.

**Note:** In case of Indian Coast Guard, since mandatory spares is not part of Refit Package, determination of L<sub>1</sub> Firm would be considered on account of Cost of Refit, services, applicable taxes and duties (including exemptions sought/granted)but exclusive of Octroi/Entry Tax.

14. **Payment Terms.** The Payment Terms for the Contract Price shall be as follows **(to be specified as per under mentioned format in consultation with IFA).**

Stage No.	Activity Definition	Stage Payment

**Standard Conditions of Contract (SCOC)**

15. Firm shall be required to accept the SCOC. Additionally 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. A Contract will be signed between the Contract Operating Authority (COA, \_\_\_\_\_) and the shipyard/firm incorporating the SCOC at Enclosure III of this RFP, which will form an integral part of the Contract.

### **Pre-Bid Conference**

16. The SOR (Enclosure II) and SCOC (Enclosure III) should be carefully considered while preparing the bids. All clarifications are to be resolved in the Pre-Bid Conference on \_\_\_\_ (dd/mm/yy) at \_\_\_\_\_ (Location) prior submission of bids. No revision of Commercial Bid would normally be permitted after opening of the Technical Bid.

**(Note:** Pre Bid Conference may be held depending on the nature of the work and this clause may be included as applicable)

### **Commercial Bid**

17. The Commercial bid is to be submitted strictly in accordance with **Enclosure - V** to this tender enquiry. The Commercial bid once opened, will not be subjected to unilateral revision by the firm, unless the firm is called for price negotiations specifically and asked to justify the rates.

### **Conditions under which this RFP is issued.**

18. This RFP is being issued with no financial commitment and Customer reserves the right to change or vary any part thereof at any stage. The Customer reserves the right to reject any or all of the offers without assigning any reason whatsoever. The Customer also reserves the right to withdraw the RFP should it be so necessary at any stage.

19. Please acknowledge receipt.

Thanking you,

Yours faithfully

## Enclosure II of RFP

### SCHEDULE OF REQUIREMENTS (SOR)

**(Note: The Schedule of Requirements is a technical document and specific to the Project/ Service and is part of the RFP)**

Annexure 1 - Particulars of Vessel/Asset on which work is required to be carried out.

Annexure 2 - Quantified Work Package (**comprehensive scope of work** that contains break-up of individual jobs to be completed including survey, dismantling and inspection, routines and repair to be carried out, consequent repair, trials and **comprehensive list of services** required such as dry docking, berthing, jetty services (electricity, accommodation, phone, fresh water, fire main), cranes facilities, tugs and pilot charges.

Annexure 3 - Quality Inspection Schedules/QAP (minimum and essential parameters that are required to be achieved for the scope of work to be deemed as satisfactorily completed)

Annexure 4 - Extract of relevant Navy/Coast Guard orders AS APPLICABLE pertaining to the scope of work, such as 'Paint Schemes', 'Hull Survey and Ratification Procedure', 'Survey of Anchor Chain Cable', 'Entry into Confined Spaces and Precautions thereof'. Additionally, requirements for Gas Free & Man Entry Certificates, Fire Sentries, Administrative Support to OEMs, Pumping-out Facilities & Removal of Debris/Waste Material should be clearly specified as applicable.

**Enclosure III of RFP**

**STANDARD CONDITION OF CONTRACT**

**Please see Appendix 'H'**

## Enclosure IV of RFP

### GUIDELINES FOR PREPARATION OF TECHNICAL BID

The Technical Bid should contain the following information and details so as to enable \_\_\_\_\_(Name of Service Repair Agency) to assess the understanding, technical capability and infrastructure/resources of the ship repair yard to undertake the refit: -

- (a) Indicate acceptance of the entire scope of work **(or)** Indicate acceptance of the entire scope of work except \_\_\_\_\_. (Indicate specific jobs not being undertaken as a Deviation List).
- (b) Indicate acceptance of the QAP/QIS indicated in SOR **(or)** Indicate acceptance of the QAP/QIS indicated in SOR \_\_\_\_\_. (Indicate specific provisions not being undertaken as a Deviation List) **(or)** Forward a QAP/QIS for consideration of Technical Evaluation Committee.
- (c) Indicate anticipatory list of spares, if applicable, required for undertaking the scope of work specified in SOR. Budgetary Estimate of all such spares is to be indicated in the Commercial Bid if such a list of Anticipatory Spares is forwarded along with the Technical Bid.
- (d) Indicate whether Earnest Money Deposit as per para \_\_\_ of the RFP has been attached.
- (e) Indicate acceptance of Payment terms as indicated in para \_\_\_ of the RFP.
- (f) Indicate acceptance of Standard Conditions of Contract (SCOC) and other terms and conditions given in the RFP.

## **Enclosure V of RFP**

### **GUIDELINES FOR PREPARATION OF COMMERCIAL BID**

1. Summary Sheet at Encl VI of this RFP should be filled in all respects.
2. The enclosed Quantified Work Package at Annexure 2 of SOR is to be filled up in all respects. Unit cost/rate for each serial as also the total cost of repairs, e.g Rs X for One Pump (unit rate) and Rs Y for 5 pumps (total cost) and budgetary cost of mandatory spares should be indicated against each Defect List Item. The cost of Anticipatory spares should be indicated separately, but this would not be used for determining L<sub>1</sub>.
3. Cost of yard materials such as steel plates, weld consumables, general nature cables, pipes and tubes should be indicated separately. Whereas, Ferrous scrap shall be the property of the Contractor, Non-ferrous items and unused spares shall be the property of the Customer. The cost of Ferrous Material indicated in the Bid should therefore be inclusive of discount for scrap value.
4. Each page is to be authenticated (signed) by the Bidder.
5. Page numbering is a must to identify/locate missing/misplaced pages.
6. **Bid Validity**. The commercial bid is to be valid \_\_\_\_ days (period to be specified, not exceeding 180 days) from the date of opening of Technical Bid.
7. A sample for preparation of Commercial Bid is appended below: -

**SAMPLE FORMAT FOR COMMERCIAL BID**

<b><u>Defect List Item No.</u></b>	<b><u>Description</u></b>	<b><u>Repair Cost</u></b>		<b><u>Budgetary Cost of Mandatory Spares</u></b>
		<b><u>Unit Cost</u></b>	<b><u>Total Cost</u></b>	
0023	Fuel Storage Tank Top plating between Frames 26 to 31.5 (Port & Stbd) holed to be renewed. Approximate area 15 m <sup>2</sup> . Thickness 6 mm. The following items are required to be removed and refitted.	(a) Rs. X (per m <sup>2</sup> of renewal of steel)  (b) Rs. Y (Cost of Steel Plate per m <sup>2</sup> /Kg)	(a) Rs. A (b) Rs. B (Indicate clearly discount, <b>IF ANY</b> , in the amount mentioned in (a) & (b) for the Total scope of DL No. 0023)	Specify cost of all spares required for completion of the scope of each DL, as applicable
0024	Five Gyro Motor Units to be overhauled	Rs. X	Rs A (Indicate clearly discount, <b>IF ANY</b> , in the amount mentioned in (a) for the Total scope of DL No. 0024)	

**Enclosure VI of RFP**  
**(SAMPLE) SUMMARY SHEET FOR COSTING / QUOTATION**

<b>Ser</b>	<b>Description of Work/Service Material/Spares/Tax</b>	<b>Rate (in Rs)</b>
1.	Cost of all services indicated in the SOR	
	Cost of repair part of SOW in the SOR	
	(a) Hull Work Package	
	(b) Engineering Work Package	
2.	(c) Electrical work Package	
	(d) Weapon Work Package	
	(e) Cost of spares and material included in ser 2(a) to (d)	
3.	Cost of all other Services in the SOR (not covered under ser 1 and 2 including OEM charges etc)	
4.	Service Tax on ser 1, 2 and 3, excluding 2 (e)	
5.	Works Contract Tax (if applicable on ser 1,2, and 3)	
6.	Cost of Yard Materials	
7.	Budgetary Cost of Spares	
8.	VAT/Sales Tax applicable on ser 6 and 7	
9.	Octroi/other local levies applicable on ser 6 and 7	
10.	Customs Duty/Amount of Customs Duty for which Exemption is sought on ser 6 and 7	
11.	Excise Duty/Amount of Excise Duty for which Exemption is sought on ser 6 and 7	
12.	Miscellaneous (not included in any of the serial above)	
13.	Applicable Tax/Duty/Levies on ser 12	
14.	Grand Total (ser 1 to 13)	
15.	Grand Total (excluding ser 10, and 11)	

Note: The Budgetary cost of Anticipatory Spares may be forwarded by the bidder separately, if the bidder opines that the same are required for completion of SOW. However, the same shall not be considered for determination of L-1

## **APPENDIX 'H'**

### **STANDARD CONDITIONS OF CONTRACT FOR PARTIAL/COMPLETE REFIT/ REPAIRS OF SHIPS/SUBMARINES/MARINE AND SERVICE ASSETS**

**(Forms an integral part of the Contract, to be sent as Enclosure III of RFP)**

#### **TABLE OF CONTENTS**

<b><u>ARTICLE NO.</u></b>	<b><u>DESCRIPTION</u></b>
ARTICLE 1	- DEFINITION AND ABBREVIATION
ARTICLE 2	- EFFECTIVE DATE AND OPERATION OF CONTRACT
ARTICLE 3	- SCOPE OF CONTRACT
ARTICLE 4	- CONTRACT PRICE AND TERMS OF PAYMENT
ARTICLE 5	- TAXES AND DUTIES
ARTICLE 6	- ADVANCE BANK GUARANTEE
ARTICLE 7	- PERFORMANCE BOND
ARTICLE 8	- DURATION AND DELIVERY
ARTICLE 9	- LIQUIDATED DAMAGES
ARTICLE 10	- RISK AND EXPENSE CLAUSE
ARTICLE 11	- QUALITY AND INSPECTION
ARTICLE 12	- WARRANTY & WARRANTY BOND
ARTICLE 13	- GENERAL TERMS AND CONDITIONS
ARTICLE 14	- INDEMNITY & INSURANCE
ARTICLE 15	- SECURITY
ARTICLE 16	- FORCE MAJEURE

- ARTICLE 17 - TERMINATION OF CONTRACT
- ARTICLE 18 - LAW
- ARTICLE 19 - ARBITRATION
- ARTICLE 20 - PENALTY FOR USE OF UNDUE INFLUENCE
- ARTICLE 21 - AGENTS/AGENCY COMMISSION
- ARTICLE 22 - NON DISCLOSURE OF CONTRACT DOCUMENTS
- ARTICLE 23 - NOTICES
- ARTICLE 24 - AMENDMENTS
- ARTICLE 25 - NOTICES & COMMUNICATIONS
- ARTICLE 26 - INTERPRETATION
- ARTICLE 27 - SIGNATURE AND WITNESSING BY PARTIES
- ARTICLE 28 - SPARE (ARTICLES such as "PROVISION OF SERVICES  
TO 40 BY CUSTOMER/CONTRACTOR", "UTILISATION OF  
CUSTOMER'S FACILITIES BY CONTRACTOR", "THIRD  
PARTY INSPECTION", "APPROVAL OF DRAWINGS,  
SPECIFICATIONS AND STANDARDS" to be incorporated  
on case to case basis, provided the same have been  
included in the RFP upfront along with ARTICLES for all other  
agreements arrived at during the CNC)

<b><u>ANNEX No.</u></b>	<b><u>DESCRIPTION</u></b>
ANNEX 1	: FORMAT OF CERTIFICATE OF ACCEPTANCE
ANNEX 2	: SCOPE OF WORK (DEFECT LIST WITH ITEMISED COST)
ANNEX 3	: FORMAT OF PROMULGATING CHANGE IN SCOPE OF WORK
ANNEX 4	: BREAKDOWN OF CONTRACT PRICE
ANNEX 5	: FORMAT OF WORK COMPLETION CERTIFICATE (to be filled up whenever bills are raised in accordance with terms of payment)
ANNEX 6	: FORMAT FOR COMPLETION OF HANDING OVER ALL DATA BY CONTRACTOR RELATED TO WORK (such as 'As Fitted Drawings', Record of Hull survey/ Renewal of Hull Plates/ Clearances/ Alignment/ Testing and Tuning/ Weight Change/ Grouping of Shock Mounts etc. (to be formulated on case to case basis, if applicable and part of RFP)

Contract No. \_\_\_\_\_

Date : \_\_\_\_\_

## PREAMBLE

THIS Contract is made and entered into at (Name of Place), on this \_\_\_\_\_ day of the month ----- in the year (specify the year in words),

BETWEEN

**The President of India represented by \_\_\_\_\_ (Contract Operating Authority (COA))** (hereinafter referred to as the **CUSTOMER**), which terms, unless excluded by the context, shall be deemed to include his successor or successors and permitted assignees, ON THE FIRST PART

AND

**M/s \_\_\_\_\_ (Name of the Firm/Shipyard including the address)**, hereinafter referred to as the **CONTRACTOR**, which expression shall include their Administrator, Executors, Successors and Assignees, ON THE SECOND PART

And where as the CUSTOMER agrees to deliver /permit (Name of the Vessel/Asset) to the CONTRACTOR for undertaking \_\_\_\_\_ (Title of the Work) and to take delivery of (Name of the Vessel/Asset) from the CONTRACTOR after successful \_\_\_\_\_ (Title of the Work undertaken)

The **CUSTOMER** and the **CONTRACTOR** being hereinafter referred to as “**Party**” or “**Parties**”.

**It is now agreed by and between both the parties hereto as follows:**

### ARTICLE 1 - DEFINITIONS AND ABBREVIATIONS

#### 1.1

##### i. DEFINITIONS

The following words and expressions in this Contract including its Annexes shall have the meanings as hereinafter defined unless the context requires otherwise:-

- Actuals : The term Actuals, related to payment, shall mean all expenses, inclusive of those incurred towards associated cost elements such as all taxes, duties & levies, freight, insurance and clearance charges incurred by the CONTRACTOR and computed at the prevailing exchange rate wherever applicable, at the time of release of payments by the CONTRACTOR to the OEMs. Additionally handling and / or service charges and remuneration payable to the CONTRACTOR (not exceeding 7.5% of the basic cost exclusive of taxes, duties, freight. Insurance and clearance charges) shall be applicable on such Actual expenses as per the terms of this Contract.
- Article : Any Article of this Contract or partial Article with separate marginal number as referred to anywhere in the wording of this Contract and / or its Annexes.
- Certificate of Acceptance : The Certificate to be signed jointly by the representatives of the CONTRACTOR and the CUSTOMER on the Date of Delivery of the Ship as set out in Article 8.1.1 and **Annex 1** of this Contract.
- Contract : Shall mean this Contract including its Preamble, Articles \_\_ to \_\_ and Annexes \_\_ to \_\_ herein, and all amendments, changes, alterations and modifications made to this Contract.
- Material : The term Material shall mean all equipment, fittings, finished / semi finished products, spares, consumables, Yard material, items, sub-assemblies/assemblies, documentation etc. required for the removal, repair & refurbishment, refit/installation and testing of any part of the work being undertaken by the CONTRACTOR (and/or by his Subcontractors on his behalf) as per scope of his work defined in this Contract, upto to completion of the guarantee period and liquidation of his outstanding liabilities.
- COA : Agency assigned by the Competent Financial Authority on behalf of the President of India to conclude the contract and operate in accordance with Article 2.1
- Month : Any calendar month, as defined in the Gregorian Calendar, or any period of 30 consecutive Days.

Year : Year starting from the 1<sup>st</sup> January and ending on 31<sup>st</sup> December or any period of 12 consecutive Months, as the case may be.

## 1.2 ABBREVIATIONS

The following words and abbreviations in this Contract including its Annexes shall have the meanings as hereinafter defined unless the context requires otherwise:-

B & D Spares	: Base & Depot Spares.
DCD	: Dockyard Completion Date
FAT	: Factory Acceptance Trials
HAT	: Harbour Acceptance Trials
SAT	: Sea Acceptance Trials
MoD	: Ministry of Defence
OBS	: On Board Spares
PAC	: Proprietary Article Certificate
OEM	: Original Equipment Manufacturer/ Firm accorded PAC
TEC	: Technical Evaluation Committee
CNC	: Contract Negotiation Committee
R & R	: Remove and Refit
STW	: Setting To Work
COA	: Contract Operating Authority
ABER	: Anticipated Beyond Economical Repairs
A's & A's	: Additions and Alterations
QAP	: Quality Assurance Plan

(**Note:** All Abbreviations pertaining to the case, which require clarification are to be listed here and should form part of RFP)

## ARTICLE 2 - EFFECTIVE DATE AND OPERATION OF CONTRACT

- 2.1 It is hereby agreed and declared that the powers and functions of the CUSTOMER under this Contract, shall be exercised by \_\_\_\_\_(COA).
- 2.2 The Effective Date of Contract is \_\_\_\_\_(The date of signing of Contract or the date of handing over the vessel/asset or as the case may be). The Contract commences from the Effective Date of Contract.

## **ARTICLE 3 - SCOPE OF CONTRACT**

### **3.1 Work & Services Contracts.**

3.1.1 It is expressly understood and agreed between the CUSTOMER and the CONTRACTOR that this is a repair, refit and services Contract.

### **3.2 Scope of Work.**

3.2.1 The \_\_\_\_\_ (Title of work) is to be completed in accordance with the terms, conditions and provisions of this Contract, as detailed in the following Articles.

3.2.2 The Scope of Work with itemised cost is placed at Annex 2 of this Contract.

### **3.3 Removal and Refitting of Items**

3.3.1 In the event of the requirement to remove the existing machinery / equipments, switch-boards / control panels, electronic & communication equipments, light fittings, piping, trunking, valves, electrical cables, junction boxes, lagging, panelling, obstructions, protrusions, foundations, etc. falling in the way of repairs, **temporarily to facilitate completion of Scope of Work**, the CONTRACTOR shall reinstall the same as per drawings, amendments thereto and to the satisfaction of the CUSTOMER. All work associated with this Article forms an integral part of Scope of Work specified in Article 3.2.

3.3.2 Electrical cables in way of repairs, if required, are to be covered adequately for protection against accidental mechanical / fire damage, by the CONTRACTOR. Damages caused during the execution of the work by the CONTRACTOR or his Sub Contractors are to be made good by the CONTRACTOR at his cost.

3.3.3 All pipe lines, machinery, equipment and fittings which are not required to be taken out of the Ship are to be properly covered / secured to ensure they are not damaged during the course of the refit. Damages caused during the execution of the work by the CONTRACTOR or his Sub Contractors are to be made good by the CONTRACTOR at his cost.

### **3.4 Change in Scope of Work**

- 3.4.1 Notwithstanding the scope of work specified in Article 3.2 and 3.3.1, the CUSTOMER shall have the right to modify the Scope of Work during the execution of the Contract. The necessity for repairs/renewals/replacements other than those presently included in the Scope of Work may arise during the inspection/survey/repair. All such work as also consequential work (rework) required to be done by the CONTRACTOR along with work arising out of items/drawings supplied by the CUSTOMER shall be treated as Scope of Work.
- 3.4.2 Such changes in the scope of work and the cost and time implications thereof shall be mutually agreed upon on priority, in writing, before undertaking such changes in the scope of work. The resultant increase in cost as well as any extension in project duration will be intimated by the CONTRACTOR and shall be agreed and accepted by the CUSTOMER through mutual negotiations prior to undertaking such changes in Scope of Work. Format for promulgating of Change in Scope of Work is placed at **Annex –3** of this Contract.
- 3.4.3 In case promulgation of such change in Scope of Work affects the Initial Scope of Work as per Article 3.2 and 3.3 and/or additional Scope of Work as per article 3.4.1, the cost and time implications due to such changes, shall also be taken in to consideration by both the Parties, while promulgating the change in Scope of work in accordance with Article 3.3.

### **3.5 Procurement of Material by the CONTRACTOR**

- 3.5.1 A list of items procured, indicating landed cost which includes cost of materials, freight, insurance, packing/forwarding taxes, duties, clearing charges etc. together with handling charge of \_\_\_\_ [not exceeding 7.5% (Seven point Five percent)] will be furnished along with the bill raised by the CONTRACTOR on the basis of Third Party Invoice.
- 3.5.2 All material and items procured by the CONTRACTOR for Scope of Work, except where specifically indicated that such items are CUSTOMER supplied, are to conform to the relevant approved and applicable specification (in accordance with Article 10).
- 3.6 **Return of Unused Materiel.** All Ferrous scrap arising out of repairs shall be the property of CONTRACTOR. However, non-ferrous scraps/equipments shall be the property of the CUSTOMER.

### **3.7 Sub-Contracting.**

- 3.7.1 The CONTRACTOR may subcontract any part of Scope of Work on mutual agreement with the CUSTOMER. The CONTRACTOR can under no circumstance sub-contract the complete Scope of Work to a Third Party.
- 3.7.2 The CONTRACTOR would be entirely responsible for quality / standard and timely execution of the sub-contracted work. The CONTRACTOR is to draw up a suitable Quality Assurance (QA) Plan with the Sub-Contractor and a copy of the same along with Record of Inspection in accordance with such QA Plan shall be submitted to the CUSTOMER.
- 3.7.3 The supervision of work for the sub-contracted jobs is to be done by the CONTRACTOR. The CONTRACTOR is not permitted to seek any extension of Completion Date citing delay on the part of Sub-Contractors or re-work arising out of Sub-Contracted work.

**3.8 Employment of Service Personnel.** The CONTRACTOR shall not employ any service personnel of the\_\_\_\_\_ (Repair Agency/Service) or on his own take any assistance either directly or indirectly from any of the workshops / facilities of the\_\_\_\_\_ (Repair Agency/Service) in the form of men or material for Scope of Work.

## **ARTICLE 4 - CONTRACT PRICE AND TERMS OF PAYMENT**

### **4.1 CONTRACT PRICE**

- 4.1.1 This is a Fixed Price Contract for completion of Work specified in Article 3.2 and 3.3. The Contract price is **Rs. \_\_\_\_\_/- (Rupees in Words)** exclusive of applicable taxes. Taxes and Duties shall be paid at actuals on submission of proof of payment. A detailed breakdown of the Contract price, **including applicable taxes and duties** (calculated as per the existing rate) is placed at **ANNEX – 6** of this Contract
- 4.1.2 Notwithstanding the provisions contained in Article 4.1.1, the price is subject to revision upon mutual agreement, as and when scope of work is changed as per Article 3.4, ERV, Changes in Tax Rate, etc. **(All aspects related to escalation or revision of the Contract Price specified in Article 4.1.1 must be discussed and finalised on mutual agreement during the CNC and the same would form part of the Contract.)**

- 4.2 CHANGE IN CONTRACT PRICE DUE TO PROCUREMENT OF ADDITIONAL/NA SPARES.** Notwithstanding the Contract Price specified in Article 4.1 and as amended vide Article 4.2, the CUSTOMER shall pay for any additional/NA Spares procured by the CONTRACTOR for Scope of Work based on mutual agreement. Payment shall be made under this Article on the bill raised by the CONTRACTOR on the basis of Third Party Invoice accompanied by list of items procured, indicating landed cost which includes cost of materials, freight, insurance. together with handling charge of \_\_\_\_ [not exceeding 7.5% (Seven point Five percent)]. The Contract Price specified in Article 4.1 and as amended vide Article 4.2, shall further stand amended to include payment towards such additional/NA Spares.
- 4.3 PAYMENT TERMS.** The Payment Terms for the Contract Price specified in Article 4.1 shall be as follows:- **(The Stage Payment is to be specified as per under mentioned format in the RFP in consultation with IFA)**

<b>Stage No.</b>	<b>Activity Definition</b>	<b>Stage Payment</b>
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**ARTICLE 5 - TAXES AND DUTIES**

- 5.1.1 The Contract price indicated in Article 4.1 of this Contract is exclusive of all taxes, duties, levies of Central / State authorities, as applicable at prevailing rates under the extant Government policy for all Materials and services procured by the CONTRACTOR for the Scope of Work. Any increase on rates during the period of contract shall be paid extra at the time of invoicing. The same shall be reimbursed by the CUSTOMER to the CONTRACTOR at actuals on submission of documentary proof of payment. The CUSTOMER reserves the right to deny any increase in taxes, duties, levies, etc. if the delivery period is extended beyond the period specified in Article 8.1.1.
- 5.1.2 Contract Operating Authority or his nominated representative shall issue appropriate tax exemption/concession certificate(s) on behalf of the CUSTOMER, to avail tax exemption/ concession, where applicable, as per existing Government policy, rules and regulations in force.
- 5.2 **“END USER” CERTIFICATE.** Contract Operating Authority or his nominated representative shall issue the appropriate “End User Certificate” on behalf of the CUSTOMER, for import of material and services, wherever required by the concerned manufacturer /supplier of equipment material and services / governmental agency.

**ARTICLE 6                    ADVANCE BANK GUARANTEE**

**(As per Form DPM-16)**

**ARTICLE 7                    PERFORMANCE BOND**

**(As per Form DPM-15)**

**ARTICLE 8    DURATION OF THE DELIVERY**

**8.1                    Duration of Work**

8.1.1                The CONTRACTOR shall complete his scope of work specified in Article 3.1 and 3.2 in \_\_\_\_\_ (duration in months/days/date for completion of Scope of Work) from the Effective date specified in Article 2.1. Delivery by the CONTRACTOR shall be treated as complete on satisfactory HATs/SATs and upon signing of Delivery Acceptance Certificate ( applicable in the case of complete Refit/Repairs of Ships/ Submarines only) OR Completion of Scope of Work and Trails ( applicable in case of Refit/Repairs of Yard/Service Assets and partial Refits of Ships / Submarines.

8.1.2                The said duration of Refit specified in Article 8.1.1 may be extended on mutual agreement only, with the CUSTOMER shall accept the vessel/asset without imposition of any sort of Penalty / Reduction in Contract Price.

**8.2                    Incomplete Work**

8.2.1                The CONTRACTOR and the CUSTOMER shall mutually agree on the quantum of incomplete and unsatisfactory work. Cost of such incomplete work shall be withheld, except where such incomplete work is not attributable to the CONTRACTOR. Payment thus withheld will be made on completion of such incomplete work, which should in any case be completed within \_\_ days **(to be indicated in the RFP)**. If such work is incomplete beyond the specified date, the same shall be deleted from Scope of Work specified in Article 3.2 with corresponding amendment to Contract Price specified in Article 4.1. The CUSTOMER reserves the right to levy LD as per Article 9 on such incomplete work.

8.2.2                The CONTRACTOR shall be paid for completion of work specified in Article 8.4.1 only on satisfactory completion and trials.

## **ARTICLE 9 - LIQUIDATED DAMAGES**

- 9.1 The CONTRACTOR shall be liable to pay to the CUSTOMER Liquidated Damages (LD), and not by way of Penalty, a sum equivalent to 0.5% (zero point five percent) of the unfinished/undelivered/unfulfilled part of Contract for each week of delay beyond duration of Work specified in Article 8.1, subject to a maximum of 10% (Ten percent) of the Contract Price.

## **ARTICLE 10 - RISK AND EXPENSE (As per Part IV of Appendix 'C')**

## **ARTICLE 11 - QUALITY AND INSPECTION**

### **11.1 Quality Assurance & Quality Control**

- 11.1.1 In order to assure the quality of repair/refit and exercise effective control, the work executed by the CONTRACTOR will be in accordance with CUSTOMERS inspection schedule as applicable followed by preliminary, stage and final inspection. The repair work will be undertaken as per (**specified Standards**) and quality norms. Ensuring and maintaining quality will be the responsibility of the Shipyard. (**Additional Third Party Inspection or the Services of Professional Certifying Agencies may be mentioned as applicable in respect of items of special use.**)

- 11.1.2 The CONTRACTOR shall submit a Quality Assurance (QA) Plan as applicable to the scope of work for approval of the CUSTOMER. The approved QA plan will form the basis for inspection and acceptance of work executed by the CONTRACTOR under this contract.

### **11.2 Overseeing and Inspection**

- 11.2.1 Necessary tests and inspections of the contracted job shall be carried out by COA/ or his nominated agency. The CONTRACTOR shall give reasonable notice to the above team reasonably in advance of the date and place of such tests / inspections. COA shall also carry out joint receipt inspection of the equipment and material procured by the CONTRACTOR / supplied by CUSTOMER. The CUSTOMER's representative shall, during the repairs / refit invariably attend such tests and inspections as per the QA Plan/Quality Inspection Schedule.

- 11.2.2 Any non-conformity discovered by CUSTOMER Representative and intimated in writing co-relating relevant documents where necessary, in Refit or material or workmanship shall be corrected by the CONTRACTOR at his cost, to the full satisfaction of Representative in accordance with the relevant drawings and specifications.
- 11.2.3 During the repairs / refit of the Ship, until the delivery thereof, the CUSTOMER's representatives shall be given free and ready access to the **Ship/Submarine/Asset** and to any other place where related work is being performed, or materials are being processed or stored, including the yards, workshops, stores and offices of the CONTRACTOR and premises of Subcontractors who are doing work or storing materials, in connection with the repairs / refit of the **Ship/Submarine/Asset**. Notwithstanding any provision in this Article or any other Article in this Contract, the responsibility for the repairs / refit as per the scope of work vide Article 3.2, 3.3 and 3.4 shall rest with the CONTRACTOR.

## **ARTICLE 12 - WARRANTY & WARRANTY BOND**

### **12.1 Guarantee**

- 12.1.1 The CONTRACTOR warrants that the repairs carried out under this Contract conform to specifications vide SOR.
- 12.1.2 The CONTRACTOR shall give **Six months guarantee** for workmanship and material defects for items repaired and **12 months guarantee for new installations** under the contract from the Contract Completion Date. The guarantee clause will also be applicable to the items repaired by the OEMs / sub contractor of shipyard. Any defects noticed during this guarantee period due to defective / poor workmanship or sub-standard material shall be rectified free of cost by the shipyard or by the OEMs / sub-contractors under arrangements by the shipyard.
- 12.1.3 If within the period of warranty, the repairs reported by the CUSTOMER to have failed to perform as per the specifications, the CONTRACTOR shall either replace or rectify the same free of charge, within \_\_\_**(time frame to be specified in RFP)** of notification of such defect received by the CONTRACTOR provided that the equipment are used and maintained by the CUSTOMER as per instructions contained in the Operating Manual. Record of the downtime would be maintained by user in logbook. Spares required for warranty repairs shall be provided free of cost by CONTRACTOR.

12.1.4 CONTRACTOR hereby warrants that necessary service and repair backup, during the warranty period of the repair, shall be provided by the CONTRACTOR at the CUSTOMER's premises.

12.2 Notice for Remedy/Rectification of Defects During Warranty Period shall be in writing and transmitted to each other by the fastest possible means.

### **ARTICLE 13            GENERAL TERMS AND CONDITIONS**

13.1 **Safety of Men:** The CONTRACTOR is to ensure adequate safeguards for personnel when employed on work where human risk of health/injury is involved.

13.2 **First Aid:** The CONTRACTOR is liable to provide immediate first aid/hospitalisation in case of accident/sudden illness to personnel.

13.3 Gas Free & Man Entry Certificates, Fire Sentries, Administrative Support to OEMs, Pumping-out Facilities & Removal of Debris/Waste Material shall be as per Annexure 4 of SOR.

### **ARTICLE 14    -    INDEMNITY & INSURANCE**

14.1 **Indemnity.** The CONTRACTOR shall indemnify the CUSTOMER against all claims for death or injury caused to any person, whether workman or not, while engaged in any process connected with the CONTRACTOR's work or for dues of any kind whatsoever, and the CUSTOMER shall not be bound to defend any claim brought under the Workmen's Compensation Act, 1923 or Payment of Wages Act 1936, or any other statutory Act or Law in force from time to time and applicable to the said work unless the CONTRACTOR first deposit with the CUSTOMER a sum sufficient to cover any liability which CUSTOMER may have to incur in relation to such proceedings.

14.2 **Insurance. (If applicable, to be included in the RFP and would form part of the Contract).**

### **ARTICLE 15    -    SECURITY**

15.1 The CONTRACTOR is bound by the Official Secrets Act 1923 and, in its connection any other statutory Act / Law / Amendment in force and the information given is to be treated as strictly confidential and is not to be disclosed to any person or persons not concerned therein. The CONTRACTOR shall be responsible to ensure that all persons employed by him in the execution of any work in connection with this Contract are fully aware of the provisions of the Official Secrets Act 1923 / Law / Amendment in force and have undertaken to comply with the same.

- 15.2 The CONTRACTOR shall also ensure secrecy of design, construction, equipment and documentation and shall carry out all or any instructions given by the CUSTOMER in this respect. Should the CUSTOMER desire to check up the security measures which have been provided, or will be adopted to achieve security, the CONTRACTOR shall produce necessary evidence to establish the same.
- 15.3 In giving any information to the Sub-Contractors, the CONTRACTOR shall furnish to the Sub-Contractors only such information as may be necessary for carrying out the respective work entrusted to them.
- 15.4 The security of the Ship, men and material in the CONTRACTOR'S premises is the CONTRACTOR'S responsibility.

- ARTICLE 16 - FORCE MAJEURE (As per Part IV, Appendix 'C')**
- ARTICLE 17 - TERMINATION OF CONTRACT  
(As per Part-III, Appendix C)**
- ARTICLE 18 - LAW (As per Part-III, Appendix C)**
- ARTICLE 19 - ARBITRATION (As per Form DPM-7,8 and 9 as applicable)**
- ARTICLE 20 - PENALTY FOR USE OF UNDUE INFLUENCE  
(As per Part-III, Appendix C)**
- ARTICLE 21 - AGENTS/AGENCY COMMISSION  
(As per Part-III, Appendix C)**
- ARTICLE 22 - NON DISCLOSURE OF CONTRACT DOCUMENTS  
(As per Part-III, Appendix C)**
- ARTICLE 23 - NOTICES. Any notice required or permitted by this contract shall be written in English Language and may be delivered personally or sent by Fax, Telex, Cable or registered prepaid airmail addressed to the legal address of the party.  
(As per Part-III, Appendix C)**
- ARTICLE 24 - AMENDMENTS 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. (As per Part-III, Appendix C)**

**ARTICLE 25 - NOTICES & COMMUNICATIONS**

25.1 **Address for notice /communication:** The legal addresses of the Parties for the purpose of Notice/Communication are as follows:-

**(Legal Address of Customer)**

**(Legal Address of Contractor)**

25.2 **Language.** Any and all notices and communication in connection with this Contract shall be in English language.

**ARTICLE 26 - INTERPRETATION**

26.1 This Contract shall be governed by the laws of Republic of India.

26.2 In the event of any conflict or discrepancy between the provisions of any Article to this Contract and any Annex thereof, the Article of this Contract shall prevail.

26.3 This Contract constitutes the entire agreement between the CUSTOMER and the CONTRACTOR

26.4 Any amendment to this Contract and its Annexes shall be in writing and signed by both Parties.

26.5 In the event of any conflict with respect to specification/drawing/existing practices, the order of precedence for acceptance would be as follows:-

- (a) THE CUSTOMER APPROVED DRAWING
- (b) SPECIFICATION VIDE SCHEDULE OF REQUIREMENTS
- (c) THE CUSTOMER'S DECISION

26.6 The failure of either Party to enforce any provision of this Contract shall not be considered as a waiver of such provision or the right of such Party thereafter to enforce the same.

**ARTICLE 27 - SIGNATURE AND WITNESSING BY PARTIES**

This Contract is signed on \_\_\_\_\_ day of the month of ..... in the Year ....., in two (2) originals of the same wording, one (1) for the CUSTOMER and one (1) for the CONTRACTOR. The Annexes listed in Table of annexures (page 4) and forming an integral part of this Contract are signed under same circumstances.

FOR AND ON BEHALF OF  
M/s \_\_\_\_\_  
**THE CONTRACTOR**  
( \_\_\_\_\_ )  
REPRESENTATIVE OF  
CONTRACTOR  
Dated \_\_\_\_\_ 20...

FOR AND ON BEHALF OF  
**PRESIDENT OF INDIA**  
**THE CUSTOMER**  
( \_\_\_\_\_ )  
REPRESENTATIVE OF CUSTOMER  
Dated \_\_\_\_\_ 20....

In the presence of

In the presence of

1. \_\_\_\_\_  
Name \_\_\_\_\_  
Designation \_\_\_\_\_  
\_\_\_\_\_

1. \_\_\_\_\_  
Name \_\_\_\_\_  
Designation \_\_\_\_\_

2. \_\_\_\_\_  
Name \_\_\_\_\_  
Designation \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
Name \_\_\_\_\_  
Designation \_\_\_\_\_

**ii. Distribution:**

Payment Authority	(One Ink Signed Copy)
FA to CFA	(One Ink Signed Copy)
FA to COA	(One Ink Signed Copy)
CFA	(One Ink Signed Copy)
PCDA(Navy), Mumbai	(One Copy)
IHQ,MoD(N)/DFM	(One Copy)
Or, PDFM/CGHQ	(One Copy)

**ANNEX- 1**

**FORMAT OF CERTIFICATE OF ACCEPTANCE**

***CERTIFICATE OF ACCEPTANCE***

1. CERTIFIED THAT THE M/S \_\_\_\_\_, HAVE COMPLETED THE **(TITLE OF WORK)** OF THE **(NAME OF THE VESSEL/ASSET)** AS PER THE SCOPE OF WORK ASSIGNED TO THEM AND HANDED OVER THE SAME TO **(NAME OF CUSTOMER)** AT \_\_\_\_\_ HOURS, ON THIS \_\_\_\_\_ DAY OF THE MONTH \_\_\_\_\_ IN THE YEAR TWO THOUSAND AND \_\_\_\_\_.

2. THE LIST OF LIABILITIES AS ON DATE IS PLACED AT ANNEXURE TO THIS CERTIFICATE.

---

*COA/REP*  
FOR AND ON BEHALF OF  
**THE PRESIDENT OF INDIA**

---

*REP OF*  
**M/S** \_\_\_\_\_

## **ANNEX- 2**

### **SCOPE OF WORK**

---

**Reproduce the Text of SOR finalised and accepted during CNC  
(Will be included in the document on approval of draft contract)**

**ANNEX- 3**

**FORMAT OF PROMULGATION CHANGE IN SCOPE OF WORK**

1. **NAME OF WORK:**  
\_\_\_\_\_
2. **D.L. NO:**\_\_\_\_\_
- (Wherever applicable)
3. **Proposed by:**
4. **Reference:**\_\_\_\_\_
- \_\_\_\_\_
- Drg.**  
**Document**\_\_\_\_\_
- )
5. **Details of additional work (if required use overleaf of the form / attach Annexures)**

- | <u>NAME</u>                                       | <u>DESIGNATION</u> | <u>SIGNATURE OF THE PROPOSER</u>                  |
|---|--------------------|---|
| (a) Proposal No._____                             |                    |   |
| (b) Effect on overall Schedule                    |                    | <u>REP OF FIRM/PROJECT<br/>MANAGER OF SHPYARD</u> |
| (c) Approved Cost                                 |                    |   |
| 7. i. Approved / Not approved<br>(Reasons if any) |                    | <u>COA/HEAD OF PROJECT<br/>MONITORING TEAM</u>    |

## ANNEX- 4

### BREAKDOWN OF CONTRACT PRICE

<b>Ser</b>	<b>Description of Work/Service Material/Spares/Tax</b>	<b>Rate (in Rs)</b>
1.	Cost of all services indicated in the SOR	
	Cost of repair part of SOW in the SOR	
	(a) Hull Work Package	
	(b) Engineering Work Package	
2.	(c) Electrical work Package	
	(d) Weapon Work Package	
	(d) Cost of spares and material included in ser 2(a) to (d)	
3.	Cost of all other Services in the SOR (not covered under ser 1 and 2 including OEM charges etc)	
4.	Service Tax on ser 1, 2 and 3, excluding 2 (e)	
5.	Works Contract Tax (if applicable on ser 1,2, and 3)	
6.	Cost of Yard Materials	
7.	Budgetary Cost of Spares	
8.	VAT/Sales Tax applicable on ser 6 and 7	
9.	Octroi/other local levies applicable on ser 6 and 7	
10.	Customs Duty/Amount of Customs Duty for which Exemption is sought on ser 6 and 7	
11.	Excise Duty/Amount of Excise Duty for which Exemption is sought on ser 6 and 7	
12.	Miscellaneous (not included in any of the serial above)	
13.	Applicable Tax/Duty/Levies on ser 12	
14.	Grand Total (ser 1 to 13)	
15.	Grand Total (excluding ser 10 and 11)	

**ANNEX- 5**

**FORMAT OF CERTIFICATE OF COMPLETION OF DEFECT**

**WORK COMPLETION CERTIFICATE**

**CERTIFICATE No. ... / CC / DT \_\_\_\_\_**

**The under mentioned stage/Activity as per the Payment Terms have been completed**

**DESCRIPTION OF ACTIVITY/STAGE:**

	<b>Rep Firm/Shipyard</b>	<b>COA/REP</b>
<b><i>SIGNATURE</i></b>		
<b>NAME</b>		
<b>DESIGNATION / RANK DEPT./ ORGANISATION</b>		

## APPENDIX 'I'

### DRAFT AGREEMENT FOR DESIGN, DEVELOPMENT AND FABRICATION CONTRACTS

THIS AGREEMENT made \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_  
between the President of India, hereinafter referred to as "the Government"  
(which expression unless expressly excluded by the context shall be deemed to  
include his successors and assigns) of the one part and

M/s. \_\_\_\_\_  
Shri \_\_\_\_\_  
a company incorporated under the  
carrying on business under the name and style  
Companies Act 1956/a partnership firm incorporated under the  
as its sole proprietor and having its office at  
Indian Partnership Act 1932 and having its Registered Office at  
hereinafter referred to as "the contractor" (which expression unless  
expressly excluded by the context shall be deemed to include its

successors, executors, administrators and assigns and in the  
his successors, heirs or assigns  
case of partnership firm  
partner or partners for the time being of the said firm the survivors of them  
and their respective successors, executors administrators and assigns) of the  
other part.

WHEREAS the Government had invited quotations for the designing,  
developing, fabricating, manufacturing and supply of \_\_\_\_\_ in  
accordance with the specifications laid down in Para (a) of Schedule A hereto  
(and hereinafter known as "the said store") and the contractor has submitted his  
quotation for the same vide his letter reference---- dated \_\_\_\_\_ which  
has been accepted by the Government

AND WHEREAS an Agreement is required to be executed between the parties in  
respect thereof.

Or

(for negotiated contract only)

WHEREAS the Government desire to entrust to the contractor the work of  
designing, developing, fabricating, manufacturing and supply of the said store  
\_\_\_\_\_ in accordance with the specifications laid down in Para (a) Schedule  
hereto.

AND WHEREAS the contractor has agreed and is in a position to undertake designing, developing, fabricating, manufacturing of the said store and supply the same to the Government.

NOW IT IS AGREED AND DECLARED BY AND BETWEEN THE PARTIES AS FOLLOWS:

### Clause I

1.1 The contractor shall design\*, develop, fabricate and manufacture the said store and shall supply the same complete with all accessories thereto as per Para --- of Schedule A annexed hereto at the fixed net price of Rs. \_\_\_\_\_ including packing and all packing materials or on cost plus profit basis (as applicable). (The ceiling of the cost including the profit percentage allowed shall be Rs. \_\_\_\_\_ subject to variation either way not exceeding 5% of the ceiling cost mentioned above. ) The cost of the stores or service supplied by the Govt shall be adjusted towards this ceiling).

\* delete where design is not required.

1.2 The contractor shall not be entitled to any other additional payments such as for tooling, dies, designing\* and developing or any other charges on any account whatsoever unless otherwise expressly provided for in this Agreement (not to appear in cost plus contract).

### Clause 2

2.1 The contractor shall manufacture and deliver the said store by \_\_\_\_\_ for tests and technical trials to the Accepting Officer or the consignee as intimated by the Purchaser in writing.

2.2 Should the Government desire any modifications or improvements, additions or alterations to the specifications laid down in Schedule A hereto the same shall be carried out by the contractor on the undermentioned terms:

(i) If the modifications or improvements are of a minor nature and are intimated before the job under the previous specifications had been carried out. **(without payment).**

(ii) If the modifications or improvements are of a major nature and the result in much additional expenditure to the contractor **(On payment of the additional expenditure as assessed by the Govt).**

Note : The decision of the Government whether the modifications or improvements are of a major or minor nature and whether such additional expenditure is involved or not shall be final and binding on the contractor.

2.3 Should the Government after proper development and acceptance of the said store desire any further technical assistance or any further modification to the store the same shall be undertaken by the contractor on such terms as are agreed between the parties to the contract.

### **Clause 3**

3.1 The contractor shall carry out necessary tests and trials before offering the same for trial to the Government who may detail its representatives to witness these tests if so required.

3.2 The contractor shall afford the Government, without in any way making it responsible, all proper and reasonable facilities for examining, inspecting and testing the stores machinery and workmanship used or intended to be used during the progress of the manufacture of the store and shall also supply free of charge such apparatus, materials, tools or labour as may be required from time to time for the purpose of such examinations, inspections and testing.

### **Clause 4**

4.1 The Contractor undertakes to produce the complete information and data required for production i.e. the procurement drawings, specifications and manuals as required by the design authority as per the list attached hereto and the test equipment, if required by the design authority.

### **Clause 5**

5.1 The contractor agrees to supply free of cost the under mentioned tools and spares required to operate the store during trials and experiments

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

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

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

5.2 Additional spare parts except the replacement parts mentioned in \_\_\_\_\_ if required by Government, shall be supplied by the contractor at the prices shown in Schedule ---.

5.3 List of brought out items together with the sources of purchase and their price is attached as Schedule C hereto.

### **Clause 6**

6.1 Save as otherwise provided in the contract all actions taken and all notice to be given or taken hereunder by the Government be taken or given by the Director (of the Estt concerned) or by an officer for the time being entrusted with the functions, duties and powers of the said Director and on behalf of the contractor by its Manager/Proprietor/Authorised Partner.

6.2 After signing of this agreement the Contractor shall correspond direct with the Director or the said officer in all matters concerning the contract and the implementation of the terms thereof.

**Clause 7**

The parties agree that in respect of all other matters relating to the designing, developing, fabricating, manufacturing and supply of the said store the general conditions of contract enclosed as Appendix A to this agreement and the special conditions enclosed as Appendix B to this Agreement shall apply.

**Clause 8**

The contractor agrees to bear the stamp duty payable on this Agreement under the Indian Stamp Act, -----.

IN WITNESS WHEREOF the President of India has caused \_\_\_\_\_ to sign this Agreement for and on behalf and the common seal of the Company has been affixed hereto and these presents signed by \_\_\_\_\_ and \_\_\_\_\_ Manager/Sole Proprietor/Authorised Parties of the Company the day months and year first above written.

Signed for and on behalf of the  
President of India by

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

The common seal of the Company has been affixed and these present have been signed by \_\_\_\_\_ and \_\_\_\_\_.

Manager/Sole Proprietor/Authorised Partner of the Company  
In the presence of

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**APPENDIX 'J'**

**FABRICATION CONTRACT**

Office of Issue ( \_\_\_\_\_ Organisation  
/Establishment)

Schedule ----- to the Acceptance Letter No. \_\_\_\_\_ dated \_\_\_\_\_

1. Name and address of contractor
2. Contractor's quotation No and date
3. Name of Indenter \_\_\_\_\_
4. Quantity and description of store/s : (as per Annexure I)
5. Debits in r/o deliveries made against this order to be raised against: Controller of Defence Accounts \_\_\_\_\_
6. Cost debitable to Head Major Head, Minor Head Sub Head Code head of the Defence Services Estimates.
7. Conditions of contract General conditions of contract enclosed with the invitation to quote and the special conditions contained herein. Where these are at variance, the latter shall apply.
8. Delivery schedule:
9. Dispatch instructions and consignee The prototype duly packed and preserved for transport by rail and road shall be addressed for delivery as indicated in writing by the Director \_\_\_\_\_. The prototype shall be dispatched against Military Credit Note which will be issued by the said Indenter \_\_\_\_\_ on demand by you. Forwarding charges shall be paid as actually incurred. In case the prototype is required to be transported back to the works of the contractor for any modification/improvement at any time during tests, the cost of such transportation from the place of testing to the works of the contract and back shall be borne by the Indenter.
10. Particulars governing supply As per Appendix-1
11. Inspection authority Director/Accepting Officer or their authorized nominee.
12. Tests: (a) The contractor shall carry out necessary tests on Prototype \_\_\_\_\_ before offering the same for tests

to Director/ Accepting Officer who may detail his representative (s) to witness these tests.

(b) Director/Accepting Officer or representative (s) may,

at his discretion carry out tests of the finished prototype

\_\_\_\_\_ at any or all stages of development. For this

purpose the contractor shall provide free of cost at its

premises such test facilities as are required by the

Director/Accepting Officer or rep(s) and are available with

the contractor.

(c) Director/Accepting Officer or nominee may at his discretion carry out any tests as required to be undertaken by him. The prototype shall be accepted by the Accepting Officer only after it has passed all required tests to his entire satisfaction.

13. Price :

(a) Rs (.....in words) (Rs..... (in figures) FOR ..... (Station), Central Sales Tax/Local Sales Tax/Service Tax as leviable and levied on complete ..... will be paid extra. Form D is enclosed herewith for obtaining reduction in Sales Tax.

(b) The contractor shall refund a sum of Rs..... only as developmental rebate at the rate of Rs.....bulk orders received by him from any source and when add upto ..... pieces, and such refund will continue until the above sum of Rs..... is paid back. (if applicable)

14. Paying authority:

PCDA/CDA /AAO etc.

15. Terms of payment:

As in the general conditions

(a) The contractor shall be responsible for properly packaging the prototype in commercial /trade packaging for transport by rail/and or road so as to ensure that no loss or damage takes place en route.

(b) Any damage in transit shall be recoverable from the contractor unless it is proved that such damage was not due to any negligence or default on the part of the contractor.

(c) Design of the ..... and any drawings and other documents whether supplied by the Central Government in the Ministry of Defence or made by the contractor for the purposes of this fabrication order are the property of

Government and shall not be copied or used by the contractor for any other purposes without the written consent to be obtained through the Director ..... of the Government. The said drawings and documents shall be returned to the Government immediately after the expiry of a termination of the contract.

(d) All queries on technical matter shall be preferred by the contractor to the Director/Nominated Officer ..... or any other officer intimated by him till such time as bulk production is established and the contractor is informed of transfer of technical contract to an inspection agency by the Director .....

(e) You are requested to deposit a sum of Rs.....as security deposit within 15 days of the receipt of this letter.

(Initials of the Officer signing the Fabrication Order)

## APPENDIX 'K'

### Format for issuing sanctions

#### Title of sanction

1. Broad purpose of sanction.
2. Govt Authority or Schedule / Sub-Schedule of Powers under which the sanction / order is being issued
3. Name of the item/items.
4. Quantum of item/items being sanctioned.
5. Value of sanction - both per unit and total.
6. Major Head, Minor Head, Sub Head and Detailed Head under which booking will be done.
7. Code Head as mentioned in Classification Hand Book.
8. Balance funds available, taking into account all committed liabilities, before sanction of this case.
9. Name of paying agency.
10. Approval of CFA given vide Note number \_\_\_\_ dated \_\_\_\_\_ in File number \_\_\_\_\_.
11. Whether being issued under inherent powers or with concurrence of IFA.
12. U.O. number allotted by IFA.
13. Communication of sanction being signed by the undersigned under powers delegated by CFA to sign such financial documents vide CFA's letter number \_\_\_\_\_ dated \_\_\_\_\_.

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

Serial number of sanction -  
Date of issue –  
File number -

**FORMS**



**List of items reserved for MSMEs**

S. No.	Item Description
1	AAC/& ACSR Conductor upto 19 strand
2	Agriculture Implements
	(a) Hand Operated Tools & implements
	(b) Animal driven implements
3	Air/Room Coolers
4	Aluminum builder's hardware
5	Ambulance stretcher
6	Ammeters/ohm meter/Volt meter (Electro magnetic upto Class I accuracy)
7	Anklets Web Khaki
8	Augur (Carpenters)
9	Automobile Head Light Assembly
10	Badges Cloth embroidered and metals
11	Bags of all types i.e. made of leather, cotton, canvas & Jute etc. including kit bags, mail bags sleeping bags and water-proof bag
12	Badges cloth
13	Barbed Wire
14	Basket cane (Procurement can also be made from State Forest Corpn. & State Handicraft Corporation)
15	Bath tube
16	Battery Charger
17	Battery Eliminator
18	Beam Scales (upto 1.5 tons)
19	Belt Leather & straps
20	Bench Vices
21	Bituminous paints
22	Blotting paper
23	Bolts & Nuts
24	Bolts Sliding
25	Bone Meal
26	Boot Polish
27	Boots & Shoes of all type including canvas shoes
28	Bowls
29	Boxes leather
30	Boxes made of metal
31	Braces
32	Brackets other than those used in Railways
33	Brass Wire

34	Brief Cases (other than moulded luggage)
35	Brooms
36	Brushes of all types
37	Buckets of all types
38	Button of all types
39	Candle War Carriage
40	Cane Valves/stock valves (for water fittings only)
41	Cane metallic (for milk & measuring)
42	Canvas Products
(a) Water Proof Delivery bags to spec. No. IS-1422/70	
(b) Bonnet Covers & Raidators Muff. To spec. Drg. Lv 7/NSN/IA/130295)	
43	Capes Cotton & Woolen
44	Capes Waterproof
45	Castor Oil
46	Ceiling roses upto 15 amps.
47	Centrifugal Steel Plate blowers
48	Centrifugal Pumps suction & delivery 150 mm x 150 mm
49	Chaff Cutter Blade
50	Chains Lashing
51	Chappals & Sandals
52	Chemois Leather
53	Chokes for light fitting
54	Chrome tanned leather (Semi – finished Buffalo & Cow)
55	Circlips
56	Claw Bars and Wires
57	Cleaning Powder
58	Clinical Thermometers
59	Cloth Covers
60	Cloth Jaconet
61	Cloth Sponge
62	Coir Fire and Coir yarn
63	Coir mattress cushions and matting
64	Coir Rope hawserlaid
65	Community Radio Receivers
66	Conduit pipes
67	Copper nail
68	Copper Napthenate
69	Copper Sulphate
70	Cord Twine Maker
71	Cordage Others
72	Corrugated paper Board & Boxes
73	Cotton Absorbent

74	Cotton Belts
75	Cotton Carriers
76	Cotton cases
77	Cotton Cord Twine
78	Cotton Hosiery
79	Cotton Packs
80	Cotton Pouches
81	Cotton Ropes
82	Cotton Signlets
83	Cotton Sling
84	Cotton Straps
85	Cotton tapes and laces
86	Cotton Wool (Non absorbent)
87	Creates Wooden & plastic
88	(a) Crucibles upto No.200
	(b) Crucibles Graphite upto No.500
	© Other Crucibles upto 30 kgs.
89	Cumblies & blankets
90	Curtains mosquito
91	Cutters
92	Dibutyl phthalate
93	Diesel engines upto 15 H.P.
94	Dimethyl Phthalate
95	Disinfectant Fluid
96	Distribution Board upto 15 amps.
97	Domestic Electric appliances as per BIS specifications:- "Toaster Electric, Elect. Iron, Hot Plates, Electric, Mixer, STER Elect, Iron, Hot plates, Grinders, Room Heaters and Convector and Ovens,
98	Domestic (House Wiring) PVC Cables and Wires (Aluminium) conforming to the prescribed BIS Specifications and upto 10.00 mm sq. Nominal cross Section
99	Drawing and Mathematical instruments
100	Drums and barrels
101	Dustbins
102	Dust-shield leather
103	Dusters Cotton All types except the items required in Khadi
104	Dyes :
	(a) Azo Dyes (Direct and Acid)
	(b) Basic Dyes
105	Electric Call-Bells/Buzzers/Door-Bells
106	Electric Soldiering Iron
107	Electric Transmission line Hardware like Steel Cross-bars, Cross Arms Clamps, Arching Arm, Brackets etc.
108	Electronic Door, Door-bell Ctronic Door Bell

109	Emergency light (Re-chargeable type)
110	Enamel Waris and enamel utensilsmel
111	Equipment Camouflage Bamboo
112	Exhaust Muffler
113	Expanded metal
114	Eyelets
115	Film Polythene including wide width Film
116	Film Spools and Can
117	Fire Extinguishers (Wall Type)
118	Food Powder
119	French Polish
120	Funnels
121	Fuse cut-out
122	Fuse unit
123	Garments (excluding supply from Indian Ordnance Factories)
124	Gas Mantles
125	Gauze Cloth
126	Gauze surgical all types
127	Ghamellas (TASLLAS)
128	Glass ampules
129	Glass and pressed wires
130	Glue
131	Grease Nipples and Grease Guns
132	Gun Cases
133	Gun Metal Bushes
134	Gum Tape
135	Hand Drawn Carts of All Types
136	Hand Gloves of All Types
137	Hand Lamps Railways
138	Hand Numbering Machine
139	Hand Pounded Rice (Polished and unpolished)
140	Hand Presses
141	Hand Pump
142	Hand Tools of All Types
143	Handles Wooden and Bamboo (procurement can also be made from State Forest Corporation and State Handicraft Corporation)
144	Harness leather
145	Hasps & Staples
146	Haver Sacks
147	Helmet Non-Metallic
148	Hide and country leather of all types
149	Hinges
150	Hob nails

151	Holdall
152	Honey
153	Horse & Mule shoes
154	Hydraulic jacks below 30 ton capacity
155	Insecticides Dust and Sprayers (Manual only)
156	Invalid wheeled chairs
157	Invertor domestic type upto 5 kva
158	Iron (dhobi)
159	Key board wooden
160	Kit boxes
161	Kodali
162	Lace leather
163	Lamp Holders Holders
164	Lamp signal
165	Lanterns Posts & bodies
166	Lanyard
167	Latex foam sponge
168	Lathes
169	Letter Box
170	Lighting Arresters – upto 22 kv
171	Link Clip
172	Linseed Oil
173	Lint Plain
174	Lockers
175	Lubricators
176	L.T. Prcelain KITKAT & fuse Grips
177	Machine Screw
178	Magnesium Sulphate
179	Mallet Wooden
180	Manhole Covers
181	Measuring Tapes and Sticks
182	Metal Clad Switches (upto 30 amps.)
183	Metal Polish
184	Metallic containers and drums other than N.E.C. (not elsewhere classified)
185	Metric weights
186	Microscope for normal medical use
187	Miniature bulbs (for torches only)
188	M.S. Tie Bars
189	Nail cutters
190	Napthalen Balls
191	Newar
192	Nickel Sulphate

193	Nylon Stockings
194	Nylon Tapes and Laces
195	Oil Bound Distemper
196	Oil Stoves (wick stoves only)
197	Pad locks of all types
198	Paint remover
199	Plama Rosa Oil
200	Palmgur
201	Pans Lavatory Flush
202	Paper conversion products, paper bags, envelops, Ice-creamcup, paper cup and saucers & Paper plates
203	Paper Tapes (Gummed)
204	Pappads
205	Pickless & Chutney
206	Piles fabnric
207	Pillows
208	Plaster of paris
209	Plastic Blow Moulded containers upto 20 litres excluding Poly Ethylene Terphthalate (PET) Containers
210	Plastic Cane
211	Playing Cards
212	Plugh & Sockets electric upto 15 amp.
213	Polythene Bags
214	Polythene Pipes
215	Post Picket (Wooden)
216	Postal lead seals
217	Potassium Nitrate
218	Pouches
219	Pressure die Casting upto 0.75 kg.
220	Privy Pans
221	Pulley Wire
222	PVC footwears
223	PVC pipes upto 110 mm
224	PVC insulated aluminum Cables upto 120 sq. mm (ISS: 694)
225	Quilts & Razais
226	Rags
227	Railway Carriage light fittings
228	Rakes ballast
229	Razors
230	RCC Pipes upto 1200 mm dia
231	RCC Poles Prestressed
232	Rivets of all types
233	Rolling shutters

234	Roof light fittings
235	Rubber balloons
236	Rubber Cord
237	Rubber Hoses (unbranded)
238	Rubbers Tubing (Excluding braided tubing)
239	Rubberised Garments Cap and Caps etc.
240	Rust/Scale Removing Composition
241	Safe Meat & Milk
242	Safety Matches
243	Safety pins (and other similar products like paper pins staples pins etc.)
244	Sanitary Plumbing fittings
245	Sanitary Towels
246	Scientific Laboratory glasswares (Barring sophisticated items)
247	Scissors cutting (ordinary)
248	Screws of all types including High Tensile
249	Sheep skin all types
250	Shellac
251	Shoe laces
252	Shovels
253	Sign Boards painted
254	Silk ribbon
255	Silk Webbing
256	Skiboots & shoes
257	Sluice Valves
258	Snapfastner (Excluding 4 pcs. Ones)
259	Soap Carbolic
260	Soap Curd
261	Soap Liquid
262	Soap Soft
263	Soap Washing or laundry soap
264	Soap yellow
265	Socket/pipes
266	Sodium Nitrate
267	Sodium Silicate
268	Sole leather
269	Spectacle frames
270	Spiked boot
271	Sports shoes made out of leather (for all sports games)
272	Squirrel Cage Induction Motors upto and including 100 KW440 volts 3 phase
273	Stapling machine
274	Steel Almirah
275	Steel Beds stead

276	Steel Chairs
277	Steel desks
278	Steel Racks/Shelf
279	Steel Stools
280	Steel trunks
281	Steel wool
282	Steel & Aluminum windows and ventilators
283	Stockinet
284	Stone and Stone quarry rollers
285	Stoneware jars
286	Stranded Wire
287	Street light fittings
288	Student Microscope
289	Studs (excluding high tensile)
290	Surgical Gloves (except Plastic)
291	Table knives (excluding cutlery)
292	Tack metallic
293	Taps
294	Tarpaulins
295	Teak fabricated round blocks
296	Tent Poles
297	Tentage Civil/Military & Salitah jute for Tentage
298	Textiles manufactures other than N.E.C. (not elsewhere classified)
299	Tiles
300	Tin Boxes for postage stamp
301	Tin can unprinted upto 4 gallons capacity (other than can O.T.S.)
302	Tin Mess
303	Tip Boots
304	Toggle Switches
305	Toilet Rolls
306	Transformer type welding sets conforming to IS:1291/75 (upto 600 amps.)
307	Transistor Radio upto 3 bands
308	Transistorised Insulation – Testers
309	Trays
310	Trays for Postal use
311	Trolley
312	Trollies – drinking water
313	Tubular poles
314	Tyres & Tubes (Cycles)
315	Umbrellas
316	Utensils all types
317	Valves Metallic

318	Varnish Black Japan	
319	Voltage Stabilisers including C.V.T.'s	
320	Washers all types	
321	Water proof covers	
322	Water proof paper	
323	Water Tanks upto 15000 litres capacity	
324	Wax sealing	
325	Waxed paper	
326	Weighing Scale	
327	Welded Wiremesh	
328	Wheel Barrows	
329	Whistle	
330	Wicks Cotton	
331	Wing Shield wipers (Arms & Blades only)	
332	Wire Brushes and Fibre Brushes	
333	Wire Fencing & fittings	
334	Wire nails and Horse shoe nails	
335	Wire nettings of gauze thicker than 100 mesh size	
336	Wood Wool	
337	Wooden ammunition boxes	
338	Wooden Boards	
339	Wooden Box for stamps	
340	Wooden Boxes and Cases N.E.C.(not elsewhere classified)	
341	Wooden Chairs	
342	Wooden Flush door shutters	
343	Wooden packing cases all sizes	
344	Wooden pins	
345	Wooden plugs	
346	Wooden shelves	
347	Wooden veneers	
348	Woollen Hosiery	
349	Zinc Sulphate	
350	Zip Fasteners	
<b>HANDICRAFTS ITEMS</b> S.No.	Items Description	Source of supply
351	Cane furniture	North Eastern Handicrafts & handlooms Development corporation, Assam Govt. Marketing Corpn., Craft Nagaland

		Handicrafts & Handlooms Development Corporation.
352	Bamboo file tray, Baskets, pencil stand, side racks etc.	-do-
353	Artistic wooden furniture	Rajasthan Small Industries Corpn. U.P. Export Corporation
354	Wooden paper weight, racks etc.	-do-
355	Glass covers made of wood & grass jute	-do-
356	Jute furniture	West Bengal Handicrafts Dev. Corpn. Jute mfg. Development Corporation Orissa State Handicrafts Dev. Corpn.
357	Jute Bags, file cover	-do-
358	Woollen & silk carpets	U.P. Export Corporation, J&K Sale & Export Corporation.

**Purchase Preference Policy for Pharma CPSEs**

**No. 50013/1/2006.S0(PI.IV)**

Government of India  
Ministry of Chemicals & Fertilizers .  
Department of Chemicals & Petrochemicals  
Shastri Bhavan, New Delhi

**7th August. 2006**

**OFFICE MEMORENDUM**

**Sub:- Purchase Preference Policy (PPP) for products of Pharma Central Public Sec Enterprises (CPSEs) and their subsidiaries**

The undersigned is directed to say that Government has decided to grant purchase preference exclusively to Phama CPSEs and their subsidiaries in respect of 102 medicines manufactured by them. The list of 102 medicines is enclosed. The salient features of PPP are as under:

- (i) Purchase Preference Policy (PPP) in respect of a maximum of 102 medicines would be applicable to purchases made by Ministries / Departments, PSUs, Autonomous Bodies, etc. of the Central Government It would be valid for a period of five years.
- (ii) This would also be applicable to purchase of 102 drugs made by State. Governments under health programmes which are funded by Government of India. (e.g. purchases under National Rural Health Mission etc.)
- iii) PPP will extend only to Phanna CPSEs and their subsidiaries ( i.e. where Pharma CPSEs own 51 % or above shareholding).
- iv) It would be applicable to a maximum of 102 medicines. The list of 102 medicines would be reviewed and revised by Department of Chemicals & Petrochemicals as and when required taking care not to include any item reserved for SSI units.
- (v) The Purchasing Departments / PSUs / autonomous bodies etc. of the Central Government may invite limited tenders from Pharma CPSEs and their subsidiaries or purchase directly from them at NPP A certified / notified price with a discount upto 35%.
- (vi) The purchasing departments would purchase from Pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules. If no Pharma CPSE is forthcoming to supply these 102 medicines, the purchasing departments would be at liberty to purchase from other Manufacturers.

- (vii) If the Pharma CPSEs or their subsidiaries which have the benefit of PPP, fail to perform as per the purchase order, they would be subject to payment of liquidated damages or any penalty included in the contract.
- (viii) The medicines covered under Drug & Price Control Order (DPCO) would be supplied at the ' 'rates fixed by National Pharmaceuticals Pricing Authority (NPPA) rates minus discount up to 35 per cent
- (viii) In case of medicines not covered under DPCO, prices would be got certified from NPPA, only for the limited purpose of supply to Central Government Departments and their Public Sector Undertakings, autonomous bodies etc. On the certified price, Pharma CPSEs and their subsidiaries would provide discount upto 35%.
- (ix) Pharma CPSEs and their subsidiaries would strengthen their marketing capabilities for a longer market share in the open market during the currency of Purchase Preference Policy.
- (x) All Ministries / Departments are requested to immediately bring the contents of this O.M. to the notice of all concerned office~ in the Ministries / Departments. States, CPSEs. Autonomous bodies and other organizations under their administrative control for strictly following the PPP in respect of products of Pharma CPSEs and their administrative control for strictly following the PPP in respect of products of Pharma CPSEs and their subsidiaries.

Sd/-  
(S. C. Sharma)  
Deputy Secretary to the Government of India  
Tele : 23389840

1 .All Chief Secretaries of -----  
State Governments.

2. All Principal Secretaries/ Secretaries,  
Health State Governments.

It is requested that purchase of 102 medicines as per the enclosed list by the States under various Central Health Programmes may be made from Pharma CPSEs as per the PPP contained in this O.M.

3. All Financial Advisers of the Ministries/ Departments, Government of India
4. Chairman, National Pharmaceuticals Pricing Authority, (NPPA), New Delhi.
5. Managing Directors of Pharma PSUs ( IDPL, HAL, BCPL, KAPL, RDPL). It is requested that necessary action as required in the matter may be taken immediately.
6. Chief Executives of Public Sector Undertakings autonomous organizations/ Bodies etc. (List enclosed)

Copy also to –

1. The Prime Minister's Office, South Block, New Delhi.
2. Cabinet Secretariat. New Delhi. This has reference to their O.M. No.31/CM/2006(i) dated 31<sup>st</sup> July, 2006.
3. Department of Public Enterprises ( Shri Priyadarshi Thakur, Secretary) It is requested that contents of this O.M. ,may specifically be brought to the notice of the Chief Executives of PSUs, autonomous bodies, etc. for strict compliance.
4. PS to Minister (C&F&S), 5. PS to MOS (C&F) '6. PPS to Secretary (C&F). 7. Hindi Section.

**LIST OF MEDICINES MANUFACTURED BY CPSUs AND PROPOSED FOR PURCHASE PREFERENCE**

<b>S.NO.</b>	<b>PRODUCT'S NAME</b>
1	Tetracycline IP
2	Ampicillin IP
3	Amoxycillin IP
4	Doxycycline IP
5	Cephalexin IP
6	Rifal1Jpicin IP
7	Amoxycillin + Cloxacillin
8	Cebexin-Z (B-Comp. + Zinc)
9	Iodomethacin
10	Cefadoxil
11	Ompeprazole I.P
12	Fluconazole
<b>TABLETS</b>	
13	Co-trimoxazole I.P
14	Metronidazole IP
15	CiprofJoxacin IP
16	Diclofenac Sodium
17	Domperidone
18	Cetirizine Hydrochloride BP
19	Albendazole IP
20	ParacetamolIP
21	Erythiomycin StearatelP
22	Tinidazole IP
23	EthambutolIP
24	Isoniazid IP
25	Pyrazinamide IP
26	Chloroquine Phosphate IP
27	Ranitidine IP Hc!'
28	Dicyclomine HCL + Paracetamol
29	Ibuprofen IP
30	Norfloxacin
31	Norfloxacin + Tinidazole
32	Ofloxacin
33	Ofioxacin+Ornidazole

34	Sparfloxacin
35	Ciprofloxacin + Tinidazole
36	Nimesulide
37	Furazolidone I.P.
38	Ornidazole
39	Azithromycin
40	Roxithromycin
41	Paracetamol IP+ Ibuprofen IP
42	Cefuroxime Axetil
43	Diclofenac Sodium IP
44	Livofloxacin
45	Famotidine
46	Polyvitamin ( Prophylactic) NFI
47	Vitamin B-complex (Prophylactic) NFI
48	Ascorbic Acid IP
49	Frusemide IP
50	Nishchint- Emergency Contraceptive Pills Livonogesterl
51	Diclofenac Sodium+ Serratop[e]todase
52	Penicillin V

#### **SUSPENSION/SYRUP**

53	Sulphamethoxazole & Trimthoprim Mixture IP ( Paediatric)
54	Cetirizine Hydrochloride Syrup
55	Domperidone Susepnsion
56	Amoxyllin Oral Suspension
57	Paracetamol Syrup
58	Amipicillin Oral Suspension
59	Albenxazole Suspension
60	Cough Syrup Each 5 ml contains : (Diphenhydramine Hydrocholoride IP – 144mg Ammonum ChloridE ip- 135 K sodium citrate IP 57 mg Menthol IP 0.9 mg
61	Cough Syrup : Each 5ml contains Chloropheniramine Malaeta IP 3 mg Ammonium Choloride IP 110 mg Sodium Citrate IP- 46 mg Menthol IP 0.9 mg.
62	Promethazine Syrup

63	Furazolidone Suspension
64	Hamycin Suspension
<b>Oral Powder</b>	
65	Oral Rehydraion Salts Citrate IP (WHO Formula) External Lotion Solution
66	Applicaion Nenzyl Benzonate IP
67	Chlorhexidine Gluconate Solution BP
68	Glutaraldehyde
<b>Eye / Ear Drops</b>	
69	Sulphacetamide Eye Drop IP
70	Ciprofloxacin Eye / Ear Drop OINTMENT
71	Silver Sulphadiazine IV Fluids I Infusions)
72	Plasma Volume Expander
73	Mannitol
74	Metronidizole
75	Ciprofloxacin DRY POWDER/ LIQUID INJECTABLES
76	Sodium Anitomy Gluconate
77	Benzyl Penicillin IP
78	Fortified Procanie Penicillin IP
79	Ampicillin IP
80	Streptomycin IP
81	Cefotaxime Sodium USP
82	Ceftriaxone
83	Ceftriaxone+ Sulbactum
84	Amoxycillin Sodium+ clavulanate Potassium
85	Gentamuycinn IP
86	Benzathene Pencillin
87	Cefoperazone+ Sulbactum
88	Amoxycilin Sodium+ Clavulanate Potassium
89	Getamycin IP
90	Ranititdine IP
91	Amikacin IP
92	Diclofenac sodium

93	Dexamethasone
94	Lignocaine
95	Cefotaxime Sodium+ Sulbactam
96	Rabies Vaccine
97	Atropine Sulphatae
98	Aminophylline
99	Frusemide
100	Eto-theophylline
101	Pentazocin
102	AVS Liquidi / Lypholysid

**Purchase/Price Preference Policy for Kendriya Bhandar / NCCF**

**F.No. 14/12/94-(Welfare(Vol.II))**

Government of India

Ministry of Personnel Public Grievances and Pensions

Departmental of Personnel and Training (Welfare Section)

Room No. 361, 3<sup>rd</sup> floor, Lok Nayak Bhawan, New Delhi

**Dated 5.7.2007**

**OFFICE MEMORANDUM**

**Subject : Local purchase of stationery and other articles from Kendriya Bhandar, NCCF and other Multi-State Co-operative Societies having majority shareholding by the Central Government.**

1. In terms of Deptt. of Personnel & AR's O.M.No. 14/4/80 Welfare dated 14.7.1981, it was made incumbent on all Central Government Departments, their attached and subordinate offices and other organizations and/or controlled by the Government located at Delhi/New Delhi to make all local purchases of stationery and other items required by them only from the Central Government Employees Consumer Cooperative Society Ltd. (Kendriya Bhandar) New Delhi. Only if the Society was not able to supply a particular items, was it permissible for them to make local purchase from other sources. Subsequently, Instructions were issued in 1987 and 1994 bringing Super Bazar & NCCF (National Consumer Co-operative Federation) under the purview of DOP&T O.M. dated 14.7.1981.
2. After the issuance of new General Financial Rules, 2005, the above dispensations stood withdrawn from 1.7.2005.
3. The matter has since been reviewed in consultation with the Department of Expenditure. The concept of providing an assured market to Kendriya Bhandar (KB), NCCF or any other MSCS is not in keeping with the concept of liberalization of the economy and making the Government organizations competitive and self supporting through open competition. However, keeping in view the avowed objective of the co-operative movement to ensure supply of goods and services to the consumers at the most economical and competitive prices and taking note of the changes concepts of marketing, it has been decided to adopt the following dispensation in respect of all Central Government Departments, their attached and sub-ordinate offices and other organizations financed and/or controlled by them in making the local purchases of stationery and other items from KB/NCCF :-

- (a) Under Rule 145 of GFRs 2005, Ministries/departments can make purchases of goods up to Rs. 15,000 without inviting quotations or bids. Further, under Rule 146 of GFRs 2005, a Local Purchase Committee constituted by the concerned Ministry/Department can make purchases of goods up to Rs. 1 lakh on the basis of a market survey to ascertain the reasonableness of rate, quality, etc. and the submission of a certificate to that effect. In partial modification of this Rule, Ministries/Departments are permitted to make purchases at their discretion of all items required for office consumption up to Rs. 1 lakh on each occasion directly from Kendriya Bhandar/NCCF without calling for quotation. The responsibility for ensuring the reasonableness or rates, quality, specifications, etc. should be certified by the Local Purchase Committee as envisaged under Rule 146 of the GFRs, 2005. It shall be ensured that supply orders are not split under any circumstances with the objective of circumventing the limit of Rs. 1 lakh.
- (b) For procurement of all items of office consumption beyond Rs. 1 lakh to Rs. 25 lakh, where limited tenders are to be invited as per Rule 151 of the GFRs 2005, KB and NCCF among others shall also be invited to participate in such limited tenders. In case these cooperative are functioning at the station. Other things being equal, purchase preference will be granted to KB/NCCF, if the price quoted by the co-operative is within 1-% of the L1 price and if these cooperatives are willing to match the L1 price. No price preference over and above the L1 price shall be given to these co-operatives. However, KB/NCCF will be exempted from furnishing bid security (Earnest Money Deposit).
- (c) Supply orders up to Rs. 25 lakh, in respect of office equipments covered under the DGS&D rate contract may also be procured from KB and NCCF provided KB/NCCF offer the items at DGS&D rate contracted prices as also fulfill all the contractual obligations which the manufacturers/suppliers of such products are required to meet under the DGS&D rate contract. The Ministries/Departments shall make their own arrangements for Inspection and testing of such goods where required.
- (d) The above dispensation shall be applicable only up to 31-3-2010.
- (e) Other Multi-State Co-operative Societies registered prior to the issue of this Office Memorandum in which the majority of the shares are held by the Central Government, are also permitted to avail of the facility of purchase preference in respect of limited tender enquiries up to Rs. 25 lakh.

4. It is requested that the Instructions contained in this Office Memorandum may be noted carefully and complied with in respect of local purchase to be made by Government Departments etc. hereafter. Ministries/Departments are also requested to instruct their attached and subordinate offices as well as other organizations financed and/or controlled by them to follow the same procedure for obtaining their requirements of stationery and other items from the Multi-State Co-operative Societies.

5. This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their O.M.No. 1(12)/E.II(A)/94 dated 12<sup>th</sup> June 2007.

(R.P.Nath)  
Director of Chief Welfare Officer, Tel No. 24625562

To

All Ministries/Departments of the Government of India, their attached and Sub-ordinate offices and other organizations financed and/or controlled by them.

Copy for information : Ministry of Finance, Deptt. of Expenditure (Ms. Rubina Ali, Under Secretary), E.II(A) Branch, North Block, New Delhi with reference to their O.M.No. 1(12)/E.II/94 dated 12.6.2007.

Copy also for information and necessary action to :

1. Managing Director,  
Central Gov. Employees Consumer Co-operative Society Ltd,  
(kendriya Bhandar), Pushpa Bhawan, 1<sup>st</sup> floor, Madangir Road, New Delhi-110062
2. Managing Director, National Consumer Co-operative Federation, 5<sup>th</sup> floor, Deepali Building, 92 Nehru Place, New Delhi.

**PRODUCT RESERVATION FOR KVIC / HANDLOOM SECTOR**

**LIST OF KHADHI ITEMS RESERVED FOR EXCLUSIVE PURCHASE FROM KVIC**

1. DOSUTI
2. PAGRI CLOTH
3. BUNTING CLOTH
4. DANGRI CLOTH
5. SHEETING CLOTH
6. BED SHEETS
7. DUSTERS
8. TOWELS
9. SAREES
- 10 DHOTIS (UNBLEACHED)
11. PILLOWS CASES
12. READYMADE GARMENTS (SHORTS)
13. BLOUSES
14. SKIRTS

**LIST OF ITEMS NOTIFIED FOR PURCHASES FROM HANDLOOM SECTOR**

<b>TITLE</b>	<b>IS: SPECIFICATION</b>
<b>COTTON-HANDLOOM</b>	
Angavastram	7216-1974
Bandage Cloth	868-1969
Bed Durries	1557-1972
Bed Sheets	745-1975
Blankets, Grey or Coloured	746-1955
Bleeding, Madras, Coomstate	1937-1961
Buckram Cloth	1102-1968
Bunting Cloth, Dyed	747-1982
Calico, Bleached or Dyed	1241-1958
Cambrick Bleached	1098-1957
Celluler Shirting, Handloom Cotton	1101-1981
Cloth for Plaster of Paris Bandages & Cut bandages	6237-1971
Coating, handloom Cotton	1243-1981
Colour Fastness of Handloom Cotton Textile, Requirements	6906-1982
Crope	1100-1978
Dhoties	718-1974
Dostutie, Grey, Scoured Bleached or Dyed	756-1984
Dress material, bleached, Dyed, Printed, Striped; or checked	1095-1967
Drills	1451-1979
Dungri Cloth	749-1978
Dusters	859-1978
Floor Durries	1450-1972
Gada Cloth	1094-1976
Gauze, absorbent, non-sterilized Handloom Cotton	758-1975
Handkerchiefs	1989-1975
Holland Cloth, unscored	1096-1957
Honeycomb towels and toweling cloth	855-1979
Huckback towels	856-1971
Jaconet Cloth, Grey, Dressed	861-1982
Light Sheeting, Grey	864-1986
Lining Cloth, Dyed	1099-1957
Lint, Absorbent, Bleached	757-1971
Long Cloth, Bleached or Dyed	1244-1958
Lungies	750-1971
Long Cloth, Bleached or Dyed	1244-1958

**FORMAT OF CAPACITY/CAPABILITY REPORT ON FIRMS  
PART – I**

**FACTUAL INFORMATION FURNISHED BY THE FIRM**

1. Name and registered address of the firm :
2. Name and address of subsidiary/ associated industry within India. :
3. Factory location and address :
4. Telegraphic address :
5. Name and address of Managing Director :
6. Telephone No. : Office :  
Factory :
7. Details of the Organisation :
  - (a) Brief History :
  - (b) Area – present set up and provisions for future expansion :
  - (c) Covered accommodation :
  - (d) Main Departments :  
Tech/managerial :
  - (e) Design office and Library details :
  - (f) Sales and service set up :
8. Approximate capital Investment :
  - (a) Authorised capital :
  - (b) Capital Investment :
  - (c) Financial position (*comments with latest copy of Balance Sheet and income*) :
9. Main items of machinery/equipment and test/inspection facilities available :
10. Labour :
  - (a) Strength presently employed :
    - (i) Skilled :
    - (ii) Semi-skilled :
    - (iii) Non-skilled :
  - (b) Availability of labour for future expansion. :
11. Power:
  - (a) Source :
  - (b) Present load :
  - (c) Availability of power for future expansion :
12. Raw materials : :

- (a) Requirements :
- (b) Period for which reserve stock of raw materials is held.
- (c) Sources of procurement
- (d) Percentage of indigenous improved raw materials
- (e) Any difficulty regarding normal product or likely order
- 13. Is the firm registered with DGS&D or with any other Defence or Civil Govt Department? If so, give details.
- 14. Has the firm any collaboration and technical know-how agreement with foreign firms? If so, give details. :
- 15. Details of items for which patent rights of the firm exist :
- 16. Are you having any development activities? Are you having in hand any basic research program? :
- 17. Details of qualified managerial and technical personnel. :  
Is any member on your staff a foreigner or foreign qualified specialist?
- 18. Is your product "Type Approved" or has ISI certification mark? If so, give details. :
- 19. Training program of staff
- 20. Details of stores under production or development (Appendix 'A') :
- 21. Name and address of agents :
- 22. Any other information you wish to provide :

Place :

Seal

Date :

Signature :

Name :

Designation :

Enclosures : Appendix A (Details of Stores under production or development))

**Annexure**  
(Attached to the Report)

M/s. \_\_\_\_\_  
(To be filled in by the firm)

Details of stores the firm is :

- (a) Producing at present :
- (b) Developing at present :
- (c) Interested in for future development/production :

S No	Present products Remarks	Monthly Production	
		<u>(Give number of shifts)</u>	
		Present Capacity available	Spare Capacity

*Present Production*  
*Production under Development*  
*Future plan for Development*

Signature  
Name of firm

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## PART II

### CERTIFICATE BY INSPECTION TEAM

1. Name and designation of the Inspecting team :
2. Date on which the firm was inspected :
3. Comment on the standard of know-how and adequacy of the production process for the end product :
4. Comments on arrangement for inspection/ testing and quality control of products :
  - (a) Adequacy of equipment :
  - (b) Application of planned inspection during production :
  - (c) Inspection of components raw materials procured from sub-contractors :
  - (d) Evidence of proper work study possibility of improvement of man power :
  - (e) Built in training programme for improvement of man power :
5. Are Management-labour relations good? Any labour problems which may hold up production :
6. Are they supplying their product to any leading manufacturers or Govt undertakings/departments? Give details. :
7. Comments on potential to carry out research/ development as normal feature If so percentage of total expenditure on such activities :
8. Are they considered suitable for production/ development order :
9. Is the firm capable of providing a relevant paper particulars for AHSP work, i.e., user handbook/workshop manual, part/identification list recommended spares for two years maintenance and one overhaul :
10. Comments on past performances for producing quality goods, adhering delivery schedule, attention to complaints as security consciousness :
11. General remarks (give any other observation not already covered) :
12. Do you consider the firm to be financially sound :
13. Final recommendations regarding suitability of the firm for placement of development orders :

**Signature and Designation of the Inspecting Team**

**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. **Consignee's Right of Rejection**- Notwithstanding the fact that an item may have been inspected prior to dispatch, the consignee will have the right to reject it, in whole or part, if it is observed that the item supplied does not conform to the specifications or has been damaged. Such rejection will be communicated to the supplier within 90 days of the item reaching the consignee's premise. If an item is rejected, the supplier is required to replace the item within a period determined by the supplier, which should not be less than 45 days, failing which he shall make financial restitution based on the 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.

## Form DPM-7

### Format of Arbitration Clause – Indigenous Private bidders

(i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof, should be settled by bilateral discussions.

(ii) Any dispute, disagreement or question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to a sole Arbitrator.

(iii) Within sixty (60) days of the receipt of the said notice, an arbitrator shall be nominated in writing by the authority agreed upon by the parties.

(iv) The sole Arbitrator shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

(v) The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.

(vi) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.

(vii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

**(Note -** In the event of the parties deciding to refer the dispute/s for adjudication to an Arbitral Tribunal then one arbitrator each will be appointed by each party and the case will be referred to the Indian Council of Arbitration (ICADR) for nomination of the third arbitrator. The fees of the arbitrator appointed by the parties shall be borne by each party and the fees of the third arbitrator, if appointed, shall be equally shared by the buyer and seller).

**Format of Arbitration Clause – Foreign bidders**

(i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof, should be settled by bilateral discussions

(ii) Any dispute, disagreement or question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to the Arbitration Tribunal consisting of three arbitrators.

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

(iv) The third arbitrator, who shall not be a citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties, the said arbitration shall be nominated by the parties within (90) days of the receipt of the notice mentioned above, failing which the third arbitrator may be nominated under the provisions of UNCITRAL by the International Chamber of Commerce, Paris at the request of either party. However the said nomination would be after consultation with both the parties and shall preclude any citizen or domicile of any country as mentioned above. The arbitrator nominated under this clause shall not be regarded nor act as an umpire.

(v) The Arbitration Tribunal shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

(vi) The arbitration proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts or as may be mutually agreed between the parties.

(vii) The decision of the majority of the arbitrators shall be final and binding on the parties to the contract.

(viii) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the third arbitrator shall be shared equally by the Seller and the Buyer, unless otherwise awarded by the Arbitration Tribunal.

(ix) In the event of a vacancy caused in the office of the arbitrators, the party which nominated such arbitrator shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the outgoing arbitrator.

(x) In the event of one of the parties failing to nominate its arbitrator within 60 days as above or if any of the parties does not nominate another arbitrator within 60 days of the place of arbitrator falling vacant, then the other party shall be entitled after due notice of at least 30 days to request the International Chamber of Commerce to nominate another arbitrator as above.

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

(xii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

**(Note** - The provisions with regard to appointment of an Arbitrator by the International Chamber of Commerce, Paris shall only be resorted to in cases of International Commercial Arbitration. Similarly, the UNCITRAL provisions will only apply with regard to appointment of Arbitrator, fixation of fees of the Arbitrator when it is a foreign arbitration. The procedure to be adopted during arbitration will be as provided in the Indian Arbitration & Conciliation Act, 1996.]

**Format of Arbitration Clause – CPSUs/DPSUs**

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party to the Permanent Arbitration Machinery set up in the Department of Public Enterprises and that if the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

**Format for Pre-Integrity Pact clause**

**General**

1. Whereas the PRESIDENT OF INDIA, represented by \_\_\_\_, 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, \_\_\_\_\_ (Designation 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 precontract or postcontract 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\* \_\_\_\_\_ 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. A model Bank guarantee format is enclosed. (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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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 has appointed Independent Monitors for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given)

12.2 As soon as the Monitor notices, or believes to notice, a violation of this Pact, 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

Witness

Witness

1. \_\_\_\_\_  
2. \_\_\_\_\_

1. \_\_\_\_\_  
2. \_\_\_\_\_

**Form DPM-11**

**Model ECS Mandate Format**

Customer's option to receive payments through e-Payment (ECS/ EFT/ DIRECT CREDIT/ RTGS/ NEFT/ Other payment mechanism as approved by RBI.)

**Credit Clearing Mechanism**

1. Customer's name
2. Particulars of Bank Account –
  - a. Bank name
  - b. Branch name
  - c. Address
  - d. Telephone numbers
  - e. IFS code
  - f. 9 Digit code number of Bank and Branch appearing on MICR cheque issued by Bank
  - g. Account Type (S.B. Account / Current Account or Cash)
  - h. Ledger number
  - i. Ledger Folio number
  - j. Account number as appearing on Cheque Book
3. Please attach a blank cancelled cheque, or, photocopy of a cheque or front page of your savings bank passbook issued by your bank for verification of the above particulars.
4. Date of Effect

“I, hereby, declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I would not hold the user institution responsible. I have read the option invitation letter and agree to discharge the responsibility expected of me as a participant under scheme.”

Date - \_\_\_\_\_  
Signature of Customer

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

Bank's Stamp: (.....)

Date:

Signature of the Authorized Official from the Bank

**Form DPM-12**

**Letter of Credit Format**

**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) : Not 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  
Period**

**Amount**

**Validity**

+ 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) : -----

**EMD Bank Guarantee format**

Whereas .....(hereinafter called the “Bidder”) has submitted their offer dated.....for the supply of

.....  
(hereinafter called the “Bid”) against the Buyer’s Request for proposal No.

.....  
KNOW ALL MEN by these presents that WE .....of ..... having our registered office at ..... are bound unto ..... (hereinafter called the “Buyer) in the sum of .....for which payment will and truly to be made to the said Buyer, the Bank binds itself, its successors and assigns by these presents.

Sealed with the Common Seal of the said Bank this..... day of .....20.....

The conditions of obligations are –

(1) If the Bidder withdraws or amends, impairs or derogates from the Bid in any respect within the period of validity of this tender.

(2) If the Bidder having been notified of the acceptance of his tender by the Buyer during the period of its validity.

a) If the Bidder fails to furnish the Performance Security for the due performance of the contract.

b) Fails or refuses to accept/execute the contract.

WE undertake to pay the Buyer up to the above amount upon receipt of its first written demand, without the Buyer having to substantiate its demand, provided that in its demand the Buyer will note that the amount claimed by it is due to it owing to the occurrence of one or both the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force upto and including 45 days after the period of tender validity and any demand in respect thereof should reach the Bank not later than the above date.

.....  
(Signature of the authorized officer of the Bank)

Name and designation of the officer

Seal, name & address of the Bank and address of the Branch

**Guidelines on confirmation of Bank Guarantees  
of Foreign Banks by Indian Banks**

1. In terms of Reserve Bank of India's guidelines issued vide letter No AP (DIR Series) Circular No 15 dated 17 September, 2003, all remittances of foreign exchange beyond US\$ 100,000 are to be against BGs/stand by Letter of Credit from banks of international repute. Accordingly, Ministry of Defence will obtain Bank Guarantees (BGs) from foreign suppliers from banks of international repute for:-

- (a) Advances paid to them.
- (b) Performance of contracts as Performance BGs.
- (c) Warranty bonds to ensure warranty support of equipments supplied by the vendors.

2. To ascertain whether BGs given by foreign vendors are from banks of international repute, Ministry of Defence will be assisted by the Parliament Street Branch of SBI.

3. With a view to institutionalize the procedure to be adopted for obtaining advice of State Bank of India, an Arrangement Letter has been signed with SBI which covers the services that SBI will offer.

4. While CNC commences its commercial deliberations, SBI's advice on the BG will be sought in parallel. The advisory role of SBI will be put into action in the following manner-

- (a) On receiving details of BG proposed to be submitted by the vendor, the matter is to be referred to SBI.
- (b) SBI will render its advice within 7 days from the date of receipt of reference/details of the BG from MoD.
- (c) SBI's advice will be as follows:-
  - (i) In case the BG is from a bank of international repute and country rating is satisfactory, SBI will advise MoD to accept BG without need for confirmation of the BG by an Indian bank.
  - (ii) In case the advice of SBI is that the BG is not from a bank of international repute and / or a confirmation of a local bank is required to be obtained by MoD, the vendor will be asked by MoD to instruct its banker to mutually settle the issue of BG with SBI who will in turn advise MoD regarding further action to be taken.

(iii) Only in case the vendor's bank is unable to settle the issue of BG with SBI, the matter will be referred back to MoD by SBI.

(iv) In such cases, as required, MoD will associate SBI officials in Contract Negotiation Committee (CNC) for settling the issue of BG with the vendors.

**Performance Bank Guarantee Format**

**From:**

**Bank** \_\_\_\_\_

To,

The President of India

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 \_\_\_\_\_, hereinafter referred to as the "seller" for supply of goods as per Part-II of the said contract to the said seller 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 the \_\_\_\_\_ bank 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, all and any sum up to a maximum of \_\_\_\_\_ Rupees \_\_\_\_\_ only. 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\_\_\_\_\_.

**Form DPM-16**

**FORMAT FOR BANK GUARANTEE FOR ADVANCE PAYMENT**

From :

Bank \_\_\_\_\_

To

The President of India

Sir,

With reference to contract No. \_\_\_\_\_  
\_\_\_\_\_ dated \_\_\_\_\_ concluded between the President of  
India, hereinafter referred to as 'the Purchaser' and M/s \_\_\_\_\_  
\_\_\_\_\_ hereinafter referred to as the "the contractor" for the development  
and supply of \_\_\_\_\_ as detailed in the above  
contract which contract is hereinafter referred to as "the Said Contract" and in  
consideration of the Purchaser having agreed to make an advance payment in  
accordance with the terms of the Said Contract to the said contractor,  
we the \_\_\_\_\_ bank, hereinafter  
call 'the Bank' hereby irrevocably undertake and guarantee to you that if the Said  
Contractor would fail to develop and supply the stores in accordance with the terms  
of the Said Contract for any reason whatsoever or fail to perform the Said Contract in  
any respect or should whole or part of the said on account payments at any time  
become repayable to you for any reason whatsoever, we shall, on demand and  
without demur pay to you all and any sum upto a maximum of Rs. \_\_\_\_\_  
(Rupees \_\_\_\_\_ only) paid as advance to the Said  
Contractor \_\_\_\_\_ in \_\_\_\_\_ accordance  
with the provisions contained in Clause \_\_\_\_\_  
\_\_\_\_\_ of the Said Contract.

2. We further agree that the Purchaser shall be the sole judge as to whether the contractor has failed to develop and deliver the stores in accordance with the terms of the Said Contract or has failed to perform the said contract in any respect or the whole or part of the advance payment made to Contractor has become repayable to the Purchaser and to the extent and monetary consequences thereof by the Purchaser.

3. We further hereby undertake to pay the amount due and payable under this Guarantee without any demur merely on a demand from the Purchaser stating the amount claimed. Any such demand made on the Bank shall be conclusive and binding upon us as regards the amounts due and payable by us under this Guarantee and without demur. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

4. We further agree that the Guarantee herein contained shall remain in full force and effect for a period of 12 months from the date the last advance payment was made or for a period of 90 days from the date on which final delivery of the stores after development was made and accepted by the Purchaser whichever falls later unless the Purchaser in his sole discretion discharges the Guarantee earlier.

5. We further agree that any change in the constitution of the Bank or the constitution of the contractor shall not discharge our liability hereunder.

6. We further agree that the Purchaser shall have the fullest liberty without affecting in any way our obligations hereunder with or without our consent or knowledge to vary any of the terms and conditions of the Said Contract or to extend the time of development/delivery from time to time or to postpone for any time or from time to time any of the powers exercisable by the Purchaser against the contractor and either to forbear or enforce any of the terms and conditions relating to the Said Contract and we shall not be relieved from our liability by reason of any such variation or any indulgence or for bearance shown or any act or omission on the Purchaser or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so relieving us.

7. We lastly undertake not to revoke the Guarantee during the currency of the above said contract except with the prior consent of the Purchaser in writing.

Yours faithfully,

for \_\_\_\_\_ Bank

(Authorised Attorney)

Place : \_\_\_\_\_

Date : \_\_\_\_\_

Seal of the Bank

**Format for SMT/STE/TJ/Fixtures clause**

**COMPLETE LIST OF ACCOMPANIED ACCESSORIES/ USER REPLACEABLE PARTS/ EXPENDABLES, SPARES AND SMTs/STE/TJ FOR EQPT**

**1. Sub-assemblies for equipment**

SI No	SI No of offer	Part No	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**2. Accessories along with equipment**

SI No	SI No of offer	Part No	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**3. Optional items**

SI No	SI No of offer	Part No	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**4. Spares**

SI No	SI No of offer	Part No	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

**5. Additional items required for completeness of spares and consumables**

SI No	SI No of offer	Part No	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
<b>Total</b>								

6. List of SMTs/STEs/TJs

SI No	SI No of offer	Part No	Nomenclature	Schematic reference	No. per eqpt	Unit cost	Total cost	Remarks
Total								

Note - The Seller confirms for authenticity, completeness correctness of the data given in this Annexure.

**Format for Technical Literature Clause**

1. **Operator Course.** This course is designed to give the student the necessary knowledge to operate an Equipment \_\_\_\_ effectively. It also covers unit maintenance procedures and procedures for unit level repair and replacement of parts.

**Course Description & Materials**

a. This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. Materials - Slide Show, User Guide.

b. This course allows the student to do practical exercises with an Equipment \_\_\_\_.  
Materials - User Guide, Equipment \_\_\_\_ unit, Practical outline.

c. This time allows the student to ask any questions they have and review for the test. Materials - User Guide, Equipment \_\_\_\_ unit

d. Operator Test - The student takes the certification test. Materials - User Guide, Test paper.

2. **Trainer Course.** This course is designed to give the student an understanding of the Equipment \_\_\_\_ as well as first line maintenance techniques that will help the student to keep the (Equipment) \_\_\_\_ working properly. In addition to that there will be a course on training others how to use the (Equipment) \_\_\_\_ by stressing the important issues using the (Equipment) \_\_\_\_\_. Following the course there will be a certification test which will then allow the student to train other users on the (Equipment) \_\_\_\_\_.

**Course Description & Materials**

a. This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. It will also include first line maintenance techniques used in the field. Materials - Slide Show, Supervisor Guide.

b. This course allows the student to do practical exercises with an (Equipment) \_\_\_\_\_. Materials - Supervisor Guide, (Equipment) \_\_\_\_unit, Practical outline

c. This course cover the important issues in training other users on the (Equipment) \_\_\_\_\_. Materials - Trainer Guide, (Equipment) \_\_\_\_unit.

d. This course allows the students to practice training other users on the (Equipment) \_\_\_\_ under supervision. Materials - Trainer Guide, Slide Show, (Equipment) \_\_\_\_ unit.

- e. Supervisor Test - The student takes the certification test. Materials - Supervisor Guide, Test paper Trainer Guide.

**3. Field Repair Level Maintenance Training:** This course is designed to give the student an understanding of the (Equipment) \_\_\_ as well as first line maintenance techniques that will the student to keep the (Equipment) \_\_\_ working properly. Then the course will discuss the Mechanical/Automotive/Electronic/Armament portion of the (Equipment) \_\_\_\_. A break down of all components as well as the calibration procedure is taught. The student will then take apart and rebuild an (Equipment) \_\_\_ going over various points. Following the classes there will be a certification test which will allow the student to then do any repairs needed on the (Equipment) \_\_\_.

#### **Course Description & Materials**

- a. This course covers the theory, operation and proper sampling techniques. It will include hands on and visual presentations. It will also include first line maintenance techniques used in the field. Materials - Slide Show, Supervisor Guide.
- b. This course allows the student to do practical exercises with an (Equipment) \_\_\_\_. Materials - Supervisor Guide, (Equipment) \_\_\_ unit, Practical outline.
- c. This course covers all the electronics in the (Equipment) \_\_\_\_. A look at all the PCBs in the unit and the procedure of analyzing samples. Materials - Technical Guide, (Equipment) \_\_\_ unit.
- d. This course discusses the troubleshooting techniques used for repairing an (Equipment) \_\_\_\_. Materials - Technical Guide, (Equipment) \_\_\_ unit.
- e. This course cover the proper procedure in calibrating and (Equipment) \_\_\_\_. Materials - Technical Guide, (Equipment) \_\_\_unit.

**4. Component level Maintenance Training.** This course is designed to train students to undertake component level repair of all assemblies, subassemblies, modules, PCBs. etc.

**5. Base Repair Maintenance Training.** The syllabus for base repair maintenance training will be finalised during MET as per the requirement of the BUYER.

**6. Technical Know How.** The SELLER shall provide the complete know how on the technology used , repair and maintenance of the equipment and shall not withhold such information during the conduct of the training. Maintenance philosophy will be discussed and suggested norms for major maintenance tasks will be provided by the SELLER.

**Format for MRLS clause**

Equipment \_\_\_\_\_  
OEM \_\_\_\_\_

SI No	Part No	Source of supply	Nomenclature	Nos fitted in one eqpt	ISPL reference	Unit cost	Rec scale for qty 100 eqpt s for two years	Total cost	Remarks
Total cost									

**Note –**

1. Recommended scale and cost be given separately for Unit repair, Field repair, Intermediate and Base repair.
2. Maintenance spares/stores like lubricants, sealing compound, gases should be given separately giving source of supply.
3. Spares for component repairs should be included under the column of nodal repair & Base Repair as suggested by OEM.
4. In Remarks column, following information (if applicable) be given:-
  - a. If an item has a shelf/operational life it be marked as 'G' and life indicated.
  - b. Matching set of components be indicated.
  - c. Items which can be locally manufactured should be marked 'LM'.
  - d. Items which cannot be manufactured in India due to sophisticated design/technology may be marked as 'SI' special item.
  - e. If a component/assembly is common to other similar equipment offered by the OEM earlier these should be marked 'CM' and name of the equipment be indicated.
5. MRLS should be drawn out of the Part List of the equipment, which should be separately given as part of Technical Manual.
6. If the main equipment consists of other equipment, then MRLS should be prepared for them under proper heads.

7. MRLS be prepared as per the maintenance concept of the customer.
8. Items provided along with the equipment as spares should also be included in MRLS.
9. Modules/ Shop Replaceable Unit (SRU)/ assemblies should be listed and their components should be included under them so as to relate each item of spare to their module / SRU / assembly.
10. Complete MRLS should be costed separately for Field, Nodal and Base repairs as it is required to be included as part of Total Costed Engineering Support Package (ESP). OEM may give cost details in confidence to Price Negotiation Committee (PNC), but other details as above be provided during Maintainability Equipment Trial(MET).
11. MRLS for test equipment should also be provided on the similar format.

**Format for Maintenance Evaluation Trials Clause**

1. This is carried out with a view to facilitate provisioning of effective engineering support for the life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance spares, tools, test equipment and technical literature. To facilitate this process, the SELLER is required to provide the following in addition to one complete set of the equipment apart from the quantity being procured vide this contract. :-
  - a. Technical Literature.
  - b. User Handbook/Operators Manual.
  - c. Design Specifications.
  - d. Technical Manuals.
    - i. Part- I. Technical description, specifications, functioning of various systems.
    - ii. Part – II. Inspection/Maintenance tasks, repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs) /Special Test Equipment (STEs).
    - iii. Part – III. Procedure assembly/disassembly, repair up to component level safety precautions.
    - iv. Part – IV. Part list with drawing reference and list of SMTs/STEs Test Bench.
  - e. Manufacturers Recommended List of Spares (MRLS) with schematic references and part numbers for all the items.
  - f. Illustrated Spare Part List (ISPL).
  - g. Technical Manual on SMT/STE with drawing reference.
  - h. Complete Equipment (TOTE) & carried spares.
2. One set of Gauges.
3. One set of complete SMTs/STEs/TJs and Test set up.
4. Servicing Schedule and condemnation limits.
5. Permissive Repair Schedule for repairs possible at various levels with available infrastructure.
6. Packing specification/ instructions.
7. Any additional information suggested by the OEM such as infrastructure/facilities/Buyer furnished items for use and maintenance/repair of eqpt.

8. The vendor technical representative shall be present during complete duration of MET. On completion of MET, the SELLER can take back all the items produced for evaluation and maintenance training.

**Certificate of Conformity format**

Date :

No :

Product Name :

Product No :

Lot No :

Quantity :

Contract No :

Packaging List No :

THIS IS TO CERTIFY THAT THE ABOVE MENTIONED PRODUCT/S HAVE SUCCESSFULLY PASSED ALL THE ACCEPTANCE TESTS IN ACCORDANCE WITH THE RELEVANT SPECIFICATIONS AND DRAWINGS.

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**QUANTITY CLAIM FORMAT**

Quantity Claim to the Contract No .....dated

Claim Protocol number .....

Laid ..... down

For inter/tare storage

Commission, consisting of Chairman .....and Members  
..... having examined

the state of the delivered equipment ascertained as follows:-

1. The equipment was delivered by M/s ..... against Bill of  
Lading No ..... of ..... in the  
quantity of one collie with the Marking ..... Case No  
.....

2. The obtained equipment is delivered under Contract  
number..... Item Sr Number .....  
Cost.....

3. The state of packing and seals on goods packages, correspondence of the  
gross weight and the weight indicated in the way bills (packing lists) Nos of the  
collies are to be pointed out ..... Condition of the collie  
..... Gross weight of the collie  
..... Net weight of the collie .....

4. While unpacking the goods packages, the following discrepancy between the  
shipping documents (packing lists as the packed equipment was  
discovered/separately for the each package .....

5. Conclusion of the commission .....

6. The following documents confirming the justification of the complaint are  
attached to the report (Packing list, photos of the damaged sports and others)

Chairman .....

Members .....

Place and date of issue .....

**QUALITY CLAIM FORMAT**

Quality Claim to the Contract No .....dated  
.....

Claim Protocol number .....

Laid down on

Concerning (Name of the claimed equipment)

Commission Members .....

Chairman .....

.....

The Commission has acquainted with the claimed equipment and made the following decision:--

1. .... Serial No  
.....(equipment)

Production by the ..... Made by the manufacturer .....

.....

(date of manufacture)

No of running hours ..... With guarantee period of .....

(completed) .....

.....

(years, months)

From the beginning of operation, the product has been operating for .....  
hours.

2. Indicate operation conditions of the equipment .....

.....

(State type of fuel and oil used during operation of the equipment)

3. Description of the defect .....

.....

(the date and circumstances under which the defect was ascertained, short description of the probable causes and probable consequences of the defect)

4. List of units (or their parts)

(defective equipment will remain in that organization store-room when it has been operating till arrival of the Seller's instruction)

5. Conclusion of the Commission .....

.....

.....

.....

(on investigation the commission decided that the claimed equipment is not serviceable and that it must be subject to repair or must be replaced with a new equipment. The kind of repair and place where the repair should be carried out are to be stated).

The following parts are required for the repair of the equipment (or its parts)

.....

.....

The defect occurred ..... within the guarantee period from the reason as follows .....

.....

The costs of the repair of the equipment or its parts .....

.....

.....

The defect occurred ..... within the guarantee period from the reason as follows.....

.....

..... The costs of the repair will be debited to (..... manufacturer/owner.....)

To settle the claim, the Seller has to replace the equipment and dispatch the unit and other parts, indicate the parts and where the repair should be carried out (manufacturer's side), the manner of reimbursement of costs connected with the repair of the equipment, etc.

Supplementary data:

The equipment was handed over in accordance with the ..... No ..... on (date)

..... The following documents are enclosed to this claim protocol to support the justification of the claim (photos, samples, results of analysis, packing sheets, etc.)

Signature of the commission members  
.....  
.....

**Format for TEC Report**

Para of RFP specifications	Specification of Machine Offered	Compliance of RFP specification : Whether Yes or No	In case of Non-compliance the Deviation from RFP specification to be indicated in unambiguous terms
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

**FORM DPM-25****COST ANALYSIS FORMAT**

Dept / Wing		Break- Up of Fixed Price Quotation  (Rs. in Lakhs)		Appendix-I	
				Produce	
				Base Year of Quote	
				Quantity:	
SI No.	Particulars	Previous Year Rs.	Year of Quote Rs.	Remarks	
1 1.1	MATERIAL Imported i) Raw Materials Rejection ( % on (i) ii) Bought Out items Rejection ( % on (ii)  Sub-total-1.1				
1.2	Indigenous i) Raw Materials Rejection ( % on (i) ii) Bought Out items Rejection ( % 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)			

**Model Amendment letter for Extension of Delivery Period for  
FOB/FAS/CIF Contract**

Registered Acknowledgement Due  
Address of the Buyer

-----  
-----

To  
M/s .....

-----

Subject : This office contract no..... dated ..... placed on you for  
supply of .....

Ref : Your letter no..... dated .....

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to \_\_\_\_\_. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from \_\_\_\_\_ (last delivery period) to \_\_\_\_\_ (presently agreed delivery period).

2. Please note that in terms of clause..... of the contract, a sum equivalent to .....% (..... per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable) viz. \_\_\_\_ will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the further condition that, notwithstanding any stipulation in the contract for increase in price on any ground, no such increase, whatsoever, which takes place after \_\_\_\_\_ shall be admissible on such of the said goods as are delivered after the said date. But, nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on any ground (including the impact of the price variation clause, if incorporated in the contract), which takes place after the expiry of the above mentioned date namely \_\_\_\_\_.

4. You are also required to extend the validity period of the performance guarantee for the subject contract from ..... (present validity date) to ..... (required extended date) within fifteen days of issue of this amendment letter.

5. Please intimate your unconditional acceptance of this amendment letter within ten days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

6. All other terms & conditions of the contract remain unaltered.

Yours faithfully,

(.....)

for and on behalf of.....

Copy to :

.....

.....

.....

*(Note - The entries which are not applicable for the case under consideration are to be deleted.*

**Model Amendment letter for Extension of Delivery Period for  
Contract other than FOB/FAS/CIF Contract**

Registered Acknowledgement Due  
Address of the purchase office  
-----

To

M/s .....

Sub : This office contract no..... dated ..... placed on you for  
supply of .....

Ref : Your letter no..... dated .....

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to \_\_\_\_\_. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from \_\_\_\_\_ (last delivery period) to \_\_\_\_\_ (presently agreed delivery period).

2. Please note that in terms of clause..... of the contract, a sum equivalent to .....% (..... per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable) viz. \_\_\_\_\_ will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the following further conditions:-

i) That no increase in price on account of any statutory increase in or fresh imposition of custom duty, excise duty, sales tax or on account of any other tax or duty leviable in respect of the goods specified in the said contract, which take place after \_\_\_\_\_ shall be admissible on such of the said goods as delivered after the said date.

ii) That notwithstanding any stipulation in the contract for increase in price on any ground, no such increase whatsoever, which takes place after \_\_\_\_\_ shall be admissible on such of the said goods as are delivered after the said date.

iii) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of custom duty, excise duty, sales tax or on account of any other tax or duty or any other ground

whatsoever, including the impact of price variation clause (if incorporated in the contract), which takes place after the expiry of the above mentioned date namely \_\_\_\_\_.

4. You are also required to extend the validity period of the performance guarantee for the subject contract from .....(existing date) to ..... (required extended date) within fifteen days of issue of this letter.

5. Please intimate your unconditional acceptance of this amendment letter, to reach this office within ten days of issue of this letter, failing which the contract will be cancelled at your risk and expense without any further reference to you. All other terms & conditions of the contract remain unaltered.

Yours faithfully,

(.....)  
for and on behalf of.....  
Copy to :

(Note - The entries which are not applicable for the case under consideration are to be deleted.)

**Format for Performance Notice**

Registered Acknowledgement Due

To

M/s \_\_\_\_\_

\_\_\_\_\_

Sub : Contract No..... dated ..... placed on you  
for supply of .....

Dear Sirs,

Your attention is invited to the acceptance of tender cited above, according to which supplies ought to have been completed by you on or before \_\_\_\_\_. In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that \_\_ (Details of outstanding goods) \_\_ are still outstanding even though the date of delivery has expired.

2. Although not bound to do so, the delivery date is hereby extended to \_\_\_\_\_ and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

3. ....

Yours faithfully,

(-----)

for .....

**MODEL FORMAT FOR CORRESPONDENCE WITH SELLER**  
**AFTER BREACH OF CONTRACT**

Registered Acknowledgement Due

To

M/s \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Sub : Contract No..... dated .....**  
**for supply of .....**

Dear Sirs,

The date of delivery of the subject contract expired on \_\_\_\_\_. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity so far supplied and, also, the quantity so far inspected but not yet despatched and the quantity so far not tendered for inspection before the expiry of the date of delivery. The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach.

This is without prejudice to the rights and remedies available to the Buyer in terms of the contract and law applicable in this behalf.

Yours faithfully,

(-----)

for.....

