



# **AWEIL Procurement Manual 2022**

## **“(Stores Procurement)”**

at

**Advanced Weapons and Equipment India Limited (AWEIL)**

**A Government of India Enterprise**

**Department of Defence Production**

**Ministry of Defence**

## TABLE OF CONTENTS

Para No.	Topic/subject	Page No.
	<b>Chapter 1 - Introduction and Basic Principles of Procurement</b>	
1	Introduction	1
1.1	Challenges in Procurement	1
1.2	Terminology and Abbreviations	1
1.3	Present Manual	2
1.4	Scope of Manual	2
1.5	Definition of Goods/Store/Items	2
1.6	Transparency in Purchase	3
1.7	Salient feature of Bids Solicitation	3
1.8	e-Procurement	4
1.9	Consideration of Purchase Quantities	4
1.10	Timely Procurement	4
1.11	Competent Financial Authority (CFA)	4
1.12	Consultations with Finance	5
1.13	Responsibility of the Competent Financial Authority (CFA)	5
1.14	Difference of opinion in TEC/TPC	6
1.15	Exemptions/relaxation from some tender conditions to certain supplier	6
1.16	Development of Micro, Small and Medium Enterprises	6
1.17	Development and Procurement from Start-ups & iDEX challenge winner	6
1.18	Make procedure and indigenisation	7
1.19	Procurement from Defence/Central Public Sector Undertakings	8
1.20	Standard Tender Documents	9
1.21	Amendments to the Manual	9
1.22	Applicability	9
	<b>Chapter 2 – Procurement Procedure</b>	
2	Procurement Procedure	10
2.1	a) Need for Procurement	10
	b) Procurement of items ex-import	10
2.2	Make or Buy Decision	10
2.3	Authority for Procurement	11
2.4	Specifications	11
	i) Proprietary Articles specification	11
	ii) Branded Product specification	11
	iii) Industrial specifications	11
	iv) Defence specifications	12
	v) Indigenized item specifications	12
	vi) Ad-hoc specifications	12
	vii) As per Sample specification	12
	viii) Common Use items specifications	12

2.5	Store Holders Inability Sheet	12
2.6	Quantity to be purchased	13
2.7	Procurement Lead Time	14
2.8	Stockpile	15
2.9	Channels of Procurement	16
2.10	Deciding the mode of purchase from trade	16
2.11	IFD on Sister Factories	16
2.12	RC concluded by AWEIL HQ/ Ordnance Factories/ Units	17
2.13	Purchase from Trade without inviting Quotation	17
2.14	Purchase from Trade through Local Purchase Committee	17
2.15	Purchase from Trade by obtaining Tenders	17
2.16	Advertised Tenders (OTE/GTE)	18
2.17	Limited Tender Enquiry (LTE)	18
2.18	Single Tender Enquiry (STE)	19
2.19	Proprietary Article Procurement	20
2.20	Procurement from a Single Known Source	21
2.21	Cash and Carry Procurement	21
2.22	Government e-Marketplace (GeM)	21
2.23	Electronic Reverse Auction	21
2.24	Classification of Goods/Stores	21
2.25	Procedure for COTS items (other than MTO items)	22
2.26	Procedure for Made-to-Order items	22
2.27	Public Procurement (Preference to Make in India) Order, 2017	26
2.28	Identification of Suppliers	26
2.29	Registration of Firms	26
2.30	Vendor Selection (VSL)	27
2.31	Single Bid System	27
2.32	Two Bid System	27
2.33	Evaluation of Technical Bids	28
2.34	Evaluation of Financial Bids	29
2.35	Discounted Cash Flow Technique for Evaluation of Price Bids	30
2.36	Resultant Single Tenders	31
2.37	Option and Repeat Order Clause	32
2.38	Retendering	33
2.39	Cartel Formation / Pool Rates	34
2.40	Placement of Order on more than one firm in a tender	34
2.41	Samples	35
2.42	Entire and Severable Contracts	35
2.43	Pre-contract Integrity Pact	35
2.44	Import Regulation	35
2.45	Ground Rent	35
2.46	General Instructions to Bidders	36
2.47	Instruction for Purchase Division	37
	<b>Chapter 3 – The Tender Process</b>	
3	Tender Process	39
3.1	Tendering	39
3.2	Publicity in Advertised Tender	39

3.3	Notice Inviting Tender	39
3.4	Sale of Tender Documents	40
3.5	Despatch of Tender Documents	40
3.6	Format of Tender	40
3.7	Time for Submission of Bids	40
3.8	Amendments / Modifications to Tenders	41
3.9	Extension of Tender Opening Date	41
3.10	Prequalification in Advertised Tenders	42
3.11	Pre-bid Conference	42
3.12	Receipt and Custody of Tenders (physical tender cases)	42
3.13	Reference to Brands in TE	43
3.14	Opening of Tenders under Single Bid System (physical tender cases)	43
3.15	Opening of Tenders under Two Bid System (physical tender cases)	43
3.16	Late Tenders and Unsolicited Offers (physical tender cases)	44
3.17	Force Majeure	44
	<b>Chapter 4 – Inspection and Delivery</b>	
4	Inspection and Delivery	45
4.1	Inspection	45
4.2	Inspection at Supplier's Premises	45
4.3	Acceptance of Stores against Supplier's Inspection Report and Warranty	45
4.4	Inspection at Consignee's Premises	46
4.5	Inspection after Installation & Commissioning at Site	46
4.6	Inspection Procedure	46
4.7	Inspection of Goods offered at the fag-end/ on the last date of the Contract Delivery Period at Firm's Premises	46
4.8	Purchaser's Right of Rejection	47
4.9	Acceptance of goods vis-à-vis Warranty Provisions	47
4.10	Joint Inspection against complaints relating to Quality of Goods	47
4.11	Outside Testing Laboratories	47
4.12	Delivery Period	47
4.13	Terms of Delivery	48
4.14	Relationship between the Terms of Delivery and the Date of Delivery	48
4.15	INCOTERMS	49
4.16	Air Consignment	49
4.17	Insurance	49
4.18	Failure to deliver within the Contract DP	49
4.19	Re-fixation of Delivery Period	50
4.20	Extension of Delivery Period	50
4.21	Risk and Expense Purchase	51
4.22	Performance Notice	51
4.23	Despatch of Goods after Expiry of Delivery Period	52
4.24	Packaging and Dispatch for Imports	52
4.25	Warranty Claims for Imports	52
4.26	Short Deliveries	52
4.27	Correspondence with the Supplier after Breach of Contract	53
4.28	Cancellation of Contract for Default	53

4.29	Termination of Contract for Insolvency	53
4.30	Termination of Contract for Convenience	53
4.31	Signing of Contracts / Placing of Supply Orders	54
4.32	Amendment to Contract	54
	<b>Chapter 5 – Commercial Aspects</b>	
5	Commercial Aspects	55
5.1	Price and Payment Terms	55
5.2	Currency	55
5.3	Earnest Money Deposit	55
5.4	Performance Security Deposit	56
5.5	Firm (Fixed) Price vis-à-vis Variable Price	58
5.6	Exchange Rate Variation	59
5.7	Mode of Payment	59
5.8	Standard Payment Terms to Domestic Vendors	60
5.9	Payment Terms for Foreign Vendors	60
5.10	Stage / Part Payments	61
5.11	Advance Payment to Suppliers	62
5.12	Bank Guarantees	62
5.13	Direct Bank Transfer	63
5.14	Letter of Credit	63
5.15	Liquidated Damages	63
5.16	E-Payment	64
5.17	Estimating the Cost of Procurement	64
5.18	Evaluation of Price Bids	64
5.19	Basis for Cost Comparison	65
5.20	Comparative Statement of Tenders	65
5.21	Negotiations	66
5.22	Bench Marking	66
5.23	Last Purchase Price	66
5.24	Indices for Assessing Price Movements	67
5.25	Deduction of Income Tax etc at Source from Payments to Suppliers	68
5.26	Payment of Air Freight Charges	68
5.27	Documents for Claiming Payment	68
5.28	Refund from Supplier	68
5.29	Verification of Bank Guarantees	68
5.30	Safe Custody / Monitoring of EMDs and PSDs	68
5.31	Duties & Taxes on Domestic Goods	68
5.32	Custom Duty on Imported Goods	69
5.33	Taxes & Duties on Raw Materials	69
5.34	Procurement governed by General Contracts	69
	<b>Chapter 6 – Rate Contracts and Long-term Agreements / Contracts</b>	
6	Rate Contracts and Long-term Agreements/Contracts	70
6.1	Items suitable for Rate Contract	70
6.2	Rate Contract Definition	70

6.3	Rate Contracts	70
6.4	Competent Financial Authority	71
6.5	Estimate/Indent/Requisition	71
6.6	Selection of Firms	71
6.7	Price Negotiation	71
6.8	Conclusion of a Rate Contract	71
6.9	Conclusion of Parallel Rate Contract	71
6.10	Operating RCs	72
6.11	Special Conditions applicable for RC	72
6.12	Fall Clause	72
6.13	Performance Security	73
6.14	Renewal and Extension	73
6.15	Termination and Revocation of RC	73
6.16	Payment Terms	73
6.17	Paying Authorities	74
6.18	Long-term Umbrella Agreement/Contracts	74
6.19	Processing Long-term Umbrella Contracts by Nodal Factory	74
6.20	Long-term Product Support	75
6.21	Long-term Contract for Transportation in case of Import through Ocean/Sea Route	75
	<b>Chapter 7 – Contracts</b>	
7	Contracts	76
7.1	Elementary Law	76
7.2	Contract	76
7.3	Proposal or Offer	76
7.4	Acceptance of the Proposal	76
7.5	Agreements are Contracts	76
7.6	Competency of Parties	76
7.7	Parties to the Contract	76
7.8	Contracts with Individuals	76
7.9	Contracts with Partnerships	77
7.10	Contracts with Limited Companies	77
7.11	Corporation other than Limited Companies	77
7.12	Parties to Contracts entered into by Factories/Units of AWEIL	77
7.13	Consent of Both Parties	77
7.14	Free Consent of the Parties	77
7.15	Consent given under Mistake	78
7.16	Mistake of Fact and Law	78
7.17	Consideration	78
7.18	Lawfulness of Object	78
7.19	Communication of an Offer or Proposal	78
7.20	Communication of Acceptance	78
7.21	Completion of Communication of Acceptance	78
7.22	Acceptance to be identical with Proposal	79
7.23	Withdrawal of an Offer or Proposal	79
7.24	Withdrawal of Acceptance	79
7.25	Signing of Contracts	79

7.26	Acceptance of the Contracts	79
7.27	Stamping of Contracts	79
7.28	Types of Contract	80
7.29	General Principles of Contracting	80
7.30	Changes / Amendments to a concluded Contract	80
7.31	Enhancement in Rates	80
7.32	Vetting of Price Variation Clause	80
7.33	Imposition of LD while granting Extensions	80
7.34	Liability on account of Taxes & Duties on Grant of Extension of Delivery Period	81
7.35	Consultation with F&A	81
7.36	Termination of a Concluded Contract	81
7.37	Contract Effective Date	81
7.38	Conditions of Contract	81
7.39	General Conditions of Contract	81
7.40	Special Conditions of Contract	81
7.41	Applicability of GCC to Supply Orders	82
7.42	Applicability of all Terms and Conditions	82
7.43	Amplification of the Terms and Conditions	82
7.44	Effective Date	82
7.45	Arbitration	82
7.46	Appointment of Arbitrators through Court	82
7.47	Settlement of Disputes	82
7.48	Buy Back Offer	83
7.49	Fall Clause	83
7.50	Penalties	83
	<b>Chapter 8 – Procurement of Consultancy</b>	
8	Procurement of Consultancy	84
8.1	Requirement for engaging consultants	84
8.2	Procedure for engagement of Research Assistance	84
8.3	Conflict of Interest	84

	ANNEXURES	
Annexure No.	Subject	Page No.
Annexure -1	List of acronyms used in this Manual	85
Annexure -2	Definitions	88
Annexure -3	Format for Proprietary Article Certificate	91
Annexure -4	Format for Single Known Source Certificate	92
Annexure -5A	Format for Pre-Contract Integrity Pact (for cases valuing above Rs. 100 Cr)	93
Annexure -5B	Format for Pre-Contract Integrity Pact (for cases valuing above Rs. 5 Cr and up to Rs. 100 Cr)	100
Annexure -6A	Time Frame for Purchase Case (Single Commercial Bid)	107
Annexure -6B	Time Frame for Purchase Case (Two Bids - Tech/Commercial)	108
Annexure -7	Procedure for Acquisition of Contract Services for R&D	109
Annexure -8	INCOTERMS 2010	116
Annexure -9	Letters related to decentralisation of shipping arrangements in respect of ocean transportation of cargoes under the control of Government/PSUs	120
Annexure-10	Letters related to Relaxations of Norms for Startups Medium Enterprises in public procurement regarding Prior Experience - Prior Turnover	126
Annexure-10A	Revised FAQs in respect of Public Procurement Policy for MSEs Order, 2012- regarding.	129
Annexure-11	Settlement of disputes/claims arising out of the contracts through arbitration/court-procedure	139
Annexure-11A	Demand Note to firm when Arbitral award is in favour of Purchaser	148
Annexure-11B	Demand Note to firm when Arbitral award is against the Purchaser and it has been decided not to go for appeal	149
Annexure-11C	Format for Arbitration Clause - Indigenous Private bidders	150
Annexure-11D	Format for Arbitration Clause - CPSUs/DPSUs	151
Annexure-11E	Format for Arbitration Clause - Foreign bidders	152
Annexure-12	Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities vide MoD I.D No. 31013/1/2016-D (Vig) Vol.II dated 21.11.2016	154
Annexure-12A	Amendment to the guidelines of the MoD for Penalties in Business Dealings with Entities vide MoD I.D No.31013/1/2016-D (Vig) Vol.II dated 30.12.2016	161
Annexure-12B	Guidelines on Debarment of Firms from Bidding dated 02.11.2021	162
Annexure-13	Public Procurement (Preference to Make India), Order 2017 - Revision; regarding	169
Annexure -14	Standard Tender Enquiry/RFP for Stores procurement	176

Annexure -15	Compliance Statement (OTE)	215
Annexure -16	Compliance Statement (LTE/STE)	218
Annexure -17	Important T&C to be decided by VSL TPC before floating of TE	220
Annexure -18	Model ECS Mandate Format	221
Annexure -19	Bank Guarantee Format for furnishing EMD	222
Annexure -20	Performance Bank Guarantee Format	223
Annexure -21	Certificate of Conformity format	224
Annexure -22	Quantity Claim Format	225
Annexure -23	Quality Claim Format	226
Annexure-24	Supply Order Format	228
Annexure-25	Acknowledgment Of Acceptance Of Tender	232
Annexure-26	Standard Form for Intimating Firms regarding Rejection of their Offer	233
Annexure-27	Closure of Supply Order	234
Annexure-28	Inter Factory Demand	235
Annexure-29	Format for Bank Guarantee for Advance Payment	236
Annexure-30	Guidelines on confirmation of Bank Guarantee of Foreign Banks by Indian Banks	238
Annexure-31	Form of Letter to be addressed to Bank for Verification of Bank Guarantee	239
Annexure-32	Format for Refund of Security Deposit	240
Annexure-33	Performance Notice for not submitting Advance Sample	241
Annexure-34	Format for Performance Notice	242
Annexure-35	Correspondence with seller after breach of contract	243
Annexure-36	Short Closure and Cancellation of Supply Order	244
Annexure-37	Letter for Final Payment	245
Annexure-38	Public Procurement Policy for MSEs Order 2012	246
Annexure-39	Scheme for Innovations for Defence Excellence (iDEX)	249
Annexure-40	Implementation Plan of 'Make-II' Procedure at OFB	255
Annexure-41	Extract from General Instructions on Procurement & Project Management dated 29.10.21	265

## INTRODUCTION AND BASIC PRINCIPLES OF PROCUREMENT

### 1. Introduction

#### 1.1 Challenges in procurement

- a) Maintaining an uninterrupted and reliable flow of material of the requisite quality is an inescapable necessity for seamless manufacturing. The challenges in material procurement are as follows:
  - (i) Major parts of the inputs required for production of military hardware are of very stringent specifications that are normally not applicable in commercial items, and therefore are available only as Made-to-Order.
  - (ii) Low quantity requirement and demand fluctuations restrict the interest of potential suppliers.
  - (iii) Specifications of input materials are mostly governed by JSS, GOST and other defence specifications, and have very limited scope for use in other fields of application.
  - (iv) Diverse product range with common procurement procedure.
  - (v) The requirements are not always adequate for vendors to keep the production lines customised for a unique product range, running throughout the year.
- b) The above indicated fundamental necessities and challenges comprise of the basic fabric of the procurement policy and govern the procurement decisions in ordnance factories.
- c) It is imperative that material purchases be made following systematic, efficient and cost-effective way, in compliance with laid down procedure in this Manual, while ensuring timely positioning of the material.

#### 1.2 Terminology and Abbreviations

- a) Standard terminologies have been adopted in the Manual. Important acronyms used in this Manual are listed at Annexure for ready reference.
- b) In certain areas, there may be two or more widely used terminologies bearing the same meaning as mentioned below:

Tender, Bid, Quotation	Offer received from a supplier
Tenderer, Bidder, Vendor	An entity who seeks to supply goods by sending tender/bid/offer.
Tender Enquiry Document, Tender Document, Bidding Document	Detailed document issued by the purchaser specifying needs and the requirements that a potential tenderer/bidder must meet.
Notice Inviting Tenders, Request for Proposal (RFP), Invitation for Bids	Advertisement containing brief of the requirement & scope of supply
Earnest Money Deposit, Bid Security	Monetary guarantee furnished by a bidder along with its tender
Security Deposit, Performance Security	Monetary guarantee furnished by the successful bidder for due performance of the contract concluded with it
Bid, Offer, Quotation	Offer from a vendor in response to a tender

### 1.3 Present Manual

- a) This Manual has been formulated on the basis of OFBPM 2018 which was into use till the conversion of OFB into DPSUs. The erstwhile OFB had formulated the said manual after including guidelines from GFR 2017 (or amended from time to time) other policies/ guidelines/ instructions issued by MoD, DPIIT, MoF, MoMSME, CVC and ATN on CAG observations keeping in view the specific requirements of production and to ensure availability of material for continuity of production. It is found that said manual covered the practical aspects of difficulties faced while sourcing and positioning material in time viz-a-viz implementing all policy aspects notified by Government of India (GOI) from time to time.
- b) If any instance of variance with GFR 2017 (or amended from time to time) is noticed, the matter should be referred to AWEIL for clarification. However, the ongoing procurements may not be stopped pending receipt of the clarification, if there is operational urgency in going ahead with the production or delay is likely to have adverse implications to meet production targets.
- c) Stores procurement by the AWEIL and its Factories/Units/ Establishments shall be governed by the provisions of this Manual.
- d) All related SOPs, guidelines, instructions, orders, etc. issued/ accepted by AWEIL and its units shall be deemed to have been modified by the provisions of this Manual, to the extent the former is not in conformity with this Manual. Accordingly, in case of any inconsistency, the provisions of this Manual shall prevail in the context of procurements covered under the scope defined in paragraph 1.4. These SOPs, guidelines, instructions, orders, etc., shall be updated in line with the provisions of this Manual. Further, tender conditions shall also be amended or made in-line with the guidelines mentioned in this manual.

### 1.4 Scope of the Manual

Procedures detailed in the Manual are applicable for purchase of:

- (i) Inputs and aids for production such as all articles, material, commodity, livestock, furniture, fixtures, raw materials, spares, instruments, equipment, medicines, components, assemblies, sub-assemblies, tools, gauges, jigs, accessories, process materials, production consumables, indirect consumables, IT products/items, software, technology transfer, licenses, patents or other intellectual properties purchased or otherwise acquired for the use of DPSU/Govt. etc. but excludes books, publications, periodicals, etc. for a library.
- (ii) Maintenance aids, including spares, tools & tackles, etc.
- (iii) Services (production related) which are incidental or consequential to the supply of such goods, i.e. conversion, job-work, packing, unpacking, preservation, transportation, insurance, delivery, maintenance support, technical assessment, consultation, system study, software development, maintenance conservancy, etc.

### 1.5 Definition of Goods/Stores/Items

The term goods/stores/items used in this Manual are interchangeable and applies to all items mentioned at 1.4 above.

## 1.6 Transparency in Purchase

Procurement by the AWEIL and its units are Public Procurement, and accordingly, should be conducted in a transparent manner to bring competition, fairness and eliminate arbitrariness in the system.

## 1.7 Salient Feature of Bids Solicitation

- (i) The tender document should be comprehensive, unambiguous, and relevant to the objective of the purchase. The right and commonly used technical and industrial parlance need to be used.
- (ii) The specifications of the required goods should be framed giving adequate details. The specifications must be broad-based and meet the essential requirements, without including superfluous or non-essential features, which may result in unwarranted expenditure.
- (iii) The tender document should clearly mention the eligibility criteria such as minimum level of production experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction, etc. that need to be made by the bidders.
- (iv) Eligibility criteria should conform to extant Government policies (which includes the provisions of this Manual) and be judiciously chosen so as not to stifle competition amongst potential suppliers.
- (v) All aspects pertaining to tender preparations, submission, deadlines, acceptance, evaluation, ranking and conclusion of contract should be unambiguously and explicitly detailed.
- (vi) Offers should be invited following a fair, transparent and reasonable procedure. Tender enquiries (and subsequent amendments etc., if any) shall be given wide publicity, including display at the AWEIL/Factories/Units official website and mirrored at the Central Public Procurement Portal (CPP Portal).
- (vii) Sufficient time should be allowed to the bidders to prepare and submit their tenders. Suitable provisions should be kept in the tender document allowing the bidders a reasonable opportunity to enquire about the tender conditions, tendering process, and/ or rejection of its tender and the settlement of disputes, if any, emanating from the resultant contract.
- (viii) Bidders must not be permitted to alter or modify their tender responses after the expiry of their deadlines for submission; such modified bids will be summarily rejected.
- (ix) Tenders should be evaluated only as per the evaluation details provided in the tender documents. No new condition, which was not incorporated in the tender document, should be brought into consideration while evaluating the tenders.
- (x) Negotiations with the bidders must be avoided. However, under some circumstances, where price negotiations are considered unavoidable, they may be resorted to only with the lowest evaluated responsive bidder, with the approval of the CFA only after duly recording reasons for such action.
- (xi) At every stage of procurement, the procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
- (xii) The name of the successful bidder to whom the contract is awarded should be appropriately notified for the information of general public, through the portal on which tender was published or the AWEIL/Factories/Units official website and Central Public Procurement portal.

### 1.8 e-Procurement

- (i) The e-procurement system or other method of procurement may be used for OTE/LTE/SKS/PAC tendering only when specifically approved by AWEIL for procurement of any good/ service irrespective of value. However, until and unless so specified the GeM platform shall be used for all type of procurement. For detailed guideline for procurement through GeM may be referred to at para 2.22
- (ii) The basic procurement procedures (unless repugnant to the context or not relevant in e-procurement being system performed) shall remain as contained in this manual even if procurement is through e-procurement.
- (iii) All procurement will be processed through GeM portal except LPC and cash and carry procurements.

### 1.9 Considerations for Purchase Quantities

- (i) Purchase quantities in excess of requirement is not permitted.
- (ii) A demand should not be split into small quantities for the purpose of avoiding the necessity of taking approval of the higher authority required for sanctioning the purchase of the original demand.

### 1.10 Timely Procurement

- (i) To reduce delays, the time-frame stipulated for each stage of procurement should be adhered to as specified in annexure.
- (ii) Contract should be concluded within the original validity of the tenders. Extension of tender validity must be discouraged and resorted to only in absolutely unavoidable, exceptional circumstances with reasons recorded.

### 1.11 Competent Financial Authority

- a) Financial powers have been delegated to various authorities in AWEIL and its units, through the DFP notified by AWEIL from time to time. These powers are to be used within the framework of laid down procedures, canons of financial propriety and amplificatory instructions. The powers so delegated also imply accountability; and the CFA must ensure that financial propriety and probity are observed in all cases.
- b) 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 item/ head of delegation, authority with next higher delegated financial powers will constitute the 'next higher CFA'.
- c) The financial powers delegated by AWEIL to various authorities in the AWEIL and its factories/ units/ establishments cannot be further sub-delegated. However, on the strict understanding that the sole responsibility rests on them, the authorities to whom financial powers have been delegated may authorize officer(s) to sign communications and financial documents on their behalf conveying the sanction of the original delegate provided that the name of the officer who is so authorized is communicated to the Finance division concerned.
- d) The recommendations of TPC will be concurred by Member Finance and approved by CFA in the same TPC. CFA is the Chairman of relevant TPC/TEC. In case of dissent note/different opinion (Member Finance or any other TPC/TEC member), the decision of CFA will be final. CFA can

overrule Finance Member or any other TPC/TEC member after recording reasons for overruling as explained later on.

- e) The constitution of the TEC/TPC shall be as notified in the DFP. However, the Chairpersons of these Committees (CFA), if necessary, may co-opt other relevant experts on the Committee. Reference in this manual to VSL TPC (Vendor Selection TPC) is to the appropriate TPC while performing initial activities for procurement (including vendor selection amongst other activities) indicated later on.
- f) The CFA will be decided taking into consideration, the value of the original quantity to be ordered plus the Option Clause (OC) quantity if provisioned. In case of foreign procurements, the current Exchange Rate of SBI, Parliament Street Branch/ RBI as on Tender bid closing date, shall be taken into consideration for determining the CFA. For the purpose of cost reduction and convenience, number of items or group of items may be clubbed for tendering, provided the CFAs are defined in advance before floating the TE by VSL TPC i.e. individual item wise or all items together.
- g) In umbrella agreements of multi years (including RCs), CFA shall be decided on the basis of average annual requirement and not the sum of annual contracts.
- h) In respect of cases beyond the powers of Factory TPC-I that have been duly approved, unless specifically decided otherwise by the CFA, subsequent operation of OC shall be done by the Factory TPC-I after strictly complying with the provisions of this Manual.

#### 1.12 Consultations with Finance

- a) Procurement as per the DFP shall be done only with the concurrence of the internal Finance at all the prescribed stages. Though Finance is an integral part of the TPC/TEC structure, a financial concurrence will also be required on the recommendations of the TPC prior to CFA's approval in the same TPC.
- b) In case of disagreement/ non concurrence by the Member Finance, the CFA can overrule after recording reasons for overruling the views of the Member Finance.
- c) In all cases where the CFA has overruled the advice of Member Finance, a copy of the TPC minutes shall be sent to the Director Finance. The CFA is accountable and responsible for her/his decision and accordingly, the decision of the CFA (although by overruling) shall stand.

#### 1.13 Responsibility of the Competent Financial Authority

- a) CFA is the Chairman of relevant TPC/TEC. The CFA must consider all aspects of the case including advice of other members of TPC/TEC, the quoted price, terms and conditions of the contract, delivery period, warranty, freight, insurance and other charges and the compliance with the technical specifications/QR before a purchase decision is taken. Conditional offers and those with specifications not in conformity with the tendered specifications (Essential QRs), normally should not be considered. However, in exceptional cases of any justifiable minor discrepancies, CFA (Chairman of relevant TPC/TEC) may take appropriate decision with recorded reasons. Wherever as per DFP, delegated powers are exercisable subject to financial concurrence, it shall be ensured before according sanction that the requisite financial consultations have been done at all the prescribed stages.
- b) While making the purchase decision, the CFA needs to satisfy himself/herself that (i) proper procedures have been followed at various stages of procurement, (ii) purchase policies of the Government have been complied with, and (iii) capacity and financial status of the firm have been checked. Purchase decisions should be communicated only through a formal order in a written form.

- c) The decision of TEC/TPC will be considered as collective decision.

#### 1.14 Difference of opinion in TEC/ TPC

- a) The designated CFA including TPC/TEC Members are accountable for all decisions taken.
- b) In case of disagreement/ non concurrence by any Member, the CFA can overrule the same after recording reasons for overruling.

#### 1.15 Exemptions/ Relaxation from some Tender Conditions to Certain Suppliers

Government of India has issued general directives on (i) mandatory/ preferential purchase of specified goods from specified suppliers (ii) extension of price preference (iii) exemptions/ relaxation from certain tender conditions like tender fee, EMD, PSD, etc., to certain categories of suppliers. In procurements attracting these general directives, the contemporary directives of the Government of India should be followed checked (from the relevant website) for necessary action. These contemporary directives shall apply in the procurement of Commercially-off-the-shelf (COTS) as well as Made-to-order (MTO) items. Separate directives issued by DDP indicating the eligibility and nature of concession/relaxation to industry including iDEX in order to promote MSEs (Micro & Small Enterprises), Start-ups etc. shall be followed.

#### 1.16 Development of Micro, Small and Medium Enterprises

- a) The Micro, Small and Medium Enterprises Development Act 2006 provides that “For facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises”.
- b) Any order issued by Central Government in relation to Micro, Small or other sections of Industries including iDEX winners relevant to procurement shall be followed by all units under AWEIL. Currently, one such Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 w.e.f 01.04.2012, is in force and should be strictly adhered to. The Public Procurement Policy shall apply to Micro and Small Enterprises registered with District Industries Centres or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises (MSME). Declaration of Udyog Aadhaar Memorandum (UAM) number by the MSME vendors on CPPP/GeM/DOO e-procurement portal should be made. The MSE bidders who fail to submit UAM number will not be able to avail the benefits in tenders available to MSEs as contained in Public Procurement Policy for MSEs Order, 2012 issued by MSME.

#### 1.17 Development and Procurement from Start-ups and iDEX challenge winner

##### (a) Start-ups

For Startups (whether MSEs or otherwise), prior experience and turnover requirement may be relaxed subject to meeting of quality and technical specification in accordance with relevant provisions of GFR 2017 (or revised time to time) as per Ministry of Micro, Small and Medium Enterprises Policy Circular No. 1(2)(1)/2016-MA dated 10th March 2016 and Ministry of Finance, Dept. of Expenditure O.M No. F.20/2/2014-PPD(Pt) dated 25th July 2016. Also, as per MoF, Dept of Expenditure O.M. No. F.20/2/2014-PPD(Pt) dated 20th September 2016, the criteria of prior experience / turnover may not be relaxed for Startups, for procurement of items related to

public safety, health, critical security operations and equipments etc., where vendors with prior experience are preferred and adequate justification is available.

(b) iDEX challenge winner

iDEX was launched by the government in 2018 with the primary objective of self-reliance and indigenization in Defence & aerospace sector of the country bolsters the “Atmanirbhar Bharat Abhiyan” of the Government.

The scheme (annexure) has been implemented through DIO, with budgetary support of Rs. 498.8 crore for the next 5 years from 2021-22 to 2025-26 to provide financial support to nearly 300 startups/ MSMEs/ individual innovators and about 20 partner incubators under the DIO framework in consultation with other stakeholders including DST.

Defence Innovation Organization (DIO) aims at creation of an ecosystem to foster innovation and technology development in Defence and Aerospace by engaging Industries including MSMEs, startups, individual innovators, R&D institutes and academia and provide them grants/funding and other support to carry out R&D development which has good potential for future adoption for Indian defence and aerospace needs. The core objectives of the scheme are:

- a. Facilitate rapid development of new, indigenized, and innovative technologies for the Indian defence and aerospace sector, to meet needs for these sectors in shorter timelines
- b. Create a culture of engagement with innovative startups, to encourage co-creation for defence and aerospace
- c. Empower a culture of technology co-creation and co-innovation within the defence and aerospace sectors
- d. Boost innovation among the start-ups and encourage them to be a part of Indian defence and aerospace ecosystem.

Ordnance factories/Units under AWEIL are into production of critical defence platforms and systems. There are sometimes challenges to indigenize the TOT items. Therefore, the scheme as notified by the government shall be taken maximum use in indigenization of critical defence items by the factories/units. The policy and guidelines for engagement and procurement from iDEX challenge winners as and when notified or modified from time to time shall be application. Meantime, the Factories/units under AWEIL can procure the items so developed/indegenised by iDEX challenge winners thorough available guidelines as mentioned in this manual i.e STE(SKS/PAC) mode of tendering.

#### 1.18 Make procedure and indeginisation

The detailed procedure for procurement under ‘make’ and innovation category has been notified under Chapter III of DAP 2020. With the emerging dynamism of private sector and with the aim of achieving substantive self-reliance in defence production oblique manufacturing, it is imperative that the DPSUs harness the potential of private sector by implementing “Make” the procedure at their level for indigenously developing products.

Projects Under Make-I (AWEIL Funded): Projects involving design and development of equipment, systems, major platforms or upgrades thereof by the industry. For Projects under Make-I sub-

category, AWEIL will provide financial support upto 70% of prototype development cost or maximum ₹ 250 crores per Development Agency (DA). Funding would be released in a phased manner based on the progress of the scheme, as per terms agreed between AWEIL and the DA(s). However, the final percentage or upper limit of financial support to be provided may vary from case to case and would be dependent upon nature of the project and the fund support sought by the selected DAs for development of prototype.

Projects Under Make II and Make III: Projects under Make II and Make III would encompass equipment/ system/ platform or their upgrades or their subsystems/ sub-assembly/ assemblies/ components/ materials/ ammunition/ software, primarily for import substitution.

- (i) Make-II (Industry Funded). This would include design and development and innovative solutions by Indian vendor, for which no funding will be provided. In Make-II, where solutions have been offered even by a single individual or a firm as a Suo-Moto proposal, the cases would be progressed as a Resultant Single Vendor. However, OFs should seek for multivendor options in such cases, if feasible, before progressing the case as Single Vendor Case. The ordnance factories/Units of AWEIL shall adopt the framework for implementation of Make-II procedure as notified on 16.04.2019 by erstwhile OFB (annexure).
- (ii) Make-III. This although would not be designed/developed indigenously, but can be manufactured in India as import substitution for product support of weapon systems/equipment Indian firms may manufacture these either in collaboration or with ToT from foreign OEMs. In this category, an Indian vendor can enter into a JV with OEM.

#### 1.19 Procurement from Defence/ Central Public Sector Undertakings

- a) Goods and Services may be procured from newly formed Defence Public Sector Undertakings (DPSUs) and other DPSU(s) being into existence prior to corporatization of OFB through signing a deemed contract or tender respectively as the case may permit. Item(s) developed/ manufactured by a DPSU specifically for the Defence Services and with transfer of technology or through design and development, should be procured from the concerned DPSU only. Similarly, DPSU(s) shall be approached for providing any service, such as repairs and overhauling, if facility for providing such services has been set up by them exclusively for the Defence Services. However, such cases will not be treated as STE/PAC procurements and CFA for such cases shall be as per DFP notified. The reasons for invoking this provision shall, however, be recorded.
- b) Strategic tie-ups and business sharing agreements: There may be cases where the scope of work of other DPSU(s)/CPSE(s) having specialised technological edge and become useful, in such cases AWEIL or its units with prior approval of HQ may decide to take strategic help of DPSU(s) (other than those into existence prior to corporatization of OFB)/CPSE(s) in design, development and/or manufacturing system or subsystem for meeting needs/requirements of its customers including armed forces and/or exports. However, such strategic and technical tie-ups can be done only through a Memorandum of Understanding (MOU) signed between AWEIL and the concerned DPSU(s)/CPSE(s). Hence, such cases will not be treated as STE/PAC procurements. Further reasons for invoking this provision shall, however, be recorded and procurement shall be done at respective CFA level.

- c) For cases other than category stated above, DPSUs will have to bid for contracts through a tendering process open to private sector enterprises, for supplying goods and services to Factories/Units.

#### 1.20 Standard Tender Documents

Standard forms of tender are to be used as enquiry documents and contracts in line with the extant rules, regulations, directives, procedures etc. Deviations in the standard provisions of the standard documents may be permitted by an authority competent to grant waiver/ relaxation for the provision as per the DFP. Extent of deviation that may be permitted by the said competent authority shall be as per the powers available to him under the DFP for granting waiver/ relaxation.

#### 1.21 Amendments to the Manual

No modifications/amendments will be made to the AWEIL Procurement Manual 2022 (AWEILPM 2022) without prior approval of AWEIL Board. However, changes in policies issued by MoD necessitating amendments in AWEILPM 2022 may be implemented immediately after due authorization from AWEIL HQ.

#### 1.22 Applicability

This manual shall come into force with effect from the date of approval of AWEIL Board or the date notified so. However, all on-going procurements where tender had been issued prior to date of effect of this Manual may continue to be regulated by the provisions of the OFBPM 2018 which was in extent use.

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## PROCUREMENT PROCEDURE

### 2 Procurement Procedure

#### 2.1 a. Need for Procurement

The need for procurement of goods may arise for (i) catering to the annual production and allied activities (ii) building up authorized stocks (iii) repair and maintenance of assets. Similarly, the need for procurement of services may arise for (i) maintenance of equipment/ assets (ii) outsourcing work that can be economically performed in trade or where facilities are not available/ not adequate in-house (iii) for engaging experts and consultants.

#### b. Procurement of Items Ex-Import

An item already established by any of the Ordnance Factory/other DPSUs or indigenized, should normally not be imported. However, decision to import can be taken considering the in-house production capacity, delivery timelines, the product mix, availability of manpower, condition of plant & machinery etc. and after duly recording specific reasons with the approval of HOD. While initiating the case, at the time of taking decision for placement of order as well as taking all subsequent decisions like extension/re-fixation of delivery period etc., all relevant aspects like capacity of factories/units, availability of indigenous sources, capacity and reliability of indigenous sources, cost of indigenous supplies v/s the import cost etc. should be kept in view. The supply position of indigenous sources should be ascertained at every stage of procurement. In order to promote import substitution, the norms detailed in this chapter shall be adopted.

### 2.2 Make or Buy Decision

(i) Policy on make or buy (including import substitution) decision should be such that it not only promotes optimum utilization of in-house capacity in Factories/Units but also lays equal emphasis on cost of production being reasonable. After weighing all facts, an appropriate make or buy decision shall be taken by the HOD on the advice of the Make & Buy Committee of the factory or Director Operation in consultation Director Finance in case of outsourcing items manufactured by ordnance factories. If item's estimated cost fall under financial power of AWEIL HQ as per DFP, the same committee will forward its recommendation with recorded justification regarding make or buy to AWEIL HQ. The final decision in this regard shall be taken by AWEIL HQ at appropriate level as per DFP. The constitution of Make or Buy Committee at factory shall be (i) HOD as a Chairman, (ii) GM/Jt.GM(PIng), (iii) GM/Jt.GM(MM), (iv) GM/Jt.GM(User) or equivalent officials.

(ii) Non-core activities should as far as possible be outsourced, if cheaper options can be found outside & resources thus should be utilized for core activities.

(iii) If the items of procurement for production of weapon items are common between two or more fys/units in such cases nodal factory for procurement of trade items shall be decided with the approval of Director Operation based on recommendations of 'make and buy' decision of such factories/units. Nodal factory will collect the approximate annual estimated requirement from all the Factories/Units concerned and consolidate the same. Nodal Factory will collect the list of established suppliers for the item from all the Factories/Units, and short list suppliers based on the past performance, capacity and registration status. The CFA for such cases shall be as per DFP.

## 2.3 Authority for Procurement

Indent/ Letter of Intent/ Roll-on-Indent/Roll-on-Plan/ Extract/ IFD/ SWOD/ Supply Plans/Deemed Contract issued by AWEIL/ Purchase Requisition raised by user section are the required authority for procurement.

Annual Supply plan supported by Roll-on-plan issued with approval of AWEIL HQ may also be an authority for procurement.

## 2.4 Specifications

(a) All procurements have to meet the stringent specifications prescribed. In addition to qualitative requirements, the specifications indicate the detailed qualitative requirements of the item being procured and shall indicate all relevant requirements/ parameters like (i) material composition (ii) physical (iii) dimensional (iv) performance (v) tolerances (if any) (vi) manufacturing process (where applicable) (vii) test/ inspection schedule (viii) acceptance criteria (ix) preservation & packing (x) transportation requirements (especially relevant for chemicals), etc, without any superfluous requirements that may have the effect of stifling competition or increasing expenses. AHSP/Specifications promulgating authority should periodically forward copies of specifications/ amendments to all agencies concerned to ensure that goods of current specification are purchased.

(b) For MTO items number of item codes may be restricted so as to control the inventory and its proper management. In case of any subsequent amendments in drawing, the existing item code may be modified with the revised drawing/specification, however record of such change to be maintained.

(c) Make/Brand based item (which are generally available in open market as COTS) should include more than 3 brands/makes (in case of less than 3 makes HOD approval with justification should be obtained) and OTE only may be resorted, however in exceptional situation for LTE mode approval of HOD may be taken.

Various types of specifications relevant to the defence items are:

### i) Proprietary Article Specification

These are available only with the proprietary firm and are protected by the intellectual property rights. PAC specifications are normally not available with the purchaser and therefore these stores may be accepted based on the firm's certificate of quality.

### ii) Branded Product Specification

The specifications for branded commercial product are not available with the purchaser or the inspecting agency and these are to be accepted on the firm's guarantee / warranty.

### iii) Industrial Specifications

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 standard of the product being procured.

#### iv) Defence Specifications

There are defence specifications for specialized items for use by the defence departments, particularly the defence services. These are Joint Services Specifications, Mil specs, etc. Copies of such specifications should be available with the procuring agency, inspecting authority and the AHSP.

#### v) Indigenized Item Specification

The manufacturing agency, QA agency, DRDO, other DPSUs and Service Headquarters, involved in the indigenization efforts often successfully indigenize some items as import substitutes. In such cases, the specifications, including the drawing and other details, are formulated by these agencies in consultation with the Factories, manufacturing firms, QA agency, Design agency, Service Head Quarters (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.

#### vi) Ad-hoc Specifications

There may be items for which neither the industrial nor the defence specifications are available. In such cases, the Indentor must indicate the general parameters, normally the dimensions, mechanical parameters, chemical composition, performance parameters, etc. 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.

#### vii) As per Sample Specification

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 specifications as well as the drawing and gets it approved by purchaser. The purchaser and the inspecting authority should acquire such specifications and drawings and retain with them to guide future production and inspection.

#### viii) Common Use Items Specification

There are a large number of items used in the ordnance factories 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 to stifle competition.

### 2.5 Store Holders Inability Sheet

a) For procurement of any item a Store Holder Inability Sheet/Material Planning Sheet shall necessarily be prepared, duly indicating the requirement, present stock, dues and the net requirement. The Store Holders Inability Sheet and the Material Planning Sheet together provide the complete details of the computation of quantities to be procured. Normally the annual requirement is taken into consideration for preparation of SHIS/MP Sheet. The reference to annual requirement in respect of direct material shall include the requirement for the first quarter of the subsequent year. SHIS for multiple year requirements can also be generated wherever relevant. Attention shall be paid to the shelf life (where relevant) of the item to eliminate avoidable losses in storage. In such cases staggered deliveries should necessarily be resorted to.

b) If valid labour estimate exists in the factory for the item (or operation) being procured (or outsourced) from trade then justification for the procurement (or outsourcing) shall be recorded, and the factory shall ensure that payments for the same work (or operations) are not claimed for departmental labour also.

c) (i) The SHIS shall be vetted by QC/Pattern Office/DDO for the technical specification to ensure that material is procured as per the latest drawings/ technical specifications.

(ii) Direct material SHIS is not required to be vetted by F&A but to be signed by Divisional Officer of planning/MCO section.

(iii) SHIS will have a life of six months (i.e SHIS generation to issue of tender) and will need revalidation by HOD for indirect item and Controlling officers Planning for direct item thereafter.

d) The cases where indents are delayed or existing supply orders not likely to fructify, then to save time, procurement action can be initiated on provisional SHIS and can be processed up to Tender opening stage with the approval of HOD.

## 2.6 Quantity to be Purchased

a) Normally the Annual Supply Plans issued by the AWEIL shall be the basis for procuring direct material. However, when Roll-on-Plans/ Roll-on-Indents/Lol/Deemed Contract (wherever applicable) are available, supply plans exceeding one-year time-horizon may be issued by AWEIL to improve material availability at the factories. Such multi-year supply plans can also be the basis for procuring direct material for the period specifically authorised. Prior approval of the Director Operation shall be taken for initiating multi-year proposals for procurement. Availability of such multi-year plans does not imply that all procurements are to be necessarily made in one go for the entire multi-year period. The VSL TPC shall, , after considering the nature of the store and the lead-time & difficulty involved in procuring the store, take an appropriate decision as to whether it would be advantageous to procure (i) the annual requirement plus coverage for the first quarter of the subsequent year or part of annual requirement or (ii) the multi-year requirement.

b) If procurement is made on multi-Year basis, the following authorities may apply to determine time period of the contracts:

- i) Roll-on-Indents are available for 2 years or more.
- ii) Roll-on-Indents are available for 2 years and Roll-on-Plan for another 2 years or more.
- iii) Roll-on-Plan for 2 years or more.
- iv) Letter of Intent (Lol) wherever applicable.
- v) Contract / deemed contract

c) Multi Year Procurement Procedure (Long-term Umbrella Agreement/Contracts for MTO items):

i) Long-term Umbrella Agreement/Contracts may be concluded up to 5 years for MTO items.

ii) The Long-term Umbrella Agreement/Contracts shall be with the condition that Supply Order will be placed under the agreement on annual basis or as and when required based on agreed delivery schedule/period commensurate with production program, only against firm indents.

iii) Long-term Umbrella Agreement/Contracts may even be concluded at the same rate parallel with multiple vendors to ensure reliability, continuity and ease of supply.

iv) CFA in the Long-term Umbrella Agreement/Contracts shall be decided on the basis of average annual requirement, since the total value of the contract is the sum of annual contracts (i.e Total tendered quantity divided by no of contract years).

v) Supply Order may also be concluded with multiple vendors to ensure reliability, continuity and ease of supply.

vi) The Long-term Umbrella Agreement/Contracts shall contain:

- Indicative total quantity and annual off-take.
- PV Clause, wherever feasible.
- Delivery & Supply Schedule
- Fall Clause
- EMD and PSD as applicable.
- Provision of Option Clause up to 25% of the annual contract quantity may be provided and operated only in case of source development failures or to meet unforeseen requirement from the indenter.

vii) The Long-term Umbrella Agreement/Contracts does not make any binding for the purchaser to procure the indicated quantity of the tender.

viii) Para 6.18 on Long-term Umbrella Agreement/Contracts of this manual may also be referred for further details.

d) SHIS/ MP Sheet shall be prepared to work out the requirement. The procurement lead-time and the production throughput-time should also be kept in mind while working out the requirement. Procurement shall be made for the Net Deficiency worked out based on the annual requirement or multiyear requirement where relevant. Net Deficiency shall be computed, duly taking into reckoning the Supply Plan conveyed by AWEIL HQ, all stocks, WIP and dues.

e) Staggered deliveries shall be insisted upon, especially when procurement is authorised for more than the annual requirement unless such staggering is not feasible or will result in additional expenditure with no specific benefits.

f) IFD shall be placed for the firm/fixed quantity. Option clause / repeat order not relevant in case of IFD.

g) Procurement of indirect materials (not required directly for production) shall be made on the basis of monthly average consumption during the preceding 24 months, duly making an allowance for relevant factors like the quantum of production, machines being utilised, product-mix, etc. For new indirect materials the necessity for procurement shall be approved by the HOD.

h) The Vendor Selection TPC shall also deliberate on the justification for the quantities proposed for procurement for all items.

## 2.7 Procurement Lead Time

a) Timely procurement action should be initiated duly taking into account the procurement lead-time and the production throughput-time so that the end-product issue-plan matches with the requirement projected by the Indenter. Apart from initiating timely action, the case shall also be processed expeditiously at every stage of examination and the model time-frame indicated in the Annexure to the Manual shall be complied with.

b) Prompt and timely action should be taken, for both indigenous as well as imported items, so that stock-out situations are avoided to ensure continuity of production while at the same time maintaining the overall SIH inventory within the authorised limit of 4 months

A higher SIH inventory holding can be authorised under exceptional circumstances by AWEIL HQ. Stocking of COTS and Rate contract items are to be decided on the basis of contract terms and conditions.

c) The authorised inventory level as indicated above shall be reviewed at least once in a year by the Dir./Operations in consultation with the Dir./Finance to reduce the inventory carrying cost.

d) In the event of any Factory/Unit holding inventory in excess of their authorised limit, the Factory shall work out a time-bound action plan for liquidation of the excess inventory. The Factory shall closely monitor & progress the action plan duly associating the F&A. The Director Finance shall also monitor the progress of liquidation on quarterly basis. However, since procurement of stores is based on the SHIS with the deficiency being worked out after considering the stocks, WIP and dues, it will not result in the procurement resulting in holding stock of the item in excess of the requirement.

e) Provisioning review shall be an annual exercise based on Supply Plan. Apart from this annual review, any change in production programme of any end product due to increase or decrease in demand or any other reason will necessitate midcourse review.

f) The provisioning period comprises of (i) the lead time, intended to cover all actions right from assessment of net requirement up to completion of delivery by the supplier, and (ii) the period of utilisation, which is the production period during which the entire ordered quantity (including the stocks and dues existing at the time of the provisioning action) will be utilized for meeting the production target. Normally the period of utilisation is 12 months (plus the first quarter of the subsequent year), however, this would not be applicable to procurements done with respect to Roll-on-Indents/ Roll-on-Plans.

## 2.8 Stockpile

a) Stockpile is an emergency reserve of imported and difficult to procure indigenous stores clearly identified as such, held for the purpose of enhancing the responsiveness of production units to unexpected demand surges and stock out situations.

b) Once an item is identified for stockpiling and its quantity determined, the competent authority shall be approached for sanctioning the stockpile creation. Maximum permissible Stockpile for imported and difficult-to-procure indigenous stores is for 6 months and 3 months respectively, unless otherwise higher levels have been specifically authorised. The monthly requirement of stockpile items shall be determined with reference to the maximum achievable production capacity in the factory for the related end-product as evidenced by past performance.

c) Stockpile, being an emergency reserve held by a Factory, should be kept intact; however, it needs to be turned-over from time-to-time keeping in view the shelf-life/ preservation requirements for the item. Factories shall submit, to AWEIL HQ, a half-yearly certificate that all items held in stockpile are in good condition and have been subjected to requisite care & preservative treatment.

d) Stockpile shall be turned-over by transfer from stockpile-stock to working-stock, subject to the following:

(i) AWEIL HQ approval should be obtained for withdrawal from stockpile.

(ii) The withdrawal from stockpile will be first transferred to Stock Ledger and issued on Demand Notes.

e) Stockpile referred to above will be entirely distinct from the regular or any other stocks that are referred to above. Each item of Stockpile shall be reviewed annually or as soon as it comes to notice that:

- (i) Indigenous production of imported items has developed or manufacturing capacity expanded adequately.
- (ii) Supply position of indigenous items has improved.
- (iii) Production of the relevant store has been discontinued
- (iv) Obsolescence/ phasing out/ reduction in demand of end-products
- (v) Change in specifications/ substitution.

f) A database of stockpile items shall be maintained by each of the holding Factories and a centralised database of all Stockpile items shall be maintained at AWEIL HQ.

g) The cost of the Stockpile shall be capitalised, and a separate Store Ledger of Stockpile Items shall be maintained by the F&A section of the unit.

h) AWEIL HQ is the competent authority for approving new stockpile items. All existing stockpile items may be reviewed by AWEIL HQ annually.

## 2.9 Channels of Procurement

Stores shall generally be procured by one of the following methods:

- (i) IFD on sister factories
- (ii) RC concluded by AWEIL
- (iii) Purchase from Trade
- (iv) Demand on other Government Department(s)
- (v) Govt e-Marketplace (GeM)
- (vi) Electronic Reverse Auction
- (vi) Any other approved procedure notified by Central Government.

## 2.10 Deciding the Mode of Purchase from Trade

The Vendor Selection (VSL) TPC, after considering (i) the necessity for the procurement (ii) whether the store is COTS or MTO (iii) the quantity to be procured (iv) the value of the procurement (v) the period of supply and (vi) special terms & conditions (if any) for the procurement, shall decide the mode of procurement. It should also be ensured by the VSL TPC that the demand for the store is not divided into smaller quantities for making piece meal purchases for the sole purpose of avoiding the necessity of obtaining the sanction of a higher authority with reference to the estimated value of the total demand.

## 2.11 IFD on Sister Factories

a) Indenting factory (user), after ensuring that the particulars mentioned in the IFD are correct, shall place IFD on the supplying factory in the prescribed form giving inter-alia, the following particulars:

- (i) Related Contract/Deemed Contract No. and Date
- (ii) Correct nomenclature of the stores demanded together with the relevant manufacturing particulars etc.
- (iii) Purpose for which the stores are required
- (iv) Delivery Schedule

b) Indenting factory shall also provide the feeder factory with all particulars/ drawings/ specifications referred in the IFD and are required for execution of the IFD. Copies of IFDs should be endorsed, among others, to

the concerned AHSP/ QA of indenting factory/ F&A of indenting & supplying factories for necessary action by these authorities.

## 2.12 RC concluded by AWEIL HQ/ Ordnance Factories/ Units

a) AWEIL HQ may, where feasible, conclude RCs through OTE on a 2- bids system for stores of standard type items that are identified as common user items and are needed on recurring basis by various Factories/Units. RCs can be finalized through LTE with PSUs in respect of items which are known to be manufactured only by them. The Factories, as Direct Demanding Officer, can procure the items under the RC concluded by AWEIL HQ. The Factories can also conclude RCs under their delegated powers, if not covered RC of AWEIL.

b) When RCs are concluded the specifications, prices and other salient details of the rate contracted items shall be posted on the COMNET/AWEIL website, and appropriately updated, for use by all factories/ units under the AWEIL. The RCs concluded by the AWEIL / Factories/ Units shall be operated to the maximum extent possible.

## 2.13 Purchase from Trade without Inviting Quotation

As provided in Rule 154 of GFR-2017 (or amended time to time), the competent authority (as per DFP) may purchase stores (goods & services) up to the value of Rs. 25,000 (Rupees twenty-five thousand only) on each occasion without inviting quotations or bids, on the basis of a certificate to be recorded by him (or her) in the format given below.

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

## 2.14 Purchase from Trade through Local Purchase Committee

As provided in Rule 155 of GFR-2017 (or amended time to time), purchase of stores (goods & services) costing above Rs.25,000 (Rupees twenty-five thousand only) and up to Rs.2,50,000 (Rupees two lakh fifty thousand only) on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications; and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under:

"Certified that we, members of the purchase committee are jointly and individually, satisfied that the goods/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 /services in question, and it is not debarred by Department of Commerce or Ministry of Defence or DDP or AWEIL /OFs."

## 2.15 Purchase from Trade by Obtaining Tenders

a) Procurement of stores by obtaining tenders shall be done by adopting the following standard methods. These standard methods shall also apply for procurement of services, subject to other instructions contained in this Manual being followed.

(i) Advertised Tender Enquiry (OTE/ GTE)

- (ii) Limited Tender Enquiry (LTE)
- (iii) Single Tender Enquiry (STE)

b) In stores procurement bids shall be obtained through e-procurement/GeM based on the estimated value threshold limit decided from time to time, else through conventional tender method, on single or two bid system (refer paragraphs 2.31 and 2.32, respectively).

#### 2.16 Advertised Tenders (OTE/ GTE)

- a) Procurement by advertisement should normally be used for procurement of stores (other than MTO stores) with an estimated value more than Rs.25 lakh, subject to the exceptions prescribed in this Manual. OTE is the common advertised tender where only domestic sources participate. OTE procurement may also be with a prequalification requirement. OTE being the preferred mode for procurement, the CFA may resort to it even in those cases where other modes for procurement from trade have been prescribed in this manual.
- b) The source development OTE (SDOTE) is an OTE done to develop new sources for Made-to-order items.
- c) GTE is an advertised tender when no established Indian source is available for required quality, quantity & specification etc, then GTE may be resorted. Indian firms may also participate in the GTE. GTE procurement may also be with a pre-qualification requirement.

#### 2.17 Limited Tender Enquiry (LTE)

- a) LTE may be adopted (for other than MTO items) when estimated value of stores to be procured is up to Rs.25 lakh (including the OC quantity). Copies of the bidding document should be sent free of cost, directly by speed post/ registered post / courier/ e-mail/ Online through eproc-portal & GeM, simultaneously to all the firms, which are borne on the list of registered suppliers for the stores after due consideration of their past performance/ response, if any. The number of supplier firms in LTE should invariably be three or more. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. LTE can be issued to foreign vendors also. Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.
- b) Purchase through LTE may be adopted (for other than MTO items) when the estimated value of the procurement is more than Rs.25 lakh (including the OC quantity), in the following circumstances, with the approval of the HOD :
- (i) The competent authority 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 competent authority should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
  - (ii) 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.
  - (iii) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
  - (iv) The item to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms.

(v) To prevent stock out situations, to cater unforeseen requirements of the Armed Forces/ MHA and on the ground of national security as per directive of MoD. The CFA shall certify and record justification.

c) If the estimated value of the proposal for a MTO item, is up to Rs. 25 lakhs (including the OC quantity), then the entire deficient quantity may be procured through LTE without insisting on SDOTE, provided there are minimum 3 established vendors with valid registration and no cartel is suspected (to be recorded after due diligence by the relevant TPC). If the number of established & registered vendors is less than 3, then, established & registered vendors for the same range of products/ goods/ services/ technology can also be included for the LTE after due deliberation by respective TPC. If the number of established vendors with valid registration for the same range of products/ goods/services/ technology is less than three or cartel formation is suspected/confirmed, then procurement shall be done as per the procedure detailed for MTO items in paragraph 2.26.

d) However, if (i) the MTO procurement is above Rs. 25 lakhs (including the OC quantity); or (ii) there are less than 3 established vendors with valid registration for the same range of products/ goods/ services/ technology or (iii) cartel formation is suspected/ confirmed, then procurement will be done as per the procedure detailed for MTO items in paragraph 2.26. Established source shall be as defined in paragraph 2.26.

e) For MTO items where there are no established sources available/ shared by design agency, then established & registered vendors for the same range of products/ goods/ services/ technology can also be included for the LTE after due deliberation by respective TPC or OTE may be resorted;

(i) as result, if single firm become established through OTE then for the next procurement cycle, SKS for 80% of the required quantity (with 25% OC) may be processed on the firm, further for balance 20% quantity, SDOTE (without OC) may be resorted to explore new sources.

(ii) If two or more sources have been established through OTE then LTE may be issued as per guidelines mentioned in preceding sub-Paras under this para i.e Para 2.17.

## 2.18 Single Tender Enquiry (STE)

a) Obtaining quotation against tender enquiry issued to an identified source amounts to purchase without generating competition. Therefore, this mode of purchase should be resorted to only in unavoidable situations. Purchase through STE may be adopted when:

i) It is in the knowledge of the user department that only a particular firm is manufacturing the required goods. The reason for arriving at this conclusion is to be recorded and approval of the competent authority obtained.

ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source, subject to the reason for such decision being recorded and approval of the competent authority obtained.

iii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/ equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm.

b) The relevant Proprietary Article/ Single Known Source Certificate (in the format given at the end on this Manual) should be provided by the HOD (with the approval of the Director Operation if the case exceeds the financial powers delegated to HOD Fys) before procuring the goods from a single source under the provision of sub-paragraphs (i) & (iii) above as applicable.

c) Suitable tender document, containing required terms & conditions are to be issued to the selected firm (or in name of selected firm, if tender is processed through GeM or guidelines issued in regard to processing of STE through GeM guidelines from time to time with mentioning of no consideration of other bids (i.e unsolicited) since bid is reserved as STE on SKS/PAC) for preparing and sending its quotation. The question of 'late tender' as well as elaborate process of receipt & opening of tender, as applicable for advertised tenders and LTE will not apply in case of procurement through STE.

d) PAC/ SKS sources at times do not accept some of the standard tender conditions. In such cases the firms should be persuaded to comply with the standard terms & conditions. If they are still unwilling to accept the standard terms & conditions, then, since no other alternative source is available, HOD can grant relaxation/ exemption. In such cases of SKS procurements the factory shall necessarily increase its efforts to develop alternate sources.

## 2.19 Proprietary Article Procurement

a) Certain items, particularly equipments, are the propriety product of a manufacturing firm. Such items are only available with that firm or their dealers or distributors since detailed specifications are not available to others for manufacturing the item. Situations may also arise when, for standardization of machinery or ensuring compatibility of spare parts with the existing sets of equipment, goods and services have to be obtained from a particular source. In such situations, a Proprietary Article Certificate may be issued to the original equipment manufacturer (OEM) and items procured on PAC basis from that particular firm or its authorized dealers or distributors.

While PAC is issued only in favour of the concerned OEM, the item may be bought from any authorised dealer 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. In such cases, tender documents can be issued to the OEM and (or) Authorised dealer(s)/ distributor(s) specified by the OEM. However, the purchase will be made as per the DFP for PAC cases only. These provisions would also apply to repairs and servicing of equipment through the sole dealer/ servicing agency, authorized by the OEM.

If the PAC item is consumable item example IT products, like Filters, Computers, Cartridges, which are readily available in market as COTS, then such cases may be processed as product based instead of firm/OEM based to enhance healthy competition and item may be procured through Open tender wherein the OEM as well as all the authorized dealers/distributors all or alone may participate. However, it would be ensured that participating firm(s) have proper authorization to participate and should provide equivalent to OEM Warrantee/Guarantee certificate and technical support from OEM on requirements.

In case of firm-based PAC procurement, PAC shall be issued in favour of OEM and tender may be issued to OEM or its authorized dealer/distributor, here also, all or alone of aforementioned may participate. On procurement from GeM where there is no restriction on participation in such situation, procurement entity may reserve tender only for PAC firm and hence other offers if received under same tender may be rejected/ treated as unsolicited.

b) PAC bestows monopoly and obviates competition. Therefore, PAC status should be granted only after careful consideration of all relevant factors like fitness, availability, standardization and value for money. CFA for issuing PAC shall be as notified in the DFP.

c) It is common for OEMs to outsource their components/ sub assemblies/assemblies and not manufacture these themselves. Hence, such items may be available at a cheaper price with the actual manufacturers. The indenting/procurement officers must, therefore, keep abreast of the probable sources and may procure items from the right source to protect the interest of the State. However, machinery spares should be sourced

only from the OEM or OEM approved/ recommended manufacturers to make the OEM responsible for malfunctioning, if any, of the main equipment in which the spares will be fitted beyond warranty period.

## 2.20 Procurement from a Single Known Source

New sources are to be developed through Open Tender Enquiry (OTE). At times OTEs may result in development of only one source. Pending development of more sources, 80% of requirement with 25% option clause may be procured on Single Known Source mode on the basis of an SKS Certificate to be issued in the prescribed format by the Competent Authority notified in the DFP. The balance 20% of the requirement may be procured through SDOTE, without option clause.

## 2.21 Cash and Carry Procurement

Cash and carry purchase are resorted to in cases of extreme urgency or when the supplier is not willing to supply the required item on credit. Such procurement should be made only in exceptional cases. The cash payment is initially made from the Imprest fund of the unit and the same, on being claimed, is reimbursed by the paying authority after due audit of the transaction.

## 2.22 Govt e-Marketplace (GeM)

Government of India has hosted an online Government e-Marketplace (GeM) for common use Goods and Services which has been off late extended to nearly all category of procurement such MTO items. As per Rule 149 of GFR 2017, GeM has been made mandatory for procurement of Goods and Services available on GeM.

The procurement through GeM, however being a dynamic, therefore the guidelines received from government time to time shall be followed. Some of relevant guidelines are as follows;

- (i) All procurements made through Open Tender to be mandatorily made through GeM (MoD I.D. No.8(34)/2020-D(Coord/DDP) dated 10.12.2020).
- (ii) In case of STE/LTE, DPSUs may add or mention in T&C that bid is restricted only for the limited registered vendors and the same to be checked by buyers during Technical Evaluation.

Further, new functionalities rolled out by GeM and revised guidelines for procurement of Goods & Services through GeM Portal as issued by Govt. from time to time, will be application as per directives by AWEIL.

## 2.23 Electronic Reverse Auction

- (a) Electronic Reverse Auction means an online real-time purchasing technique utilized by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favorable bids during a scheduled period of time and automatic evaluation of bids.
- (b) Reverse auction may be implemented by AWEIL after creating/arranging a web portal for the same.
- (c) Ordnance Factories/Units may procure items through Electronic Reverse Auction wherever feasible.

## 2.24 Classification of Goods/ Stores

The revenue procurement is made for normal business activity as distinct from capital procurement made by a business for acquiring fixed assets. Revenue stores come under two broad categories:

(i) Commercially-off-the-Shelf (COTS) stores are available commercially and have application in fields other than defence. These stores are generally available easily. Standard Procurement Procedures of the Government of India can be applied while procuring COTS items except for the items which are directly used in production of direct/ spare items also referred to in Para 2.17(a).

(ii) Made-to-Order (MTO) stores do not have commercial applications. They are made specifically for the ordnance factories, against specified drawings of ordnance factories/ collaborators/ design agency or JSS/ other defence specification. MTO items, therefore, have limited sources and are difficult to procure. Consequently, for timely & reliable positioning of MTO items for production, special procurement procedures are necessary without compromising on transparency, competition or fair treatment of vendors.

## 2.25 Procedure for COTS items (Other than MTO Items)

a) The standard procurement procedure contained in the preceding paragraphs shall apply while procuring other than MTO items. Advertised OTE shall be the preferred mode for procurement of common use items of generic or commercial specifications which are readily available in the market from a wide range of sources/ vendors. However, depending on the value of the procurement the appropriate mode of procurement i.e. OTE, LTE, STE, RC, CC and LPC as contained in the Manual may be followed within the financial limits therein specified. However, in procurement of direct material (falling in the category 'other than MTO') through LTE [refer Para 2.17(a) and 2.24(i)], only established vendors with valid registration as per the SOP for vendor registration shall be allowed to participate.

b) Under advertised tenders (OTE/GTE), OEMs/ Manufacturers or their authorised dealers/ distributors or all can participate, depending upon policy of OEM i.e if it is the policy the OEM/ Manufacturer to deal through their authorised dealers/ distributor or the OEM/ Manufacturer specifically authorises his dealer/ distributor to quote in the tender.

c) In case of raw materials/ tools & gauges/ machinery spares/ COTS items, procured indigenously, tender may be issued to authorized dealers/distributors of the OEMs/ Manufacturers.

d) Similarly, in case of imported stores including raw material/ tools & gauges/ machinery spares, tender can be issued to authorised dealers/ entities if the OEMs/ Manufacturers deal through them.

e) The long-term requirement, if known, shall be indicated in the tender notice/ tender to attract more firms to quote.

f) Sometimes due to short shelf-life (e.g. shellac), high volatility (e.g. denatured spirit) or high storage losses, difficulties are experienced in procurement, and vendors also normally provide very short validity for their bids. These items being commercially available there are normally adequate number of sources in the market. Therefore, there may not be a need for any special source development exercise. In such case procurement may be made from registered/ government licensed/ reputed vendors through LTE issued to **minimum six vendors**. Considering the shelf-life and storage losses, the VSL TPC, after duly recording reasons, shall decide the optimal frequency at which the procurement will be made.

g) For limited tender enquiry of COTS items, para 2.17 (a) & (b), 2.24(i) and 2.25 (a) may be referred.

## 2.26 Procedure for Made-to-Order items

The challenges faced in procurement of MTO items are given in paragraph 1.1. These challenges necessitate special procedure for MTO items to ensure delivery of quality end-products according to the targeted production program. The following procedure shall be followed for procuring Made-to-Order items:

(i) Net deficiency shall be worked out as detailed in paragraph 2.6.

(ii) MTO items are manufactured as per the specific requirements of ordnance factories and their sources are limited, therefore, to generate healthy competition, source development exercise shall necessarily be undertaken through Source Development OTE to develop adequate sources. Bearing in mind the significance of competition, SDOTE, where relevant, shall necessarily be issued to vendor with valid registration (excluding the established suppliers) along with the LTE. Advance Vendor registration for new vendors should be done twice in a year through open advertisement during first fortnight of January and July of every year. However, in addition, vendor can also apply for registration throughout the year. If no response received in AVR/AVR not floated due to non availability of requirement, then Factory may float SDOTE in two bids.

(iii) Vendors become established source for a particular item after securing order by participation in a SDOTE for the item and successfully delivering at least 60% of ordered quantity against the supply order, and the same being accepted on conformity to the qualitative requirements. However, supplies against subsequent LTE orders shall be accepted subject to completion of the supplies under the SDOTE. Established vendors for aggregates, assemblies and sub-assemblies shall be considered as established vendors for components and sub-assemblies that go into making of the aggregate, assembly and sub-assembly.

(iv) If the value of the net deficiency worked out for a MTO item is up to Rs.25 lakh (including the OC quantity), then without insisting on SDOTE, the entire net deficiency may be procured through LTE provided there are minimum 3 established vendors with valid registration and no cartel is suspected (to be recorded after due diligence by the relevant TPC). If the number of established vendors is less than 3, then registered vendors for the same range of products/ goods/ services/ technology can also be included for the LTE as provided in paragraph 2.17 (c).

(v) MTO items are specialised items that do not have commercial application. Therefore, keeping established sources active/alive is important. Established production lines in the trade remain alive when established sources get periodical orders to keep the facilities active.

Thinning out orders on too many established sources has a potential risk of established sources dying out due to non-availability of adequate work to keep established facilities alive/active. To avoid such a situation, for MTO items more than Rs. 25 lakhs (including option clause quantity), where 3 or more established sources is existing for an item, the VSL TPC, after approval of Empowered Committee/Fy TPC-I /\*next higher CFA for 'A', 'B' and 'C' category items respectively (as mentioned in paragraph 2.24(viii)) and necessary due diligence with recording reasons, may decide not to undertake further source development, provided the existing established sources are not acting in collusion/ cartel. In such case the entire net deficiency may be procured through LTE.

(vi) For items other than those exempted from SDOTE, as decided by (a) Empowered Committee, (b) Fy TPC-I, (c) Next Higher CFA for 'A', 'B' & 'C' category items respectively, following provision shall prevail :-

- 80% of the net deficiency shall be procured, with a 25% option clause, through LTE issued to only established sources with valid registration. All the established sources, including sources developed by other factories for that particular item, shall be allowed to participate in the LTE. As a basis principle since most of cases of procurement are now done through GeM and there being no facility to restrict participation from any other bidders therefore bids of established sources, including sources developed by other factories for that particular item, shall be opened in the LTE cases even when restriction has been provided in TE conditions.

- Balance 20% of the net deficiency shall be procured, without option clause through SDOTE following a two-bid system where established sources shall not be allowed to participate. However, to prevent stock out situations and (or) cater to unforeseen requirements of the Armed Forces/MHA and on the ground of national security as per directive of MoD, LTE can be resorted to for even the balance quantity. In such cases, approval of Empowered Committee shall be obtained for resorting to LTE.
- With low volume/quantity, if considered necessary by VSL TPC, LTE of 50% quantity with 100% option clause and SDOTE with balance 50% quantity without option clause can be initiated.

(viii) (a) EMPOWERED COMMITTEE may be set up at factory level to identify items/ material with adequate vendor base for 'A' & 'B' category items. "Empowered Committee" may be constituted in each factory, consisting of ED/HOD as Chairman of the Committee and General Manager Operating Division, General Manager Finance Division, GM/MM, GM/F&A, JGM/MM, JGM/Planning and DGM/WM/MM or equivalent rank officials and similar type of factory as member. For 'B' category items, Fy/TPC-I is empowered to identify items/material with adequate vendor base. For 'C' category items, next higher CFA is empowered to decide items/material on adequacy of vendor base on case-to-case basis. A, B & C category items should be as per standard norms for ABC Analysis of Inventory.

(b) The above committees for 'A', 'B' & 'C' category items will be empowered to decide on adequacy of vendor base for exemption from SDOTE.

(c) The scope of work of the committee is as follows:

- Every year committees may review the MTO items ('A' & 'B' category), having 3 or more (minimum 3) established and registered vendors & finalize the list of MTO items for exemption from SDOTE. The accepted list of the 'A' & 'B' category items may remain valid for 2 years.
- The Committees should consider the adequacy of the vendor base, projected requirement of the item, complexity of the system being developed, time required for development investment required to be made etc. while making such recommendation/decision.
- Decision of 100% LTE for MTO items in case to prevent stock out situations and (or) cater to unforeseen requirements of the Armed Forces/ MHA and on the ground of national security as per directive of MoD.

(ix) To ensure expeditious action on the LTE and SDOTE front, efforts should be made to finalise the SDOTE in a time bound manner and its progress be closely monitored.

(x) Normally bids are not invited from both established as well as unestablished vendors in the same TE. However, where necessary this may be resorted after recording detailed reasons for the same. In such cases the entire net deficiency may be procured through OTE, following a 2-bids system, and allowing established and un-established sources to participate on a level playing field. In this context capacity assessment/verification of un-established or unregistered firms shall not be considered as un-equitable treatment, since, capacities of established firms are known from the fact that they have supplied the item, and the capacity of firms are required to be verified prior to their registration.

However, the TPC, if considered necessary, is competent to seek fresh capacity assessment/ verification of established or registered firms also.

(xi) In LTE for a particular item, tender shall be issued to all established and registered source(s), including sources developed by other factories for that particular item. In cases where established & registered sources are less than three, LTE shall be issued to minimum two established and registered sources. If the

established & registered source is only one, then procurement shall be on Single Known Basis after rendering the requisite SKS Certificate (or PAC if a proprietary item). If distribution of quantity is necessary for having more than one source for strategic reasons, the distribution ratio shall be indicated in the tender.

(xii) Sources unambiguously approved for a particular item(s) by collaborators and design agencies shall also be considered as established sources for that item. They shall be subjected to the normal vendor rating as per SOP.

(xiii) SDOTE shall normally be issued to OEMs and manufacturers

(xiv) If the OEMs/ manufacturers deal only through their authorized dealers/distributors/stockists then SDOTE may be issued to such authorized entities.

(xv) SDOTE will be on the two bid system wherein the technical bid will lay down the qualifying criteria, such as minimum turnover of the firm, production facilities, supplies of similar products made in required quantity/ quality control arrangements etc. The financial bid will contain (i) Item-wise price (ii) Details of applicable taxes & duties and (iii) All other commercial terms & conditions.

(xvi) Indication of the long term requirement, if known, shall be specified in the SDOTE to invoke interest in sources to quote.

(xvii) Established sources for an item will not be eligible to participate in the SDOTE for that item. The status whether a firm is established or not shall be reckoned as on the last date of the previous month in which vendor selection TPC is held.

(xviii) There may be attempts by established manufacturers/ suppliers/ sources for an item to prevent new manufacturers/ sources from being developed. Therefore, following precaution may be taken:

a) The open tender for developing new sources will be in two bid system, however in the technical bid, only those firms will be shortlisted that have the capacity for making/ developing the said item in terms of machineries, capital, skilled manpower, technology, etc.

b) Any quote that is less than 70% of simple average of the basic rate (LTE and successfully executed SDOTE/OTE) at which orders (excluding import orders) have been placed over the preceding three years (reckoned from the date of tender opening) shall be deemed as freak rate and rejected.

c) To have more firms developing an item and thereby improve the probability of developing new sources, in SDOTE the L-2 firm may be given 40% of the tendered quantity on accepting the L-1 rates, provided this was indicated in the tender. In case any of the L-2 firm whom the ordered quantity is distributed, fails to execute the order, then the shortfall quantity may be placed on the L-1 firm who has successfully executed the order, since retendering the shortfall quantity may not be fruitful due to low volume and would affect production activities.

d) If a firm on which source development order has been placed is unable to develop the item within the specified time frame, existing provision of DFP should be followed.

e) In the retender (or the next OTE, if relevant as mentioned in preceding paragraph), the firm that was unable to develop the particular item even with the extended timeframe that resulted in the retender shall not be allowed to participate.

(xix) To develop vendors for new items, development orders for value not exceeding delegated powers contained in the DFP, may be concluded when SDOTE efforts have not been successful.

(xx) If two SD Supply Order(s) for an item have already been placed against SDOTEs (irrespective of availability of number of established vendors), further SDOTE will not be processed till any of these SDOTE Supply Order is completed/ short closed/cancelled. The firm having one SDOTE supply order is also not allowed to participate in other SDOTE for same item, floated by same or any other Factory.

(xxi) The manufacture of certain items sourced from trade may require multiple diverse technologies, e.g. manufacture of certain type of items require both forging as well as machining facilities/technologies. Trade firms generally do not possess the entire range of diverse technologies that are required for the manufacture of such items. In such cases, the appropriate Vendor Selection TPC after due deliberations may decide that firms not possessing required facilities with them, but having binding agreement such as MOU (self-declared by vendors) with other firm for these facilities can also participate in the tender. This is subject to the assessment that such bidding firm has adequate facilities to ensure the quantitative and qualitative output as per the tender enquiry. In case the TEC/TPC considers it necessary, the capacity of the firm(s) with whom the bidding firm has such agreement(s) can also be verified for the facilities outsourced by the bidding firm. The bidder shall facilitate such capacity verification. It should, however, be ensured that, the bidding firm has the capacity for the important operations in-house. The VSL TPC should deliberate and decide, prior to issue of the TE, the facilities are necessarily to be possessed by the bidding firm and should be duly incorporated in the tender enquiry.

(xxii) VSL TPCs may also consider for participation of firms those having facility/capabilities of integration with testing facilities (System Integrators). These firms may not have manufacturing facilities but have agreement (self-declared by vendors) for supplying of components/assemblies/sub-assemblies. The warranty of the integrated product shall be given by the integrator.

(xxiii) Long-term Umbrella Agreement/Contracts may be concluded for MTO items up to 5 years as per details mentioned at para 2.6 & Para 6.18 of this Manual.

## 2.27 Public Procurement (Preference to Make in India), Order 2017

Provisions contained in Public Procurement (Preference to Make in India), Order 2017 issued by DPIIT, Ministry of Commerce & Industries vide letter No. P-45021/2/2017-B.E-II dated 15-06-2017 along with MoD I.D No.59011/8/2015-D(HAL-II) dated 19-07-2017 and subsequent amendment issued by DPIIT from time to time shall be followed.

## 2.28 Identification of Suppliers

Good awareness and identification of right suppliers capable of fulfilling the product qualitative requirements is a very vital function in competitive procurement of quality goods. Further, ensuring transparency, equal opportunity and fair play are fundamental in procurement. Therefore, transparent, equitable and fair procedure for selection, registration, performance appraisal, etc., of firms is absolutely necessary, which should also be disseminated.

## 2.29 Registration of Firms

a) Registration of firms shall be done as per the Standard Operating Procedure for Vendor Registration as updated from time to time. However, for the items valuing up to Rs. 2,50,000 (Rupees two lakh fifty thousand only) the said SOP shall not be mandatory as it is within the limit for purchase through Local Purchase Committee.

- b) A firm registered with any DPSU/Ordnance Factory/Unit for a particular range of products/ goods/ services shall be considered as a registered firm for the purpose of procurement for the same range of products/ goods/ services.
- c) Performance of registered firms shall be monitored by vendor rating as per the SOP for Vendor Registration. In case of a necessity for reviewing the registration of a firm or de-registering a firm, the SOP on Vendor Registration shall be followed.
- d) For renewal of registration, the guidelines as mentioned in the SOP on Vendor Registration should be followed.
- e) In addition to provisions contained in the “SOP on Vendor Registration” of the firms, for deregistration of a firm due to misconduct (suspension/banning/debarment), the existing guidelines issued by MoD vide I.D No. 31013/1/2016-D(Vig) Vol.II dated 21.11.2016 & 30.12.2016 (or revised time to time) for penalties in business dealing with entities and the suitable procedure (SOP) for levy of financial penalties and/or suspension/banning of business dealings with entities promulgated by erstwhile OFB should be followed. Action may be taken by the Head of Department by issuing a show cause notice to the firm(s) and after due consideration of all relevant facts, and circumstances of the case, accordingly an appropriate decision may be taken. The reasons for the decision should be duly recorded in detail. If the Head of Department is of the view that the gravity of misconduct justifies penal action involved more than one Factory/Unit, then the case shall be referred to concerned Dir./Operation for appropriate action by Competent Authority.

### 2.30 Vendor Selection (VSL)

The relevant TPC under whose financial powers the case falls will do the vendor selection for the procurement. For cases beyond the powers of the factory (i.e. cases falling under the powers of AWEIL), vendor selection will be done by Factory Level – I TPC. In addition to various other points, the Vendor Selection TPC shall necessarily deliberate on the (i) justification for the quantities proposed for procurement, (ii) categorisation of the item as MTO or other than MTO, (iii) adequacy of vendor base, (iv) estimated cost, (v) mode of procurement with OTE percentage, (vi) realistic delivery period (vii) identification of essential parameters of the tender, if necessary; if no specific essential parameter has been identified then, to eliminate arbitrariness, all parameters of the tender shall be treated as essential. The VSL TPC minutes shall contain complete details of the deliberations with justification/ reasons.

### 2.31 Single Bid System

Single bid system may be followed in LTEs or where only established manufacturers are participating. In single bid system since the technical and financial terms figure in the same bid, their evaluation as contained in paragraphs 2.33 and 2.34 shall be done together.

### 2.32 Two Bid System

a) The two bid system is used in procurements that are complex, technical in nature or has indeterminable parameters. Two bid system may be followed in all tenders other than that specified in paragraph 2.31. In such cases bids should normally be obtained in two parts, namely

- (i) Technical Bid and
- (ii) Financial Bid.

b) The technical bid and the financial bid should be sealed by the bidder in separate covers duly super-scribed to indicate the appropriate bid. Both these sealed covers are to be put in a bigger cover which should

also be sealed and super-scribed to indicate the tender reference, date of opening etc. Only the technical bids are to be opened and evaluated in the first instance. However, for GeM/e-Tenders this is an inbuilt feature.

c) The technical bid should establish the capability of the participating firm to manufacture & supply the specified item of the requisite quantity and in the required time frame. The manufacturing facilities of the participating firms shall also be got verified if they have not been verified earlier. The technical bid must, amongst other things ascertain that:

(i) The firm has the required financial capability, assessed by the turnover in the last three years or certificate of solvency issued by Bank or any other documents to the satisfaction of TEC.

(ii) It has the minimum critical manufacturing capability as indicated in the RFP/TE, assessed by listing out the required machines/ manufacturing facilities and ascertaining the legal ownership thereof. In case the firm (including integrator) outsources certain operations, evidence of agreement (self-declared by vendors) for such outsourcing should be obtained.

(iii) The firm is properly registered for GSTIN, Income Tax, Excise and Sales Tax (as and whenever applicable).

(iv) It has the proper licence to operate.

(v) Supplies of the similar products made in previous years. 'Similar products' should be defined in the tender to eliminate ambiguity and arbitrariness in evaluation.

(vi) If asked for in the tender, the technical bids should be accompanied with samples of the product offered, in as many numbers as specified in the tender. The samples shall be examined for conformity with the QR.

(vii) The firm shall accept all other commercial terms & conditions.

d) At the second stage, the financial bids of only the technically acceptable offers should be opened for further evaluation. The financial bid shall indicate the (i) item-wise price (ii) details of applicable taxes & duties and (iii) all other commercial terms & conditions.

### 2.33 Evaluation of Technical Bids

a) If tenders are invited in two bid, in the first instance, the technical bids shall be opened. The bidders or their duly authorized representatives shall be permitted to witness the tender opening. Thereafter, technical evaluation shall be carried by the appropriate Technical Evaluation Committee (TEC) notified in the DFP. TEC has representatives of the user, designated inspecting agency, procurement agency, and Finance. Finance representative need not be associated in the TEC if the deliberations are purely technical like assessing conformity to technical specifications and other related technical aspects. Finance representative shall, however, be associated if commercial parameters such as EMD, PSD, Payment Terms, Warranty/ Guarantee clauses, commercial viability of the firm, registration with Tax Authorities, any aspects having financial implication, etc., are indicated in the technical Bid and, these or compliance aspects (other than technical conformity) are required to be deliberated at the TEC meeting.

b) 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. All offers conforming to essential parameters should be accepted. The essential parameters should have been identified and recorded in the vendor selection TPC, if not all parameters are to be treated as essential to eliminate arbitrariness.

- c) The TEC should prepare a compliance statement bringing out the extent of variations and differences, if any, with the qualifying parameters specified. If considered necessary, the TEC may invite the vendors who meet essential parameters for technical presentation/ clarification.
- d) However, during these clarifications the basic profile/ character of technical offer submitted shall not be permitted to undergo a change. However, opportunity for revision of minor technical details may be accorded to all vendors equitably. Original Financial bid should remain firm & fixed and no alteration in price should be permitted as a consequence of presentations/clarifications sought by the TEC from the vendor. Conditional offers shall not be accepted.
- e) The TEC should prepare a compliance statement in respect of commercial terms and conditions, such as EMD, PSD, Payment Terms, Warranty/ Guarantee clauses, etc., included in the technical bid as per the tender and deliberate on these. The correctness of data and facts for TEC/TPC shall be responsibility of tender creator/coordinator and approved/verified by Head of Section (HOS).
- f) Factories/units may decide through a suitable mechanism like storing/keeping the bids so received in the tender in soft form responsibly in any of common drives, DVD and others suitable storage device used by them for the use of all concerned including audit authorities and keep them safe as per defined time for keeping records. Due to ease of processing e-tending and suitable modules available in the portals such as E-proc/GeM, efforts should be made to reduce physical copies.
- g) The member secretary of the TEC shall ensure timely recording of the deliberations of the TEC meeting in the form of a minutes of the meeting and get it signed by the TEC members and Chairperson. The minutes of the meeting shall also record a confirmatory statement that none of the TEC members have any personal interest in any of the participating company/agencies. Status of compliance/ deviations from tender clauses in the form of CST that was considered by the TEC in its deliberations shall be recorded. Cases beyond the powers of Factory, TEC report may be accepted AWEIL HQ.
- h) Financial bids of offers evaluated as technically compliant by the TEC shall only be opened. Where validation trial/ testing etc. of samples are involved, the financial bids of only those firms whose samples have been recommended as technically compliant in the validation trial/ test reports shall be opened.

#### 2.34 Evaluation of Financial Bids

- a) Financial evaluation shall be carried by the appropriate Tender Purchase Committee (TPC) notified in the DFP. TPC shall evaluate (financial) all bids evaluated as technically compliant by the TEC, and unambiguously determine the L1 duly recording the reasons. The TPC shall deliberate on the procurement, and its members shall render advice/ opinion freely/ frankly in their respective domains to arrive at a well-considered decision.
- b) On opening the financial bids (of technically compliant bidders) the comparative statement of tenders should be prepared. The CST should be prepared with due care showing each element of cost (basic cost of items, freight, insurance, other requirements except levies, taxes and duties levied by Central/State/Local governments such as GST etc on final product) separately against each bidder where only Indian bidders are participating. The CST should be got vetted by the F&A as to its correctness, where delegated powers are to be exercised with the concurrence of internal finance. Evaluation of financial bids is a very critical activity in procurement, therefore, due care should be exercised to evaluate the bids strictly as per the tender conditions.
- c) Price negotiations should not be held in OTEs and LTEs where adequate response has been received and the L1 price is assessed as reasonable. In case firms are called for price/ commercial negotiations, the

reasons for taking such a decision should be recorded by the TPC. Price/ commercial negotiation may, however, become necessary when there is lack of competition like single tender situations (including PAC, SKS and RST) or when (irrespective of the mode of tendering) the price quoted by L1 is assessed as unreasonable. Price/ commercial negotiations shall be conducted by the appropriate TPC.

d) The primary objective of commercial negotiation is to conclude a reasonable price and commercial terms for the procurement. This is a very complex task requiring careful consideration of numerous diverse factors. Some indicative factors that need to be considered while assessing the reasonableness of price & other commercial terms are the last purchase price, movement of relevant price indices, market intelligence regarding cost of the store or similar surrogate stores, material composition, cost analysis of raw materials, technological intricacies/ complexities of the store or (and) the process of manufacturing it, processing cost in manufacture of the store, whether the stores are in current production or otherwise, maintenance requirements, spares requirement, warranty, etc.

e) Freak rates (unreasonably low or high) are sometimes quoted by vendors that frustrate the whole tendering process. This is more likely to happen in source development where established vendors (Indian or foreign) may have an interest to engineer entry barriers by persuading pliable firms to quote unreasonably low. Such orders remain unexecuted for long resulting in blocking of quantities and a roadblock on source development. Therefore, it is essential to periodically review the progress of source development orders and take necessary steps to release bad dues for short closure/closure of order after appropriate opportunity given to the firm.

f) Offers with freak rates (as explained in paragraph 2.26) should not be accepted and reasons for rejection should be specifically recorded. The standard tender documents should contain these provisions.

g) The member secretary of the TPC shall ensure timely recording of the deliberations of the TPC (including VSL TPC) meeting in the form of a minutes of the meeting and get it signed by the TPC members and Chairperson

### 2.35 Discounted Cash Flow technique for evaluation of price bids

a) There may be situations when suppliers may not agree to the standard payment terms of TE and insist on their own payment terms. Since payment terms have financial implication, proper evaluation of the offers becomes difficult when the payment terms differ from bid to bid. In such situations, the Discounted Cash Flow technique can be effectively applied for determining the L1 status. The DCF is the method of evaluation by which cash outflow of the future are discounted to current levels by the application of a discount rate (as per Prime Lending Rate of RBI on the last day of submission of bid), with a view to reducing all cash flow to a common denomination to enable comparison.

b) Evaluation of price bids is done by calculating the Net Present Value (NPV) of the quoted cash outflows and evaluating the L1. DCF technique can also be utilised to evaluate offers when the deliveries/ payments are spread over multiple years and the quoted price varies year-to-year.

c) Evaluation using NPV involves the following steps (i) selection of the discount rate (ii) identifying the cash out flows to be considered in the analysis (iii) establishing the timing of the cash outflow (iv) calculating NPV of each alternative (v) selecting the offer with the least NPV. Discounting rate to be used in the calculation is the PLR of RBI on the last day of submission of bid.

d) When bids are received in the same currency the cash outflows can be structured by (i) excluding the unknown variables like escalation factors, etc., for determining the cash outflow (ii) considering the cash outflows as per the schedule indicated in different bids (the tender should provide a clause that the bidder

shall indicate the cash outflow schedule in the offer) (iii) calculating the NPV of different bids (iv) selecting the bid with the lowest NPV as the L1 bid. If the bids are received in the different currencies the cash outflows can be structured as above after the cash outflows indicated in the various bids are converted to INR. The BC (Base Currency) selling rate of the Parliament Street Branch of SBI, New Delhi on the last date of the submission of bids shall be taken as the exchange rate. Any standard software, pre-loaded as part of a personal computer may be used for the NPV analysis

## 2.36 Resultant Single Tenders

a) There are instances when only a single quote or a single valid acceptable quote is received against LTE or OTE. Such situations may arise in single bid tendering as well as in two-bid tendering (before or after technical evaluation). In such circumstances indicating lack of competition, the following aspects shall be examined:

(i) Whether all necessary requirements such as standard tender enquiry conditions, industry-friendly specifications, wide publicity, and sufficient time for formulation of tenders had been taken care of while issuing the tender.

(ii) Whether the tender had been properly dispatched (received online) to prospective vendors.

(iii) Whether the specifications, particularly in the LTE cases, could be reformulated and made broader based to generate wider competition.

(iv) Whether time and criticality of requirement permits reformulation of the specifications.

b) If the examination reveals that (i) & (ii) have been complied with, and (iii) & (iv) are not feasible, then the proposal may be processed further by the appropriate TPC as per the DFP. If there is any doubt about the tendering process or it is considered feasible to reformulate specifications without compromising on operational requirement, the tender should be retracted and re-issued after rectifying the deficiencies and (or) reformulating the specification.

c) On the above context, the guidelines issued by Ministry of Finance, Department of Expenditure, Procurement Policy Division vide no. F.1/1/2021-PPD dated 29.10.2021 at para 11.8 are relevant (re-produced below);

***“Rejection of Single Bid:*** *It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for re-tender as a ‘safe’ course of action. This is not correct. Re-bidding has costs; firstly the actual cost of re-tendering; secondly the delay in execution of work with consequent delay in attainment of the purpose for which the procurement is being done; and thirdly the possibility of re-bid may result in a higher bid.*

*Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one bid submitted, the process to be considered valid provided following conditions are satisfied:*

- (i) the procurement was satisfactorily advertised and sufficient time was given for submission of bids;*
- (ii) the qualification criteria were not unduly restrictive and*
- (iii) prices are reasonable in comparison to market values.”*

## 2.37 Option and Repeat Order Clause

### I) Option Clause

a) Option clause has an impact on the price quoted by the supplier, and therefore, should not be included routinely. However, when further requirement of the stores under procurement exist against quantities of outstanding indents/ Roll-on-Indent/ Roll-on-plan/ Lol/ Contract/ Deemed Contract, then it may be advantageous to have an option clause in the contract, if agreed to by the supplier. Therefore, in all such cases where regular repeated requirements exist, provision for option clause as decided by the VSL TPC, shall be made in the tender/ contract. The option clause can be exercised (if necessary more than once) provided the cumulative of the option clause quantities exercised does not exceed the option clause quantity provided in the contract.

b) All tenders (where subsequent requirement of the item being purchased, exists or is expected) should include a provision for an option clause stating “the purchaser (during the original DP or the extended DP, if any DP extension/ re-fixation are granted) retains the right to exercise an option to increase the ordered quantity up to a maximum option clause quantity of the originally contracted quantity at the same rate and terms of contract”.

c) The purchaser may operate the option clause within the original DP as well as Re-Fixed/Extended DP subject to (i) there being a requirement for the item (ii) incorporation of Option clause in the contract (iii) there being no downward trend in price (consent of the supplier is not necessary) or if there is a downward trend, the supplier agreeing to reduce the price for the enhanced quantity duly matching with the fall in prices, and (iv) if no fruitful result will accrue by floating fresh TE or when the store is urgently required for meeting production targets.

d) In case of a downward trend and the supplier agreeing for a matching reduction in prices for the enhanced quantity, the TPC, before exercising the option clause, should carry out the necessary due diligence and unambiguously record that the reduced price is reasonable. While carrying out assessment of downward trend, if any, provisions of the para 5.23 and 5.24 shall be considered.

e) The CFA shall be decided taking into consideration the value of the originally ordered quantity plus the option clause quantity. CFA in umbrella agreements of multi years shall be decided on the basis of average annual requirement, since the total value of the contract is the sum of annual contracts (i.e. Total tendered quantity divided by no. of contract years).

f) In contracts with PV formula, the PV formula being the terms & conditions of the contract, shall apply during the OC also.

g) Option Clause has a price implication, therefore, in multi-vendor situations, to provide a level playing field to all vendors, if the tender specifies an Option Clause, bids received without compliance to the same shall be considered as unresponsive. This shall be clearly mentioned in the tender document. In case none of the participating vendors have complied to the OC, then the concerned TPC, after due deliberations, may consider all the bids as responsive on the principle of equitable treatment of vendors.

h) Option Clause can be exercised in case of STE/PAC/SKS also.

### II) Repeat Order

a) Repeat Order clause should not be included in the TE and Contract as it has an impact on the price quoted by the supplier. However, when further requirement of the stores under procurement exists against quantities of outstanding indents/Roll-on-Indent/Roll-on-plan/Lol/Contract/Deemed Contract, then it may be

advantageous to have a Repeat Order to meet the unforeseen/sudden or urgent or emergent requirement. Therefore, a repeat order may be placed with prior approval of HOD on file justifying unforeseen/sudden or urgent or emergent requirement, before initiating Repeat Order. For the Repeat Order cases falling under Factory TPC-I, prior approval of Director Operation shall be obtained.

b) A Repeat order against a previous order may be placed with the recommendation of relevant TPC and approved by the CFA and concurrence of F&A section. The Repeat Order may be placed subject to the following:

- i) Items ordered against the previous order were delivered successfully.
- ii) It may be exercised within six months from the date of completion of supply against the previous order.
- iii) Original order was not placed to cover urgent/emergent demand.
- iv) Repeat Order is not placed to split the requirement to avoid obtaining the sanction of the next higher CFA.
- v) The original order was placed on the basis of lowest reasonable and justified price and accepted by TPC, and not on the basis of delivery or any other preference.
- vi) The requirement is there for the stores as seen in the calculation of the net deficiency.
- vii) A fresh TE will be issued to the vendor for getting the commercial offer for the quantity not exceeding 100% of the previous order.
- viii) It should not be construed as single vendor case & CFA for Repeat Order TPC will remain the same as CFA of Original SO TPC.
- ix) In contracts with PV formula, the PV formula being the terms & conditions of the contract, shall apply during the RO also.
- x) RO can be exercised in case of PAC/ Single vendor/OEM also.

## 2.38 Retendering

a) Retendering may be resorted to under the following circumstances:

- (i) None of the offer(s) conform to qualitative requirements and other terms & conditions set out in the tender.
- (ii) There are major changes in specifications and quantity that may have considerable impact on the price.
- (iii) 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.

b) In case the lowest bidder withdraws his offer, re-tendering should be resorted to as per the instructions issued by the Central Vigilance Commission.

While retendering TE may not be issued to the vendor who had backed out and EMD, if any, of such a firm should be forfeited. Further Heads of Establishment may issue a show cause notice to the defaulting firm,

and after considering the reply received thereto, can impose penalty as per existing guidelines on penalties issued by MoD.

c) If retender is unavoidable in an OTE/ SDOTE for procurement of MTO items, then (to reduce time) after recording reasons, retender can be issued to the firms that qualified in the capacity verification in the initial OTE/ SDOTE, provided the time span between the initial OTE/ SDOTE and the retender is not more than 6 months. Subsequent retenders, if any, shall be OTE/ SDOTE as applicable.

d) When retendering is decided due to unreasonable rates, negotiation may be held with the firm for supply of the bare minimum urgent/ inescapable requirement, if retendering for the entire quantity is likely to delay the availability of the item(s) jeopardizing the essential operations such as meeting the production targets, maintenance and safety. The balance quantity should, however, be procured expeditiously through retender following the normal tendering process.

### 2.39 Cartel Formation/ Pool Rates

a) Sometimes a group of bidders act in collusion to manipulate the tender process. Cartels normally attempt at manipulating the price and (or) the quantities. Pool/ Cartel formation is against the basic principle of competitive bidding as it defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. In cases where the firms have formed cartel, the offers may be rejected, and the colluding firms shall be issued show-cause notice and their reply examined.

Thereafter, based on the merits of the case, action may be taken as per existing guidelines on penalties issued by MoD/erstwhile OFB/AWEIL. Suitable provision in this regard should be made in the tender documents. Further, actions like reporting to the Competition Commission, Registrar of Companies, MoMSME/NSIC, FICCI, ASSOCHAM, etc., as relevant, should be taken when cartels are formed on case-to-case basis requesting them, inter alia, to take suitable strong action against such bidders. 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. Detailed guidelines issued by the Competition Commission of India may be kept in mind while deliberating on the issue of Cartel formation/Bid Rigging/ Competition in bidding etc.

b) Where cartel/ collusion is suspected but not confirmed, then to break the possible anticompetitive efforts, tender shall specify that bids offering less than 50% of the tendered quantity shall be considered unresponsive. In addition, the tendered quantity may be distributed in the ratio 60:40 or 50:30:20 on the basis of vendor rating of the firms worked out as per the Vendor Registration SOP updated from time to time. Where feasible, the possibility of procuring the item on advertised tender instead of LTE should be explored. Further, the source development efforts for the item should be stepped up.

### 2.40 Placement of Order on more than One Firm in a Tender

#### Appropriation of quantity

If there is an apprehension that L1 may not have capacity to supply entire quantity, it should be mentioned in the RFP that the order may be distributed to L2, L3 and so on for balance quantity at L1 rates. Also, due to strategic reasons or developing more sources and ensuring timely supplies for larger requirements and upon mentioning in advance in RFP document that the tendered quantity may be distributed in the ratio 60:40 or 50:30:20 among L1 and L2 or L1, L2, L3 at L1 rates. In case any of the L2/L3 firms among whom the ordered quantity is distributed, fails to execute the order, then the shortfall quantity may be placed on the firm who among them has successfully executed the PO in the order of ranking, since retendering the shortfall quantity may not be required as TE was issued for full quantity.

## 2.41 Samples

When a contract is to be concluded on the basis of approved sample, the same shall bear the seal(s) and signature(s) of the approving authority(s) as appropriate. Various types of samples like standard sample, tender sample, advance sample, bulk supply sample, quality/ audit sample, reference sample, etc., may be encountered during the procurement process. All such samples shall be drawn, retained, classified and disposed in accordance with the instructions issued.

## 2.42 Entire and Severable Contracts

a) A contract in the sale of goods to be delivered by installments may be either (i) an entire contract or (ii) a severable contract.

### Illustrations

(i) Entire contract: Delivery to commence after 45 days and completion within 3 months @ 20,000 units per month i.e. 31.03.2018 or earlier.

(ii) Severable contract: Delivery date-7410 units by 15.2.2018; 8510 units by 31.03.2018.

b) According to legal advice, in the case of a severable contract, each instalment constitutes a separate contract and extension in delivery period would be necessary for each instalment separately. If stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period being given with reservation of right to liquidated damages the purchaser will not be legally entitled to claim the liquidated damages.

Therefore, in contracts with delivery in instalments (i.e. the severable contracts) purchase officers should watch the delivery position of each instalment against the specified delivery date, and whenever necessary, grant extension in delivery period if there is delay in supplies against the individual instalments or cancel that instalment.

## 2.43 Pre-contract Integrity Pact

Pre-contract Integrity Pact should be signed between the purchaser and the bidder as per provision and format placed at Annexure.

## 2.44 Import Regulation

a) Import is regulated by the Directorate General of Foreign Trade 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.

b) 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.

## 2.45 Ground Rent

If the material supplied by the vendors is rejected at the factory premises, the vendor is required to lift the rejected material within 30 days of issue of rejection I-Note. The OFs have right to recover a charge for the storage space at @1% of the cost of material un-cleared, per week or part thereof, with maximum ceiling of

10% of value of the items. After lapse of 10 weeks, if it is found that firm has not taken any action for lifting of items, the goods may be confiscated and disposed off as per disposal procedure in vogue after sending a notice and giving 30 working days time to the firm. A specific provision should be made in the tender documents to the effect that ground rent be calculated from the date of expiry of the period of removal of item. No ground rent should be charged from Central/State Govt/Central PSUs. When the firm fails to pay the applicable ground rent within the prescribed period, factory is entitled to recover the ground rent due and all incidental expenses from EMD/PSD by respective TPC. The financial power for exemption of Ground Rent shall be as per DFP.

#### 2.46 General Instructions to Bidders

a) Subject to other specific provisions in this Manual, the broad instructions for the prospective bidders are as in following paragraphs.

b) A firm registered with AWEIL Units 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. As regards unregistered firms participating in OTE in two bid system, the capacity verification may be done during technical evaluation before opening of the price bid. This may be through an agency and/ or through physical verification by a duly constituted capacity verification team. For other details of registration of the firms, paragraph 2.26 may be referred.

c) A prospective bidder who requires clarification regarding the contents of the bidding documents shall notify the purchaser in writing, and the purchaser shall respond in writing to the clarifications well ahead of the tender opening date. Copies of the query and clarification by the purchaser shall be sent to all prospective bidders who have received the bidding documents. Last date for asking queries/clarification by the bidder is to be mentioned in the tender documents.

d) Bids should be forwarded by bidders under their original memo /letter pad, inter alia, furnishing the TIN No., GSTIN, Bank Address with NEFT/RTGS account No., IFS Code and the complete postal and e-mail address and contact number of the firm.

e) 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 in such cases but not less than 5 working days after the amendment.

f) A bid shall remain valid for ninety days in case of single bid tender and one hundred eighty days in case of two-bid system, from the date of the opening of the tender, unless otherwise specified. A bid valid for shorter period can be rejected by the purchaser as being nonresponsive, after giving the bidder an opportunity to comply to the tender specified validity period. 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.

g) 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) shall not be considered and returned unopened to the bidder.

h) 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.

i) 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.

j) Enlistment of Indian Agents: if they so require, may enlist Indian agents, who desire to quote directly on behalf of their foreign principals as per amended Rule 152 of GFR 2017 (MoF letter No. F.26/2/2016-PPD dated 25.07.2017) or modified from time to time.

k) One agent cannot represent two OEMs/ Principals or quote on their behalf in a particular tender enquiry.

#### 2.47 Instruction for Purchase Division

a) Subject to other specific provisions of this Manual, the broad instructions for are contained in the following paragraphs.

b) The categorised vendor list shall be reflected on a common COMNET portal. Vendors shall be broadly divided into the following categories: -

- (i) Registered and established vendors for a particular item
- (ii) Established vendors since long but not registered
- (iii) Registered vendors but not yet established
- (iv) Potential vendors neither registered nor established supplier for a particular item as yet
- (v) DRDO/ AHSP/ Collaborator approver/ recommended vendors for new items
- (vi) Banned / Suspended vendors

c) 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 supporting documents, etc. specified in the tender have been furnished; whether the bid documents have been properly signed; and, whether the bids are generally in order.

d) 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.

e) 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, initialled & dated both by the officers opening the tenders and, thereafter, signed & dated by the bidder.

f) Prior to detailed evaluation, the purchaser should determine the substantial responsiveness of each bid with respect to the tender. A substantially responsive bid is the one that conforms to all terms & conditions of the bid documents without material deviations. Deviations from/objections/ reservations to critical provisions like earnest money, performance security, liquidated damages, warranty/ guarantee, applicable

law, taxes & duties, non-submission of documents such as valid agency agreement, etc should be deemed to be material deviations.

g) The evaluation and comparison of responsive bids (where only Indian bidders are participating) shall be done on the prices of the goods offered and other charges such as Packing & Forwarding, Freight and Insurance, AMC, etc., as indicated in the price schedule of the Bid documents but excluding levies, taxes and duties such as GST etc on final product, which are to paid extra as per actual, wherever applicable against documentary evidence.

h) Contract shall be awarded to the successful bidder whose bid has been determined to be (i) substantially responsive (ii) the lowest evaluated bid (iii) technically & financially acceptable, and (iv) successful in type approval/ validation tests (where applicable) done by the purchaser. The purchaser reserves the right to counteroffer price (s) against price (s) quoted by any bidder.

i) No tender condition shall be waived or relaxed after issue of TE as this may result in denial of opportunity to firms that could have met the revised condition had this been reflected in the TE ab-initio. This is particularly relevant in resultant single vendor cases where waiver of essential parameters after issue of TE and receipt of tenders would be prejudicial to the interest of other firms that could have submitted their bids as per the revised parameters but did not do so because of the essential parameters mentioned in the TE.

j) To obviate the possibility of the TE fetching no response, resulting in a single vendor situation or resulting in generation of limited competition, technical specifications may 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.

k) In two bid system technical clarifications may be obtained after opening of technical bids. However, no revision of the financial bids should be permitted after opening of technical bids.

l) Procurement will be processed through e-procurement portal/GeM for cases above the threshold limit, except LPC and cash and carry procurements.

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### TENDER PROCESS

#### 3. Tender Process

##### 3.1 Tendering

- a) Preparation of the Tender Enquiry is the most critical stage in the procurement process. Careful and meticulous preparation of the TE can eliminate subsequent complications and the associated delays, thereby, enhance the efficiency of the procurement process. TE should unambiguously contain all the techno-commercial details of the procurement, and shall include amongst others, clauses clearly bringing out the complete specifications/ scope of requirement, technical & financial evaluation criteria, payment terms, PV formula (if applicable), inspection, delivery schedule & basis, warranty, liquidated damages, earnest money, performance security, arbitration, etc., apart from clear instructions to the bidders on how to submit his bid.
- b) Standard tender documents shall be used as per Annexure. If any special condition (s) is required to be added (including indicating the option that will apply in the tender in respect of clauses of the standard tender document containing multiple options) these shall be indicated in the additional instructions/ conditions of the tender, and the contractor's unqualified acceptance obtained thereof before incorporating the same in the supply order. Additional conditions should not replicate any of the clauses of the general conditions, and wherever the additional conditions are indicated, it should be made clear that the additional condition is in lieu of the specific general condition (to be indicated).

##### 3.2 Publicity of Advertised Tender

- a) Printed Advertisement (in the form of a Tender Notice) in leading newspapers relating to OTE through DAVP/ Indian Trade Journal has been discontinued and replaced with mandatory e-publishing of advertisement on CPP portal, OFB e-procurement portal and GeM (for items available). If any Factory/Unit still feels that the advertisement should be published in newspaper, a request for DAVP should be sent in a signed letter stating that competent authority of Factory has approved publication of newspaper advertisements. In such cases, only window advertisement will be published. All TEs, RFPs, EoI, Notice for pre-Qualification/Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or a to a single party will be uploaded in CPP portal at [www.eprocure.gov.in](http://www.eprocure.gov.in) and/or on OFB e-procurement portal and/or on GeM (for items available).
- b) GTE, in addition to above, may be sent to the selected Indian Embassies abroad as well as to the Foreign Embassies in India requesting them to give wide publicity of the requirement in those countries. They may also be requested to put the tender notice on their web sites. In Embassies and High Commissions where Defence Attachés are posted, the GTE notice may be sent to the Defence Attachés for giving publicity. The selection of the embassies will depend on the possibility of availability of the required stores in such countries. Copies of the GTE may also be sent to known OEMs.

##### 3.3 Notice Inviting Tender

The tender notice for an advertised tender should be carefully drafted. It should contain all essential features in brief to give a clear idea to the prospective bidders about the requirements. Superfluous or irrelevant details should not be incorporated in the tender notice as it will not only increase the cost of the advertisement but may also restrict competition. Tender Notice should normally contain:

- (i) Description and specification of the goods and quantity
- (ii) Period and terms of delivery
- (iii) Cost of the tender/ bidding document

- (iv) Place(s) and timing of sale of tender documents
- (v) Place and deadline for receipt of tenders
- (vi) Place, time & date for opening of tenders
- (vii) Amount & Form of Bid Security/ Earnest Money Deposit
- (viii) Web-address for downloading tender documents
- (ix) Any other important information

### 3.4 Sale of Tender Documents

- a) Tender documents should preferably be sold up to one day prior to date of opening of tenders and should be clearly indicated in the documents. The sale of tender documents against advertised tenders should not be restricted. Records shall be maintained about the number of tender documents issued, list of parties to whom issued and details of the amount received through issue of the tender document.
- b) Complete set of the tender documents should be posted on the web site and prospective bidders shall be permitted to use the document downloaded from the web site. In e-procurement and where tender documents are downloadable, cost of tender documents need not be charged. Such documents must be secured to control/ restrict access as well as avoiding possibility of modification.
- c) Price of the manual tender document should be charged at the rate of Rs. 200/- as stationery cost. MSEs (Micro and Small enterprises) having UAM number shall be exempted from payment of tender fee.
- d) Cost of drawings and specifications will be extra, if required.
- e) In advertised tenders, the NIT and/ or tender documents may also be sent to (i) all suppliers registered for the particular range of items and (ii) to the known OEMs, through post or e-mail, through e-portal.

### 3.5 Despatch of tender documents

Bidding document may be sent to vendors through speed post/registered post/ courier/ email/ fax. When bidding documents are sent to firms through email/ fax, copies of the same should also be sent by registered post.

### 3.6 Format of Tender

The bidders are to furnish their quotations as per the prescribed format and instructions incorporated in the tender documents. Fax quotations shall not be accepted.

### 3.7 Time for submission of bids

- a) Ordinarily, the minimum time allowed for submission of bids in an advertised tender should be three weeks from the date of publication of the tender notice or availability of the bidding document available on e-portal for sale, whichever is later. Where it is contemplated to obtain bids from abroad, the minimum period should be four weeks for both domestic and foreign bidders. For reasons to be recorded and without compromising on transparency and fairness, a reduced time frame for submission of bids can be adopted in case of urgency by VSL TPC.

- b) In LTEs sufficient time, normally 3 weeks, should be allowed for submission of bids. For perishable goods or consumables a reduced time frame may be adopted.
- c) With start of e-proc/GeM and also considering limited participants in STE/LTE cases. VSL TPC/ CFA may decide reduced timeline (to save procurement time) for tender opening date to the minimum possible as per procurement portal or 5 days, however in such cases it should be ensured that tender has been delivered to the concerned bidder. Further, time for participation for OTE may be decided as minimum 14 days.

### 3.8 Amendments/ Modifications to Tenders

The bidder, after submitting its tender is permitted to submit alterations/ modifications to its tender so long such alterations/ modifications are received duly sealed and marked like original tender, up to the original/modified tender closing date & time. Any amendment/ modification received after the prescribed original/modified tender closing date & time, should not to be considered.

### 3.9 Extension of Tender Opening Date

- a) Sometimes, situations may necessitate modification of the tender documents already issued (in LTEs) or already put on sale (in OTEs). Also, after receiving the documents, a bidder may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is 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 LTE. In case of OTE, the copies of such amendment /modification are to be simultaneously dispatched, free of cost, by registered/speed post/ courier/ e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents put in the web site.
- b) When the amendment/ modification changes the requirement significantly and (or) when there is not much time left for the bidders to respond to such amendments, and prepare revised tender, the time and date of submission of tenders are also to be extended suitably but not less than five working days, 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.
- c) There may also be situation where adequate response has not been received in a tender, in such cases, following to be adhered to:
  - (i) In case of less than three bids, only one extension of Tender Opening Date (ToD) not more than 6 days may be allowed in LTEs/OTEs with the approval of CFA.
  - (ii) If there are 3 bids or more, then no extension of ToD should be given in LTEs/OTEs.
  - (iii) ToD may not be extended on vendor's request.
  - (iv) In anticipation of further extension of ToD beyond (i) & (ii) above if any, it may be extended with the approval of Controlling Officer with duly recording the reasons.
- d) Even in those cases where extension of tender opening date become necessary because of the amendment to the tender (e.g. situations where adequate response have not been received) the Heads of Department, for reasons to be recorded, may extend the date of opening of the tender as specified in the tender but such extension should not exceed the total delivery period envisaged in the tender. Such

extensions and amendments should be published in the same journals/ newspapers in which the original tender was published and must be given publicity through the website if the original tender was hosted on the website.

### 3.10 Prequalification in advertised tenders

- a) Prequalification in advertised tenders is a process to select competent suppliers having technical and financial capability commensurate with the requirements of the particular procurement (Project/ supply of goods/ hiring of services). The prerequisites of the prequalification process are (i) transparency (ii) fairness and (iii) maintenance of competition.
- b) The purpose of prequalification procedure is to attract the participation of reputed & capable firms with proven track record and ensure that only capable firms are left in the fray. Therefore, it should be ensured that the prequalification criteria are exhaustive, yet specific, and there is fair & adequate competition. It should be ensured that the prequalification criteria are clearly stipulated in unambiguous terms in the bid documents.
- c) Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their
  - (i) Experience and past performance on similar contracts for last 03 years (2 years for newly incorporated company).
  - (ii) Capabilities with respect to personnel, equipment and manufacturing facilities.
  - (iii) Financial standing through latest IT returns, Annual Report (Balance Sheet and Profit & Loss Account) of last 3 years (2 years for newly incorporated company).
  - (iv) Relaxation on financial and/or experience criteria shall be provided to MSE/Startup in terms with guidelines issued by MoMSME/MoF (as per annexure) from time to time.
- d) The quantity, delivery and value of the requirement shall also be kept in view while fixing the prequalification criteria. No bidder should be denied prequalification for reasons unrelated to its capability and resources to successfully perform the contract.

### 3.11 Pre-bid Conference

In case of turn-key contract, contract of special nature, complex procurement, etc., a suitable provision may be kept in the tender enquiry document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specification and other allied technical/ evaluation/ commercial details of the item projected in the tender enquiry document. The date, time and place of pre-bid conference should be indicated in the tender enquiry document for information of the interested bidders. This date should be sufficiently ahead of tender opening date.

### 3.12 Receipt and Custody of Tenders (physical tender cases)

- a) Receipt and custody of tenders shall be done in a transparent manner. To ensure that the bids are received by the purchaser in time, a tender box (s) 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.
- b) 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.

### 3.13 Reference to Brands in TE

Broad-based specifications, use of industry standards in the specification, etc., will promote healthy competition in procurement. Therefore, a specific brand or catalogue number of a brand, etc. should not be referred to in the tender. However, in some unavoidable situations if it is essential to buy an item of a specific brand name, then OTE/STE (PAC) shall be issued for participation by authorized distributors/dealers for that brand with no restriction of zone of participating firm subject to its authorization to participate and providing requisite guarantee/warranty and other technical support by OEM.

### 3.14 Opening of Tenders under Single Bid System (physical tender cases)

- a) All tenders received on time in sealed envelope should be opened in the presence of authorized representatives of the bidders 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 bidders concerned.
- b) The tender opening official/ committee should announce the salient features of the tenders like description and specifications 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) The official (s) opening the tenders shall encircle and initial with date & time alterations/ erasing/ cutting, if any found in the opened tenders, to authenticate that these were present in the tenders at the time of opening.
- e) The tender opening official(s) should prepare the list of representatives who attended the tender opening and obtain the signatures of the representatives on the list. The list should contain the name of the representative and the name & address of the firm he is representing. Authority letters furnished by the representatives should be attached with this list. This list should be signed by both the tender opening official(s) with date & time and handed over to the procurement officer and acknowledgement obtained for the same.
- f) The tender opening official (s) shall also prepare an on-the-spot report containing the names of the bidders (serial number wise) salient features of the tenders, as read out during public opening of tenders and affix their signature on the report with date and time. This, along with the tenders that have been opened, shall be handed over to the procurement officer.

### 3.15 Opening of Tenders under Two Bid System (physical tender cases)

The procedure laid down in the preceding paragraph should be followed mutatis mutandis under two bids system also but only the technical bids should be opened in the first instance. Financial bids of only technically acceptable bidders should be opened after evaluation of the technical bids and approval of the TEC report by the CFA. The financial bids of bidders whose bids are not found technically acceptable shall be returned back to the bidders unopened.

*(Note: The e-procurement/ GeM have the in-built facility to process tender cases in two-bid system, hence all such cases to be processed as two bid system.)*

### 3.16 Late Tenders and Unsolicited Offers (physical tender cases)

- a) Tenders or modifications to tender received after the specified time for submission shall be treated as 'Late' tenders and shall be marked as "Late tender". Similar action should be taken in late quotations are received through post, i.e. the officer should mark these tenders as "Late tender" and file them. Late tenders shall not be opened but shall be kept sealed in their original envelopes and returned back to the firm.
- b) Unsolicited offers shall be summarily rejected. Such quotations may be entered, in red ink, in the Comparative Statement of Tenders below all the regular tenders. Receipt of late tenders, if any, (which shall not be opened) shall also be entered in the Comparative Statement of Tenders below all the regular tenders in red ink.
- c) Unsolicited offers of GeM cases shall be summarily rejected by incorporating the reason of rejection.

### 3.17 Force Majeure

- a) Force majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence, and which is not foreseeable. Such events may include, but are not restricted to, acts of the purchaser either in its sovereign or contractual capacity, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, acts/ actions of state authorities or any other circumstances beyond the control of the parties. If there is delay in performance or other failures by the supplier to perform its obligation under its contract due to an event of Force Majeure occurring after conclusion of the contract, then the supplier shall not be held responsible for such delays/ failures.
- b) If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof within 21 days of occurrence of such event (commencement as well as cessation of the force majeure event). Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of force majeure for a period exceeding 60 days, either party may at its option terminate the contract without any financial repercussion on either side.
- c) In contracts on foreign vendors, the 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.
- d) There may also be a force majeure situation affecting only the purchaser. In such a situation the purchaser is to take up with the supplier on similar lines as above for further necessary action.

NOTE: With the advent of e-Procurement through portals such as e-Proc/GeM, many activities during tendering process has been subsumed or controlled electronically such as publication of tender, sale of tender document, dispatch of tender document, manual opening of tender, preparation of Spot CST by tender opening team, late receipt of tender etc. However, there may be a situation which warrant manual processing of tender therefore the guidelines enumerated in this chapter at suitable paras shall stand applicable/modified to that extent.

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### INSPECTION AND DELIVERY

#### 4. Inspection and Delivery

##### 4.1 Inspection

- a) Before accepting the contracted goods, it must be ensured that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. Accordingly, the tender document and the consequent contract shall unambiguously specify complete details of inspection/ tests to be carried out and the stages/ manner for carrying out the same. The details of the Inspecting Authority shall also be incorporated in the tender documents.
- b) The stages and modes of inspection will depend on the nature of the goods, total value of the contract, location of the supplier, location of the user, etc. The commonly followed mode of inspection is given in the following paragraphs. Generally, stage inspection should not be insisted upon unless the item is of critical nature.

##### 4.2 Inspection at Supplier's Premises

- a) Normally inspection at supplier's premises may either be Stage Inspection, if the inspection is conducted during the manufacturing process or Pre-despatch Inspection, if the inspection is conducted on the finished products prior to despatch from supplier's premises. In import procurements with Inspection at the supplier's premises, the TE shall mention the scope of such inspection, the likely number of such inspections, the composition of the inspection team and duration of inspections.
- b) The stores shall be inspected in accordance with the provisions of the contract. Where inspection at the supplier's premises is specified, the seller will give the buyer sufficient advance notice (in writing) of the date on which the goods will be ready for inspection. The seller will also provide the buyer's 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. The buyer shall not be liable for payment for any rejected supplies or any costs of inspection thereof. 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. The decision of the inspector regarding mode, method, rejection or acceptance of the specified items/ entire batch/ lot will be final.
- d) The buyer reserves the right to inspect the stores on receipt and discrepancy or defects found shall be reported to the Seller within a period specified in the contract and the seller shall rectify the same within a period specified in the contract on receiving the intimation.

##### 4.3 Acceptance of Stores against Supplier's Inspection Report and Warranty

- a) Often in case of stores to be imported from abroad, pre-despatch inspection of goods at supplier's premises involves considerable expenditure to the purchaser. In such a situation, if feasible, the purchaser may substitute the pre-despatch inspection by the purchaser's inspector with the manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the

nature and cost of the goods ordered, the reliability of the supplier, etc. shall be kept in view and appropriate decision taken. For checking the reliability and background of the supplier, if necessary, the purchase organization may also request the Indian Embassy located in that country for a report on the technical/ financial competence of the firm. Further, reliable publications/internet sources that provide authentic technical & financial data and details of the manufacturing companies located in those countries, such publications may also be relied upon for this purpose.

- b) Acceptance of stores against the supplier's Inspection Report, if necessary, can also be resorted to in domestic procurements if the supplier is reliable.

#### 4.4 Inspection at Consignee's Premises

In this mode the inspection is done on receipt of goods at the purchaser's site before accepting the same. Sometimes Joint Receipt Inspection at the consignee's premise, by the representatives of supplier and the buyer, may be considered necessary, in such cases the requirement shall be clearly specified in the tender/ contract. Depending on the nature of the store and its value, generally a Joint Receipt Inspection (JRI) may be necessary if stores have been provisionally accepted (i) against supplier's Inspection Report & warranty or (ii) Pre-despatch Inspection.

#### 4.5 Inspection after Installation & Commissioning at Site

This method is adopted to check the performance and output of the equipment, machinery, sub-assembly, etc., after the same is installed & commissioned at site or assembled/ integrated with the main assembly.

#### 4.6 Inspection Procedure

The inspection procedure shall be as per the provisions contained in the contract. After satisfactory inspection/ tests, the acceptable goods shall be stamped, labelled, marked or sealed, according to the circumstances in such a way as to make subsequent identification of accepted lots easy for the consignee/ user. Inspection Notes shall be issued in the prescribed format for the goods accepted. For goods, not meeting the contract requirements the rejection Inspection Notes shall be issued immediately.

#### 4.7 Inspection of Goods offered at the fag-end/ on the last date of the Contract Delivery Period at Firm's Premises

Where feasible the supply order while mentioning the delivery period may also indicate the time required for inspection, so as to facilitate the supplier offering stores for inspection well in time. In cases where the supplier offers stores for inspection during the last few days of the contract delivery period or on the last day of the contract delivery period at firm's premises, the stores shall be deemed to have been supplied within the delivery period as per supply order i.e no DP extension shall be required. In such cases, the inspection should be completed and I-Note may be issued at the earliest and vendor may be allowed to deliver the materials maximum within 30 days beyond the issue of I-Note. Delivery period extension will be required for the supplies beyond 30 days of issue of I-Note and/or full/ partial rejection of stores. As regards application of LD, refer the provision at paragraph 4.20 (b) & 4.22 of this manual. This provision may be included in the RFP/TE.

#### 4.8 Purchaser's Right of Rejection

On many occasions, the stores received at factory's premises are in damaged condition or having deviations from the I-Note. Under such circumstances, Purchaser has the right to reject the goods on receipt at factory premises during final inspection after recording the reasons, although the goods have already been inspected and cleared at pre-despatch stage by the purchaser's inspector. However, such rejection should be strictly within the contractual terms & conditions and no new condition should be adopted while rejecting the goods during final inspection.

#### 4.9 Acceptance of Goods vis-à-vis Warranty Provisions

Goods accepted by the purchaser at initial inspection and in final inspection in terms of the contract shall in no way dilute purchaser's right to reject the same later, if found deficient in terms of the warranty clause of the contract.

#### 4.10 Joint Investigation against Complaints relating to Quality of Goods

In case a written complaint is received from the supplier disputing rejection of goods by the purchaser's inspecting officer, the same should be jointly investigated by an authorized representative of the purchase organization, who is well conversant with the goods and an authorized representative of the supplier. The joint inspection report shall be signed by both the members, and the matter processed accordingly for further necessary action.

#### 4.11 Outside Testing Laboratories

Sometimes it becomes necessary to conduct type test, acceptance test or special test at outside laboratories when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. In such cases the list of reputed testing labs whose reports are acceptable to the purchaser shall be indicated in the tender/ contract.

#### 4.12 Delivery Period

- a) Delivery as per delivery-schedule stipulated in the contract is crucial for timely positioning of stores required for production. Further, maintaining sanctity of the delivery-schedule specified in the contract will also avoid holding unnecessary inventories. To maintain the sanctity of the delivery-schedule in the contract, in the first instance firms should be given realistic delivery-schedules duly taking into account their capacity to produce the store, which will eliminate repeated DP extensions that would otherwise become necessary. Therefore, procurement proposals should be initiated well in time and closely monitored after taking into consideration the provisioning period as defined in the paragraph 2.7, and the earliest time-frame when the store will be required for production. Further, in cases where a firm holds more than one supply order for the same item, it shall be ensured that deliveries against orders concluded at lower rates are made/ accounted for first.
- b) The period for delivery of the ordered stores and completion of any allied service (s) thereof (like installation and commissioning of the equipment, etc.) should be properly specified in the contract duly indicating definite dates, and the same shall be deemed to be the essence of the contract. Expressions such as 'immediate', 'ex-stock', "as early as possible", 'off the shelf', etc. shall not be used to indicate contractual delivery period. Staggered deliveries (if relevant) should be clearly indicated in the tender/ contract, duly specifying unambiguously the date from which the delivery schedule will be reckoned (normally the date of signing of the contract). Where relevant, the contract should specify the date by

which the stores shall be offered for inspection. 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 inspector certifies in writing that the stores have been inspected and approved by him.

- c) 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 shall become payable to the seller (if permissible under the contract), only when all terms & conditions relevant to that delivery as per the provisions of the contracts have been completed.
- d) Vendor may be allowed to deliver the materials maximum within 30 days beyond the issue of I-Note if material is offered for inspection at the fag end / last date of delivery period (in case of inspection at firm's premises). Delivery period extension will be required for the supplies beyond 30 days of issue of I-Note and/or full / partial rejection of stores. As regards application of LD, refer the provision at paragraph 4.20 (b) & 4.22 of this manual. This provision may be included in the RFP/TE.

#### 4.13 Terms of Delivery

The terms of delivery is decided depending on the nature of goods to be purchased, transportation facility available, location of the user, location of the prospective suppliers etc. Terms of delivery inter alia determine the delivery point of the ordered goods from where the purchaser is to receive/ collect the goods. Terms of delivery have direct bearing on the quoted prices.

#### 4.14 Relationship between the Terms of Delivery and the Date of Delivery

- a) Delivery dates in respect of contracts incorporating standard and commonly used terms of delivery shall be deemed to be as follows (where mode is through airlift "Bill of Lading" would imply "Airway Bill"):

Terms of Delivery	Date of Delivery
Ex-Works	The date the supplier delivers the goods to the purchaser at its (supplier's) factory/ premises.
FOR, Station of Despatch (FOR - Free on Rail)	The date on which the goods are placed by the supplier on rail with clear RR (Rail Receipt).
FOR, Destination	The date on which the ordered goods reach the destination 'purchaser's premise' specified in the contract.
CIP, Destination (CIP - Carriage and Insurance paid)	The date on which the delivery is made at the destination mentioned in the contract.
Local Delivery at Site	The date on which the delivery is made at the consignee's site mentioned in the contract.
FAS, port of shipment (FAS - Free Alongside Ship)	The date on which the supplier delivers the goods alongside the vessel at the specified port of shipment. This date is reflected in the Bill of Lading.
FOB, port of shipment (FOB - Free on Board)	The date on which the supplier delivers the goods on vessel's board at the specified port of shipment. This date is reflected in the Bill of Lading.
CIF, port of destination (CIF - Cost, Insurance and Freight)	The date on which the goods arrived at the destination port.

- b) The FAS, FOB & CIF terms of delivery are applicable for goods that are directly imported from foreign countries against the subject contract, and not imported already by the supplier under its own

arrangement. The CIP terms of delivery may be applied both for domestic as well as imported supplies. The terms of delivery should be clearly indicated in the tender/ contract.

- c) The contract (in imports) shall also clearly state that expenditure such as the cost of packing, internal transportation, fees of forwarding agents, warehousing charges, port trust, dock/harbour dues and all other expenses, as may be incurred for the purpose up to the point of delivery of the stores as per the terms of delivery, shall be to the seller's account.

#### 4.15 INCOTERMS

Unless otherwise specifically agreed to by the purchaser and the supplier 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. INCOTERMS are the official rules for worldwide interpretation about the duties, obligations, etc. of the buyer and the seller for transportation of the goods from seller's country to buyer's country. INCOTERMS are recognized by the United Nations Commission on International Trade Law (UNCITRAL) as the global standard for such interpretation.

#### 4.16 Air Consignment

As per the extant directive of the Government, airlifting of any goods from abroad will be done through the cheapest Airlines available having permission to operate in India. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed. In case the consignments are dispatched by vendors at their cost, the selection of Airline etc. will be at their discretion.

#### 4.17 Insurance

- a) Wherever necessary, the goods supplied under the contract, shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination.
- b) Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rs. 5 Cr. Where delivery of imported goods is required by the purchaser on CIF/ CIP basis, the supplier shall arrange and pay for marine/ air insurance, making the purchaser as the beneficiary. Where delivery is on FOB/ FAS basis, the marine/ air insurance shall be the responsibility of the purchaser.

#### 4.18 Failure to Deliver within the Contract DP

When the supplies do not materialize by the delivery date (even after 30 days of issue of I-Note as stipulated in para 4.12.d), the purchaser has the options given below:

- i) Extending the delivery date with imposition of liquidated damages without concurrence of Finance.
- ii) Re-fixing the delivery date without LD with concurrence of Finance, by clearly recording reasons for arriving at the decision.

- iii) Forfeit the performance security and cancelling the contract and repurchasing the non-supplied quantity with concurrence of Finance.
- iv) Impose other available penalties under the contract as per penal provision in vogue with concurrence of Finance.

#### 4.19 Re-fixation of Delivery Period

- a) Re-fixation of delivery period means arriving at a fresh delivery period by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible. Re-fixation of delivery period should be done with the concurrence of Finance.
- b) Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to cater for the lost period, without imposing any penalty to the supplier with concurrence of Finance.
  - i) Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time.
  - ii) Where extension in delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier.
  - iii) Cases where the buyer controls the entire production.
  - iv) where the input (part or full) is to be provided by the buyer and there has been a delay in the part of the buyer in doing so.
- c) The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

#### 4.20 Extension of Delivery Period

- a) If the supplier is unable to complete the supply within the stipulated delivery period (including 30 days after issue of I-Note, in case of inspection at firm's premises), the supplier is required to request for extension of delivery period. If the contractual delivery schedule is decided to be extended then the same may be done by issuing an amendment to the contract with suitable denial clauses and right to impose liquidated damages for delay. The liquidated damages shall apply from the contracted delivery period. The amendment letter should mention, inter alia that, in addition to imposition of liquidated damages, no extra price or additional cost for any reason whatsoever beyond the contractual cost will be paid to the supplier for the delayed supply; at the same time, if for any reason, whatsoever the cost of the goods to be supplied/services to be performed by the supplier decreases that benefit shall be passed on to the purchaser. Supplier's unconditional acceptance of the amendment by a specified date is to be watched and if the supplier does not agree to accept the amendment letter, further action is to be taken against the supplier in terms of the contract. CFA for granting delivery period extension, shall be as per DFP. When there is no downward trend in prices, and DP extension with LD is applicable, then financial consultation shall not be required. However, for DP extension without LD, financial consultation shall be required. If the last day of delivery period falls on a holiday, DP should automatically be extended to include next working day.
- b) When there is downward trend in prices, advantage of the same should be taken while considering the request for extension of the delivery period in consultation with finance as given below: -
  - i) Where the total cost differential on account of lower trend observed is less than the Liquidated Damages leviable (if the delay is attributable to the supplier), the delivery period may be extended with application of Liquidated Damages.

- ii) If the total cost differential on account of lower trend is more than the Liquidated Damage leviable (if the delay is attributable to the supplier), the lower price should be counter offered to the firm. If the firm accepts the counter offer, the delivery period shall be extended at lower price without Liquidated Damages. If the firm does not accept the lower price, the contract may be cancelled/short closed and appropriate action be taken to re-purchase the stores on priority keeping in view the requirement.
- c) While carrying out assessment of downward trend, if any, the provisions of para 5.23 and 5.24 shall be considered.

#### 4.21 Risk and Expense Purchase

- a) Risk and expense purchase clause may be included in the TE and the contract, if considered necessary. Risk and Expense purchase clause is provided to safe guard against the eventuality of the supplier failing to honour the contract obligations. While initiating risk purchase at the cost & expense of the supplier, the purchaser must satisfy himself that the supplier has failed to deliver and has been given adequate & proper notice to discharge his obligations. When risk purchase clause is invoked the defaulting supplier is liable to pay the additional amount incurred by the factory/unit, if any, in procuring the said contracted goods/ services through a fresh contract (i.e. additional cost if any 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.
- b) 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. In proprietary/ single known source items where it would not be possible to procure the item from any other alternate source, the contract should necessarily have other forms of safe guards like Performance Bank Guarantee instead of the risk purchase clause. Similarly, in case of foreign contracts also, risk and expense clause is generally not feasible. The other remedies available to the purchaser in the absence of the Risk and Expense Clause are:
  - (i) Deduct the quantitative cost of discrepancy from any of the outstanding payments of the supplier.
  - (ii) Avoid issue of further TEs to the firm till resolution of the discrepancy.
  - (iii) Obtain suitable Performance Bank Guarantee
  - (iv) In import contracts, finally approach the Government of the supplier's country through the Ministry of Defence, if needed.

#### 4.22 Performance Notice

There can be situations where supply/ services have not been completed within the period stipulated in the contract due to the negligence/ fault of the supplier, and the supplier has not made any request for extension of delivery period, and the contracted goods/ services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a Performance Notice (also known as Notice-cum-Extension Letter) may be issued to the supplier by suitably extending the delivery date and by imposing liquidated damages with denial clauses etc. Supplier's unconditional acceptance of the Performance Notice by a specified date is to be watched and if the supplier does not agree to accept the same, further action is to be taken against the supplier in terms of the contract.

#### 4.23 Despatch of Goods after Expiry of Delivery Period

- a) As per the contract terms and subject to provision of 4.7 the supplier is not to supply the goods when there is no valid delivery period. In case the supplier makes any supply after expiry of delivery period, the purchaser/consignee can reject the supplies and inform the supplier accordingly; the purchaser shall also have the right to cancel the contract (w.r.t. unsupplied goods) in terms of the contract. If, however, the purchaser/ consignee requires the goods (which has been supplied after expiry of the delivery period), the purchaser may extend the delivery period with the usual LD & denial clauses and there is no downward trends and accept the goods.
- b) Denial clause refers to the clause in the tender/ contract denying increase in price, taxes, duties, etc., taking place during the extended DP, when DP extension is granted.

#### 4.24 Packaging and Despatch for Imports

The stores are required to be packaged to withstand normal conditions of transportation (shipment and short-term storage during transit and in the country of destination in imports). The following conditions will apply with reference to packaging (i) seller shall be responsible for any loss or damage or expenses incurred by the purchaser because of inappropriate packages (ii) 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 (iii) seller shall also comply with the detailed packaging and despatch instructions, if specified in the contract (iv) responsibility of sending despatch documents will rest with the seller. Detailed shipping instructions for imports issued from time to time by the buyer will apply.

#### 4.25 Warranty Claims for Imports

- a) All stores to be supplied should be free from all defects/ faults in material, workmanship and manufacture. They should be of the highest grade; and consistent with the established/ 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 specified number of days from 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. The Warranty shall be applicable for use and storage of stores in Indian climatic conditions.
- b) 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 by new unit. Warranty claims, if any, shall be raised within the time frame prescribed for it in the contract.

#### 4.26 Short Deliveries

There can be occasions when excess/ short supplies are made by the suppliers due to various reasons. 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 per cent) of the original value of the contract.

#### 4.27 Correspondence with the Supplier after Breach of Contract

The purchaser (or its authorized representative) is not to enter into correspondence after expiry of the delivery date stipulated in the contract, because such a correspondence will make the contract alive. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies etc. from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract alive and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract.

#### 4.28 Cancellation of Contract for Default

- a) The purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part:
  - i) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted by the Purchaser; or
  - ii) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted by the purchaser.
- b) In the event the purchaser terminates the contract in whole or in part; the purchaser may take recourse to the following action:
  - i) Performance Security may be forfeited;
  - ii) The purchaser may procure, upon such terms and in such manner as it deems appropriate, stores similar to those undelivered, and the supplier shall be liable for all available actions against it in terms of the contract.
  - iii) Penalty as per existing guidelines on penalties issued by MoD/erstwhile OFB.
- c) However, the supplier shall continue to perform the contract to the extent not terminated. Before cancelling the contract and taking further action, if considered necessary legal advice may be obtained.

#### 4.29 Termination of Contract for Insolvency

If the supplier becomes bankrupt or otherwise insolvent, the purchaser may, at any time, terminate the contract, by giving written notice to the supplier, without compensation to the supplier provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

#### 4.30 Termination of Contract for Convenience

After placement of contract, there may be some unforeseen situation compelling the purchaser to cancel the contract. In such a case, the purchaser is to send a suitable notice to the supplier for cancellation of the contract, in whole or in part, for its (purchaser's) convenience, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the purchase

organization may have to suitably compensate the supplier on mutually agreed terms for terminating the contract. Suitable provisions to this effect are to be incorporated in the tender document as well as in the resultant contract. However, a rate contract / long term umbrella agreements should not have any provision for compensation after first year execution of contract.

#### 4.31 Signing of Contracts/ Placing of Supply Orders

After the TPC decisions, a sanction letter / supply order, as the case may be should be issued / signed immediately. It must be ensured that the contract/ supply order is as per the terms & conditions approved and the rates finally negotiated and accepted by the TPC are correctly reflected, to this extent the contract/ supply order shall be got vetted by the Finance before issue. 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.

#### 4.32 Amendment to Contract

All amendments to contracts, which have financial implications, including short closing and delivery period extensions without imposition of liquidated damages, should be invariably approved by the CFA as per DFP, and also in consultation with the internal Finance, 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 shall 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. When there is no downward trend in prices, and DP extension with LD is applicable, then CFA shall approve the same without financial consultation. For other DP extension cases, financial consultation is necessary.

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## COMMERCIAL ASPECTS

### 5. Commercial Aspects

#### 5.1 Price and Payment Terms

- a) The elements of price included in the quotation of a bidder depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules & regulations about taxes, duties, etc., in the seller's & the buyer's countries/states.
- b) In case of indigenous goods, the bidder shall be asked to indicate the basic price of the finished material and other elements of cost distinctly and separately. In case of imported goods, in addition to similar elements of price as above (other than Excise Duty and taxes), there may be elements of Custom Duty, Import Duty, Landing & Clearing charges, etc. Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation & commissioning, operator's, training etc. It is, therefore, necessary that, to enable the bidders to frame their quotations properly in a meaningful manner, the tender documents clearly specify the desired terms of delivery and, also the duties & responsibilities to be performed by the supplier in addition to supply of goods. Where the price has several components like price of the goods, costs for installation & commission, operator's training etc. The bidders should be asked to furnish the cost break-up indicating the applicable prices for each such component (as specified and desired in the tender enquiry document) along with the overall price.

#### 5.2 Currency

The tender documents shall specify the currency (currencies) in which the tenders are to be priced. As a general rule (i) domestic bidders are to quote and accept their payment in Indian currency (ii) costs of imported goods that are directly imported against the contract may be quoted in foreign currency (currencies) and paid in the currency as the case may be (iii) in imported goods also the portion of the allied work/ services that are to be undertaken in India (like installation & commissioning) are to be quoted and paid in Indian currency (iv) authorised Indian dealers of foreign vendors shall quote in Indian currency.

#### 5.3 Earnest Money Deposit

- a) To safe guard against a bidder's with drawing or altering its bids 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 except Micro and Small Enterprises (MSEs) having UAM number as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department (including OFs) or Startups as recognised by Department of Industrial Policy and Promotion (DIPP) now Department for Promotion of Industry and Internal Trade (DPIIT), irrespective of the store for which they are registered. EMD is also not required from Central PSUs. The bidders should be asked to furnish EMD along with their bids. Amount of EMD should ordinarily range between two percent to five percent of the estimated value of the goods to be procured. The amount of EMD should be determined accordingly by the Factories (VSL TPC) and indicated in the bidding documents. EMD shall be obtained in favour of the ED/ Head of Department. The EMD may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the commercial banks or payment online in an acceptable form, safe guarding the purchaser's interest in all respects. The EMD is normally valid for a period off forty-five days beyond the final bid validity period.

- b) EMDs 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.
- c) In place of a EMD, the Factories/Units may require Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract or they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bid document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit Bids for contracts with the entity that invited the Bids.
- d) EMD need not be taken for tenders with an estimated value (including all taxes) of less than Rs. 5lakhs.
- e) EMD need not be taken in PAC/SKS/STE cases, since there is no other alternative source available and factories have no other option rather than to purchase from that single firm to meet production target. For such cases exemption will be granted by higher CFA, however for cases falling under level-I relevant TEC/CFA can grant exemption.

#### 5.4 Performance Security Deposit

- a) To ensure due performance of the contract, Performance Security Deposit shall be obtained from the successful bidder(s) awarded the contract. Performance Security Deposit shall be obtained from every successful bidder irrespective of his registration status etc. PSD is, however, not necessary for contracts valuing up to Rs. 10 lakhs but mandatory cases valuing above Rs. 10 lakhs.
- b) The Performance Security Deposit should be for an amount equal to 5% of the total contract value (inclusive all).
- c) PSD is initially to be given by the supplier for original supply order quantity without option clause quantity. PSD for the original supply order quantity may be returned after 60 days of fulfilment of all contractual obligations of the original supply order quantity including warranty period (if any). Regarding Option Clause, PSD amount to be taken on Option Clause quantity only. PSD for Option Clause quantity may be returned after 60 days of fulfilment of all contractual obligations of the Option Clause quantity including warranty period (if any).
- d) Performance Security Deposit may be furnished in the form of Account Payee Demand Draft/Banker Cheque, Fixed Deposit Receipt from a Commercial Bank, Bank Guarantee from a Commercial Bank or online payment in an acceptable form safeguarding the purchaser's interest in all respects. It should be drawn in favour of ED. A model format of Bank Guarantee for obtaining Performance Security Deposit is provided at Annexure. Indemnity Bonds may be accepted as Performance Security Deposit from Central PSUs. At the request of the supplier, (i) EMD or (ii) pending bills of the contractor or (iii) valid PSD where all contractual obligation as mentioned in Para 5.4 (c) are over, if any, against other contracts, can be adjusted against the Performance Security Deposit demanded. Any interest accrued in FDR submitted as PSD by the vendors shall remain in their account.
- e) In foreign procurement, Performance Security Deposit shall be obtained from the supplier in the form of Bank Guarantee, in the prescribed format, issued by an Indian Public Sector Bank or a Private Sector bank authorized to conduct government business or any international bank for which counter guarantee is given by Indian Bank acceptable to the purchaser.
- f) Performance Security Deposit submitted by suppliers in permitted form shall be kept in the custody of the HOD of the Factory/Unit or an officer authorised by him in writing. The bank guarantee, etc., after verification/ confirmation of genuineness by the relevant bank should be entered in a

suitable register/online in PPC package or any other package used by them and a copy of the bank guaranty, etc., shall be endorsed to the F&A of the factory for cross check. The validity of the bank guarantee, etc., shall be monitored closely by the factory.

g) Performance Security is to be furnished by a specified date (generally 30 days after notification of the award of contract) and it should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations if any. There shall be no warranty period for raw materials and certain service contracts like AMC, Labour contract and any additional items notified by the factory. It is necessary for suppliers to submit the Performance Security Deposit as per the terms & conditions of the Supply Order. Receipt of the Performance Security Deposit should be intimated to the Finance department and QC. After the date specified for submission of PSD, QC shall take up inspection of the store only on receipt of the intimation about receipt of the requisite Performance Security Deposit. Care should be taken to ensure that whenever DP extension/ re-fixation, etc. are granted, the Performance Security Deposit is got suitably re-validated so that it is valid for 60 days beyond the new date of completion of all contractual obligations.

h) Performance Security can be submitted by the vendor for the entire contract at a time or in part proportionate to the part quantity to be supplied. Thus, before completion of Supply Order, full PSD (put together part PSDs) should be submitted. However, the Performance Security Deposit would qualify for being returned only when all the contractual obligations against the original contract quantity are fulfilled. In case of Option Clause, full PSD for Option Clause quantity may be submitted.

i) Submission of the Performance Security Deposit within the specified date shall be insisted upon, unless otherwise, within the specified date allowed for submission of Performance Security Deposit, the firm completes all its contractual obligations qualifying for return of the Performance Security Deposit had it been submitted. In such situations, if requested by the supplier, the Performance Security Deposit may also be adjusted against the current bills.

j) If a firm fail to submit (within the specified date) the requisite Performance Security Deposit as per the contract conditions, then he shall be treated as an unreliable firm and shall be governed as per existing guidelines on penalties issued by MoD.

k) As a rule, PSD should not be waived except in the most unavoidable circumstances. At the specific request made by the supplier. PSD may be waived, in unavoidable circumstances, by the respective CFAs within their financial powers as per the DFP after taking into account the reliability and financial standing of the firm on the basis of their registration with any Body specified by MSME (like MSEs having UAM number registered with NSIC, DIC, KVIC etc.) or in the case of reliable national/ international OEMs. PSD Deposit can be waived in PAC/ SKS procurements if the firms are unwilling to provide the same, since there is no other alternate source available. However, in such cases of SKS procurement, the factory shall necessarily step up efforts to develop more sources.

l) PSD shall be forfeited and credited in the factories account in the event of a breach of contract by the supplier, in terms of the relevant contract.

m) PSD is taken for the due performance of an individual contract and becomes returnable (without

interest except FDR) to the contractor immediately on his performing/ completing the contract in all respects and after 60 days of completion of all such obligations under the contract, including warranty obligations if any. In severable contracts, since each instalment is a separate contract, the related PSD (if separately provided for each instalment) would qualify for being returned as and when all the contractual obligations against each of the separate contract are fulfilled. In an entire contract with instalment deliveries, since it is a single contract, the PSD would qualify for being returned only when all the contractual obligations against the entire contract are fulfilled.

### 5.5 Firm (Fixed) Price vis-à-vis Variable Price

a) Contracts, with delivery period less than 12 months, should be concluded on firm and fixed price by inviting tenders accordingly. However, contracts may be entered with variable price, even if the delivery period is less than 12 months, when the price trend of the store is volatile. Where it is decided to conclude the contract with variable price, an appropriate clause incorporating, inter alia, suitable price variation formula should also be provided in the tender enquiry documents. In the price variation clause, the price agreed upon should specify the base level (i.e. 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. A formula for calculation of price variation that has taken place between the base level and the scheduled delivery date should be included in the price variation clause. The variations are to be calculated by using indices published by Governments/ Chamber of Commerce/ reputed markets periodically. Suitable weights are to be assigned to the applicable elements (i.e. fixed overheads & profits, material(s) and labour) in the price variation formula. If the production of the goods needs more than one raw material, then the input cost of material may be further sub-divided for different categories of material, for which cost indices are published. The price variation formula is also to stipulate a minimum percentage of variation of the contract price above which the price variation will be admissible (e.g., where the resultant increase is lower than, say, 2% of the contract price, no price adjustment will be made in favour of the supplier).

b) The Price Variation clause shall specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates. The Price Variation clause shall provide for a ceiling on the price variations. 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.

c) 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. No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. 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 the purchaser.

d) 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.

e) Where contracts are for supply of equipment, goods, etc., imported (subject to Customs Duty and foreign exchange fluctuations) and/or locally manufactured (subject to GST and other duties and taxes), the percentage and element of duties & 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 & taxes, foreign exchange rates, and the documents to be produced in support of claims for such variations should also be stipulated in the contract.

- f) The Price Variation clause should also contain the mode and terms of payment of the price variation admissible. F&A should vet the price variation clauses/ exchange rate variation clauses.

An illustrative price variation clause and examples for using the same have been provided at Annexure.

## 5.6 Exchange Rate Variation

In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated and incorporated in the Tender. In that clause, the bidders shall be asked to indicate the import content(s) and the currency (currencies) used for calculating the value of import content(s) in their total quoted price, which (i.e. the total quoted price) will be in Indian Rupees. The bidders may be asked to indicate the Base Exchange Rate for each such foreign currency used for converting the FE content into Indian Rupees and the extent of foreign exchange rate variation risk they are willing to bear. To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the last date of submission of commercial bid. The variation may be allowed between the above base date and the date of remittance to the foreign principal/ mid-point of manufacture of the foreign component/..... (Purchaser shall decide an appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange of SBI, Parliament Street Branch, New Delhi on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus 2.5 percent. Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case delivery period is extended due to default of the vendor, any increase in exchange rate will not be admissible and exchange rate on the last date of original DP shall be considered. In case there is decrease in exchange rate during extended DP, lower exchange rate will be considered. The purchaser may formulate an appropriate ERV clause in consultation with the Finance. The following documents should be furnished by the supplier for claiming ERV:

- (i) A bill of ERV claim enclosing working sheet
- (ii) Banker's Certificate/debit advice detailing FE paid, date of remittance and exchange rate
- (iii) Copies of import order placed on supplier
- (iv) Invoice of supplier for the relevant import order.

## 5.7 Modes of Payment

a) Payments to domestic suppliers are usually made by NEFT/cheque/demand draft drawn on a government treasury or branch of the Reserve Bank of India or State Bank of India transacting government business. Such payment can also be made to the supplier's bank, if the bills are endorsed in favour of the bank with a pre-receipt embossed on the bills with the words, "Received payment" and both the endorsement and pre-receipt are authenticated by the supplier. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the bank.

b) In international trade, buyer and seller being located in different countries may not know each other well. Further, the two countries would have different legal systems, currencies and trade and exchange regulations. As a result of these uncertainties, the buyer and the seller require assurance regarding the delivery of goods and payments, respectively. The seller would want to be assured that (i) he will be paid as soon as the goods are shipped (ii) he will be paid by the buyer or his bank as per contractual obligations (iii) he will receive the payments in his own country and currency of the contract. The buyer would want to ensure that (i) payment is made for the goods only after they are shipped by the seller (ii) the seller will ship the goods ordered for and deliver them in time. These concerns are addressed by adopting letter of creditor direct debit transfer as the mode of payment in imports.

- c) Payments to foreign suppliers are ordinarily made by Letters of Credit (LC) opened by the State Bank of India or any other scheduled/ authorized Bank. While opening the Letters of Credit the purchaser should follow the provision of Uniform Customs and Practices for Documentary Credit (UCPDC). Apart from Letter of Credit mode, payment can also be made to the seller through Direct Bank Transfer for which buyer has to ensure that payment is released only after the receipt of prescribed documents.
- d) In procurement through global tendering, especially in high value contracts, to have uniform payment clauses in case domestic suppliers desire payment through Letter of Credit, then depending on the merits of the case, the same can be agreed to.
- e) The specific office of the Factory/Unit, which would be responsible for making payment, should be clearly mentioned in the tender and the contract.

## 5.8 Standard Payment Terms to Domestic Vendors

- a) Payment terms are important since it has a direct influence on the vendors cost of finance that plays a significant role in deciding the cost of the store or service being procured. Normally, 90% of the contract amount shall be paid against provisional receipt of the item at the consignee's premises along with inspection note and other relevant documents. Balance 10% shall be paid after the stores have been properly checked and accounted for. Alternatively, where considered necessary (such as raw materials), 95% of the contract amount can be paid against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 5% can be paid after the stores have been properly checked and accounted for.
- b) Some suppliers prefer 100% payment on delivery and acceptance of material at factory premises, which can be accepted. In such cases, payment is to be made within 30 days of receipt of materials at the factory premises along with requisite/relevant documents from suppliers.
- c) In many cases, suppliers request for allowing part supply and the corresponding part payment. Such requests may be considered based on the merits of the case, duly safeguarding factories interests.
- d) Generally, the preferred terms of delivery are CIP/ destination or delivery at site, so that the supplier remains responsible for safe arrival of the ordered stores at the site. Therefore, unless otherwise decided Ex-works or FOR/ despatching station should be avoided.
- e) In some exceptional procurement of COTS items with extremely high commercial demand (i.e. a situation of seller's market), suppliers may be unwilling to deliver/ supply the item unless Spot Payment is made. In such exceptional cases Spot Payment can be agreed to by the relevant TPC after duly recording the reasons for taking the decision.
- f) Trade Receivable Discounting System (TReDS) is a digital platform to help MSMEs to get their trade receivables financed at a competitive rate through an auction mechanism where multiple financiers can bid on invoices accepted by Buyers. TReDS is governed by the Reserve Bank of India under the Payment and Settlement Systems Act, 2017 and the Factoring Regulations Act, 2011. Under the TReDS initiative, at present, RBI has given licenses to three participants (A.TREDS Ltd, RXIL, M1Xchange). Factories/Units should be registered in TReDS online platform with any one of the Licencee to facilitate payments to MSMEs through TReDS.

## 5.9 Payment Terms for Foreign Vendors

- a) The normal mode of payment to foreign vendors is through irrevocable Letters of Credit or Direct

Bank Transfer (*DBT*). It should be ensured that the payment is released in accordance with the provisions of the contract and subject to the deductions of such amounts as the supplier may be liable to pay under the agreed terms of the contract.

b) Where the payment is to be made through Letter of Credit, it shall be opened within forty-five days of receipt of notification of readiness of goods for delivery from the foreign vendor. The vendor shall 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 tender. 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 tender should not be varied, particularly in Global Tender Enquiry and Limited Tender Enquiry cases.

c) It should also be mentioned in the tender 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.

d) In case of extension of delivery period, both LC and delivery period should be extended and the LC charges borne by the supplier, if the extension is due to reasons attributable to the supplier.

e) Payment through Direct Bank Transfer (*DBT*) would be the normal mode for payments below USD100,000, and such payments should be made within 30 days of receipt of clear payment documents (Bill of Lading, AWB, Proof of shipment, etc.) or as specified in the contract. In cases the supplier is not agreeable to *DBT* and insists on payment through LC, then payment can be made through Letter of Credit subject to the supplier bearing extra costs, if any, involved.

f) In case installation, commissioning, etc., are relevant in the procurement and the supplier is responsible for the same, then 80 - 90% of FOB/ FAS price may be paid against invoice, inspection certificate (where applicable), shipping documents etc., and balance within 21-30 days of successful installation & commissioning at the consignee's premises and acceptance by the consignee.

#### 5.10 Stage/ Part Payments

Stage/ part payments may become relevant in high value tenders/ contracts when the (i) throughput time for manufacture of the stores being procured or (ii) delivery period is very long. Such instances of procurement involving stage/ part payment would be rare. Stage/ part payments, if unavoidable, shall be made only against satisfactory completion of clearly identifiable physical milestones and the quantum of the stage/ part payment should be commensurate with the quantum of work completed at up to the milestone, else it would become another form of advance which is not permissible. If stage/ part payments are proposed to be made on completion of milestones, it should be clearly mentioned upfront in the TE with the approval of CFA of relevant TPC and the concurrence of the Fin Div of the factory, wherever required as per DFP. The percentage payable and the milestones on satisfactory completion of which the stage payments will become admissible shall be unambiguously disclosed in the tender to ensure transparency, fair & equitable treatment vendors. In stage/ part payments adequate safeguard should be taken against the risk of the contractor not completing the balance uncompleted work. This risk can be covered through a suitable Bank Guarantee from banks authorised to carryout government business. Where 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 stage payments.

### 5.11 Advance Payment to Suppliers

- a) Generally, no advance to 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 maintenance contract, development/ 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, up to 15%, is given as advance at the time of placement of the order. Such advance payments will be made only against the supplier furnishing of a bank guarantee (for 110 % of the advance given) from a public sector bank or private sector bank duly authorized by RBI to handle Government transactions. If it is decided to provide advance then the same shall be indicated in the tender to ensure fair and equitable treatment of vendors.
- b) Cases of advance payment over and above the limits prescribed above would require the approval of the AWEIL Board.
- c) Where advance payment is made in contracts with price variation, there should be a further stipulation that no price variations shall be admissible on such portion of the price, after the date of payment of the advance.

### 5.12 Bank Guarantees

- a) Bank Guarantee is a one-way contract made by the bank on behalf of its client (supplier) and the beneficiary (purchaser) guarantying to secure compliance of the supplier to a contract between the client (supplier) and the beneficiary (purchaser). The salient features of the guarantee are (i) absolute in character and independent of the underlying contract (ii) imply obligation to unconditional and without demur payment against a valid claim (iii) for specified amount and period (iv) issued against matching counter-guarantee from the applicant (supplier).
- b) The format of the Bank Guarantee should be provided by the purchaser and should adequately cover the risks. The essential elements of PBG are (i) amount (ii) address of the beneficiary, applicant and the bank (iii) validity date (iv) contract number and date.
- c) Bank Guarantee can only be invoked after fulfilling the following conditions (i) claim/ intimation should reach the issuing Bank on or before the expiry date (ii) claim/ intimation should be in strict conformity with the terms of the Guarantee (iii) Issuing Bank cannot enquire into merits of the claimant or take views on any dispute between the (supplier) applicant and the (purchaser) beneficiary (iv) compliance of terms of the guarantee, payments are to be effected immediately and unconditionally.
- d) The various Bank Guarantees obtained from suppliers (Performance Bank Guarantee, Advance Bank Guarantee, Warranty Bond, Earnest Money Deposit, etc.) shall be necessarily got confirmed/ verified for its genuineness, standing of the issuing bank, etc.
- e) In domestic procurement Bank Guarantee issued by any of the Commercial Bank can be accepted. The genuineness of the Bank Guarantee shall be got confirmed from the issuing bank.
- f) In foreign procurement, Bank Guarantee shall be obtained from the supplier, in the prescribed format, issued by an Indian Public Sector Bank or a Private Sector bank authorized to conduct government business or any international bank for which counter guarantee is given by Indian Bank acceptable to the purchaser.

### 5.13 Direct Bank Transfer

- a) The DBT mode of payment is a direct transfer of funds to the account of the supplier by the purchaser's bank, on being so authorized by the purchaser. DBT shows high degree of trust between parties. Buyer ensures that the payment is released only after receipt of the requisite documents provided in the contract and confirmation from the Supplier that one set of the documents has been sent to the port consignee immediately after dispatch of the stores.
- b) In comparison with payments through Letters of Credit, payment through DBT has the following advantages (i) payment is released only after receipt of goods (ii) payment is made only after full satisfaction to the quality, quantity etc. (iii) it is cost- effective as compared with LCs.

### 5.14 Letter of Credit

- a) Two banks are involved for payment to the supplier by Letter of Credit – purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by State Bank of India, along with all relevant details including authenticated copy of the contract. Based on the same, the purchaser's bank opens letter of credit on behalf of the purchaser for transacting payment to the supplier through the supplier's bank. Care should be taken to ensure that the payment terms and the documents to be produced for receiving payments through letter of credit are identical with those shown in the contract. Generally, irrevocable letter of credit is opened so that the supplier is fully assured of its payment on fulfilling its obligations in terms of the contract.
- b) Following points should be checked by granting extension of LC (i) extension of delivery date in the contract and corresponding amendment in LC for latest date of shipment (ii) Performance Bank Guarantee (PBG) extension (iii) Onus of charges for LC extension. In case, the delivery date of the contract is extended to take care of delay in supply, for which supplier is responsible, the letter of credit is also to be extended, but the expense incurred for such extension (of letter of credit) shall be borne by the supplier.
- c) LC can be extended with the concurrence of the internal Finance and the approval of the CFA if the value of the procurement requires consultation with Finance as per the DFP.

### 5.15 Liquidated Damages

- a) Compensation of loss on account of late delivery where the 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:
- (i) Whatever the quantum of the loss sustained, the claim cannot exceed the sum stipulated in the contract.
  - (ii) Only reasonable sum can be calculated as damages, which in given situation may be less than the sum stipulated.
  - (iii) What is a reasonable sum would depend on facts?
  - (iv) 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.
  - (v) 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.

b) There should be a suitable provision in the terms & conditions of the contract for claiming liquidated damages of appropriate amount from the supplier to take care of delays in supplies and (or) performance that are attributable to the supplier. Such recovery through liquidated damages should be without prejudice to the other remedies available to the purchaser under the terms of the contract. The standard Liquidated Damages percentage 0.5% per week (or part thereof) of the prices of any stores/service which the contract or has failed to deliver within the delivery period specified in the contract. There should also be an appropriate maximum limit of such deduction, to be shown as a specific percentage of the contract value of delayed supplies/ services and incorporated in the contract terms. The ceiling of LD is 10%. Liquidated Damages are to be calculated on the basic cost (excluding taxes & duties) as per MoD O.M No. 8(8)/O2P/2018 dated 06.08.2018.

c) When 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.

d) Tenders floated with staggered delivery schedule shall be incorporated with LD clause on staggered delivery period.

#### 5.16 E-Payment

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/ CMP mechanism instead of payment through cheques.

#### 5.17 Estimating the Cost of the Procurement

a) Correct estimation of cost is an important step for (i) determining the level of the CFA (ii) establishing the reasonability of the offers received from suppliers and (iii) determining the availability of funds. Cost estimation should, therefore, be done in a realistic, objective, comprehensive and professional manner after duly considering the prevailing market rates, last purchase price, economic indices for raw material/ labour, other input costs, the intrinsic value, etc. Cost shall be estimated by the user section while initiating the procurement proposal. The all inclusive estimated cost (including the tendered quantity and the option quantity specified in the tender) of the procurement shall be the basis for determining the CFA as per the DFP.

b) Various methods available for estimating the cost are (i) on the basis of the Last Purchase Price duly neutralised for inflationary/ deflationary trends, (ii) Professional Valuation, (iii) obtaining budgetary quotations from prospective suppliers, (iv) market survey, (v) estimation from first principles etc. Estimation can also be done by R&E or Planning Sections of the factory or through a Technical Committee formed for that purpose. These methods are not mutually exclusive. Any of the method or combination of methods or any other appropriate method may be applied for estimation. The method adopted for estimation of cost should be clearly recorded while seeking the approval of the CFA. The estimated cost, if worked out in foreign currency, should be converted to Rupee, and shown both in terms of the foreign currency as well as Rupee (indicating the exchange rate adopted and date & source i.e SBI, Parliament Street Branch, New Delhi/RBI) while seeking CFA's approval. In evaluation of price bids exchange rate adopted shall be as on the date of last date of submission of bids.

#### 5.18 Evaluation of Price Bids

a) Tenders are issued on the basis of the estimated cost (on approval of relevant VSL TPC for the estimated cost). On opening of the price bids, the actual financial implication of the procurement

shall be worked out based on price quoted by the lowest responsive bidder, and the CFA accordingly determined for further processing of the proposals.

b) The evaluation criteria for the financial bids (as also the technical bid) should be unambiguously indicated in the tender. The bids received shall be ranked as per provisions contained in para 5.19 of this manual, which shall be unambiguously indicated in the TE.

c) Where relevant, it may be specified in the tender that along with their quote, firms shall also offer their rates for comprehensive AMC for a specified period (say 5 years) after expiry of warranty/guarantee. In such cases the evaluation criteria contained in the tender should clearly specify whether or not the AMC cost will be considered in the CST to decide the L1 vendor.

#### 5.19 Basis for Cost Comparison

a) The basis for comparison of cost shall be as follows:

- i) When the competition is only among the Indian suppliers, the F.O.R Prices at destination, less levies, taxes and duties levied by Central / State / Local Governments such as GST etc. on final product, should be the basis for ranking of quotations.
- ii) When the competition is only among foreign suppliers, the landed price (CIF) at the destination (designated port) shall form the basis for ranking the bids.
- iii) When the competition is amongst domestic and foreign suppliers, the CIF cost quoted by the foreign suppliers plus custom duty and other duties / levies such as anti-dumping duty which cannot be claimed as input tax credit, shall be the basis for comparison with the basic cost offered by the domestic suppliers, after offloading the GST etc. and other local taxes and levies, if any.

b) Offers of foreign suppliers are compared with the offers of domestic suppliers on the basis of the CIF cost of foreign supplier. However, difficulties in comparing the offers arise when the foreign supplier indicates only the FOB/ FCA cost. There is no standard formula for arriving at the CIF cost in such cases, and it will not be appropriate to add a notional additional cost as a percentage of FOB/ FCA cost to arrive at the CIF cost. To avoid such a situation, it should be clearly mentioned in the tender that quote on CIF basis is essential to enable evaluation of the offers of foreign vendors. Similarly, the domestic vendors should also clearly indicate in their offer separately the basic cost, GST etc. and other local taxes & levies (if any) to enable a proper evaluation of their offer, providing only an all-inclusive rate will make the offer invalid.

#### 5.20 Comparative Statement of Tenders

a) The procurement section shall compile the offers in the form of a Comparative Statement of Tenders. The quotes in foreign currencies should be converted into Indian Rupees and indicated in the CST. The exchange rate may be obtained from SBI exchange rate of Parliament Street Branch, New Delhi/RBI on the last date of submission of bids. 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. Last purchase price, wherever available, should be indicated in the CST for a fair comparison of the offered prices. However, for GeM cases CST shall be as per CST report generated from GeM portal. HOS PV and F&A should sign the CST.

b) 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 L1 offer. However, it would be the TPC only which will finally determine the lowest acceptable offer (L1 offer).

## 5.21 Negotiations

Negotiations should generally be avoided. When multiple vendors participate competitively in a tender, the contract should be concluded with the L1 vendors without any requirement for price negotiations. However, in exceptional circumstances where valid logical reasons exist, then negotiations, if inescapable, may be held only with the L1. Such exceptional situations include (i) procurement of proprietary items, (ii) items with limited sources of supply (iii) items where there is suspicion of cartel formation and (iv) price quoted is considered as unreasonably high with reference to the estimated price. In each case the TPC shall record its assessment regarding the reasonableness of the price offered by the L1 bidder and the need for negotiation or otherwise along with detailed justification. In PAC/ SKS/ STE / RST procurements where there is lack of competition since there is only one source, negotiations may be held after carrying out detailed cost/ price analysis. In cases where a decision is taken to re-tender due to high prices quoted, but the requirements are urgent, negotiations may be under taken with L1 bidder(s) for the supply of a bare minimum quantity.

## 5.22 Bench Marking

a) Before scheduled negotiation (wherever negotiation is considered necessary), the TPC shall estimate the reasonable rate or benchmark rate to judge acceptability of the L1 offer. The approach to be adopted for assessing reasonability in different contingencies is given below.

b) 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. The reasonableness of the prices may be established by taking into account (i) the competition observed from the response of the trade to the enquiry, (ii) last purchase price, (iii) estimated value as given in the indent, (iv) database maintained on costs based on the past contracts entered into, (v) market price, (vi) wherever available the changes in the indices of various raw materials, electricity, whole sale price index, and statutory changes in wages, rates etc. The reasonableness of price may also be examined by resorting to cost analysis when there is a wide variance over the last paid price not explained by corresponding changes in indices. In imports the indices for inflation/ price of industrial products, exchange rate variation, etc., relevant to the country of origin may also be considered to assess the reasonable price.

## 5.23 Last Purchase Price

a) LPP is one of the important factors in deciding price reasonableness. However, following needs to be considered while comparing the quoted rates with the LPP:

- i) The last purchase price pertains to the latest contract of similar magnitude as well as scope and is not more than three years old. LPP of more than three years old may not offer a realistic basis for comparison. However, if recent rates are not available for use as LPP, then the LPP more than 3 years old may also be used by factoring in the annual escalation. Appropriate rate of escalation shall be arrived at after studying the movement of relevant indices representing the inputs for manufacturing the item. 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.
- ii) Factors like basket price/ bulk discount offered should be taken in to account while using LPP as a benchmark.
- iii) Where the price indicated in the LPP is subject to price variation then the updated price as computed in terms of the price variation clause may be considered.
- iv) Factors like items supplied against LPP being of current production or ex-stock supply need to be taken into account. Similarly, market conditions, downward price trends and other factors like re-starting production lines due to obsolescence, etc., may also have to be considered.

- v) In imported stores the comparison of the last purchase prices should be made with the net CIF value in foreign currency only.
  - vi) In SDOTE, new suppliers at times quote low price (*entry price*) to gain entry. On the other hand, while establishing production of new items; suppliers are likely to incur additional expenditure towards developing tools, fixtures & gauges, process, training, etc., which will result in the initial cost being higher than that of an established supplier. In addition, when the item is being made for the first time the estimates itself may vary substantially from the actual. In view of these factors the rates in an SDOTE may not correctly reflect the cost of an item. Therefore, the SDOTE rates, being un-established, need not necessarily be considered for bench marking the rates achieved in LTE, the relevant TPC may take an appropriate decision.
  - vii) DRDO and Production Agencies may be associated while assessing the reasonability of prices in complex and high value procurement cases.
- b) In addition to the parameters enumerated above, in case of imports the following shall also be considered:
- i) The price fixation procedure/ methodology prevailing in the country of the vendor.
  - ii) 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.
  - iii) 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.

#### 5.24 Indices for Assessing Price Movements

- a) Indices of indigenous items can be accessed from the website of Ministry of Industry [www.eaindustry.nic.in](http://www.eaindustry.nic.in). Metals and other minerals may be accessed on [www.mmr.online.com](http://www.mmr.online.com). Other useful websites are [www.tradintelligence.com](http://www.tradintelligence.com) and [www.cmie.com](http://www.cmie.com). The RBI monthly bulletin, Economic survey and its appendix contain statistical tables that are useful for assessing the market trends. The World Economic Outlook – a monthly report from IMF and European Commission provide data on economic trends like inflation, wages, etc., of different countries. LME (London Metal Exchange) gives price trends of non-ferrous metals.
- b) The business and commercial newspapers are another source of inputs for assessing price movements. The monthly report of CMIE (*Centre for Monitoring Indian Economy*) and the PROWESS Package of CMIE give updates on performance of listed Indian companies.
- c) Some of the abovementioned data sources are priced or require a subscription. The factories can subscribe to these data sources to enable effective examination of the procurement proposal.
- d) Analysis of Financial Statements of the supplier can also provide necessary information for assessing the reasonableness of price quoted. The allocation of overheads should be in line with the established principles of costing. Assessment should also 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.
- e) Reputed expert agencies can also be approached for market intelligence, forecasting trends and best practices. Similarly, Public Sector Banks, particularly SBI, may be consulted before firming up major payments involving LC, Performance Bank Guarantee, reputation of foreign banks etc.
- f) Assessing reasonableness of price is an arduous and critical task, especially where complete price data is not available or in case of overseas purchases. However, it is important to place on record the efforts made for arriving at the acceptable price and taking the procurement decision.

## 5.25 Deduction of Income Tax etc. at Source from Payments to Suppliers

This will be done as per the existing law in force during the currency of the contract. Other taxes, if any, will be paid/reimbursed on production of documentary evidence.

## 5.26 Payment of Air Freight Charges

Goods that are required to be air lifted are to be despatched through any of the cheapest Airline. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to the Airline as applicable in Rupees.

## 5.27 Documents 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 indicated in the annexure. The supply order or copy of supply order issued to the supplier should be received back (for offline SOs) before release of last/ final payment.

## 5.28 Refund from Supplier

Sometimes, the suppliers, after claiming and receiving reimbursements for Sales Tax, Excise Duty, Custom Duty etc. from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties & taxes paid by it and receives the permissible refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that supplier). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds, if any, from the supplier.

## 5.29 Verification of Bank Guarantees

Bank Guarantees submitted by the bidders/suppliers as EMD/Performance Security Deposit, etc. need to be immediately verified from the issuing Bank before acceptance. If Bank Guarantees issued by foreign banks are received in import cases, they shall be got confirmed by the SBI immediately.

## 5.30 Safe Custody/ Monitoring of EMDs and PSDs

Suitable mechanism for safe custody/ monitoring of EMDs, Performance Securities and other Instruments should be evolved and implemented by each factory/unit. The factories/ units shall also make appropriate institutional arrangements for taking necessary action, timely, for extension/ encashment/ refund of EMDs and Performance Securities. Monitoring should include monthly reviews of all Bank Guarantees and other instruments expiring after 3 months, along with a parallel review of the progress of the corresponding contracts. Extension of Bank Guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period.

## 5.31 Duties & Taxes on Domestic Goods

- a) The duties & taxes i.e. GST etc. levied on domestic goods by the Government vary from product to product. As a general policy, the statutory variations in such duties & taxes shall be allowed during the period from the last date of submission of bids to the date of acceptance of the tender (i.e. placement of contract) and during the original/ re-fixed /extended delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the prices of the goods on account of such statutory variations.
- b) In the tender conditions, the bidder(s), shall necessarily indicate the prices alongwith the break-

up details of taxes and duties, even if these are nil. In the absence of any indication to this effect by the bidders, the bids shall be treated as invalid. Sometimes, bidders mention in their bids that the quotation includes current rates of taxes & duties as applicable and statutory variations, if any at the time of supply will be applicable. This condition can be accepted. However, correctness of the taxes & duties quoted by a bidder as applicable during that period is to be verified while considering its tender. Also, only statutory variations, and no other type of variations are allowed.

### 5.32 Custom Duty on Imported Goods

- a) In imported stores, the bidders shall specify separately the total amount of custom duty included in the quoted price duly indicating the break-up details of basic, additional and special custom duty. The bidders shall indicate correctly the rate of custom duty applicable for the goods in question and the corresponding Indian Customs Tariff Number. Where customs duty is payable, the contract should stipulate the quantum of duty payable in unambiguous terms. Customs duty exemption, if any, notified by the Government of India shall be availed.
- b) If the contracted stores are entitled to any drawback of customs duty in respect of the store or the raw materials involved in its manufacture, then the price to be charged by the seller should be the net price after the deduction of all the entitled custom duty drawbacks.

### 5.33 Duties & Taxes on Raw Materials

The purchaser is not liable to any claim from the supplier on account of fresh imposition and/ or increase (including statutory increase) of GST etc. on raw materials and/ or components used directly in the manufacture of the contracted goods taking place during the pendency of the contract, unless such liability is specifically agreed to in terms of the contract.

### 5.34 Procurement 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, LD clause, integrity pact etc. However, provisions of this Manual shall apply in respect of those aspects that are not covered by such contracts/agreements.

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## RATE CONTRACTS AND LONG-TERM AGREEMENTS / CONTRACTS

### 6. Rate Contracts and Long-Term Agreements/ Contracts

#### 6.1 Items Suitable for RC

Items satisfying any one of following parameters may be considered for concluding a RC (i) available in the market ex-shelf or otherwise as per Requirement of several users including OFs (ii) required by several users on recurring basis and having clear specifications (ii) that are fastmoving with short shelf life or storage constraints (iii) expected to have only marginal price fluctuation (if not stable prices) during the currency of the RC or price fluctuation may be captured through standard/ Govt price indices available on the web (iv) that take long gestation period to manufacture and for which there is only one source for manufacturing. RC can be concluded for direct/ indirect material including the allied services.

#### 6.2 RC Definition

A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of the specified goods (and allied services if any) at specified price and terms & conditions (as incorporated in the rate contract) during the currency of the contract. No quantity is mentioned nor is any minimum off-take guaranteed in a Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier. The firm and (or) the purchaser is/ are entitled to withdraw/ cancel the Rate Contract by serving an appropriate notice on each other (not less than 30 days). However, once a supply order is placed on the supplier for supply of a definite quantity as per the terms of the rate contract during its validity, the supply order becomes a valid & binding contract and the supplier is bound to supply the ordered quantity.

#### 6.3 Rate Contracts

- a) No Rate Contract should be concluded for items which are available with GeM.
- b) AWEIL HQ may, where feasible, conclude RCs through OTE on a 2- bids system for stores of standard type that are identified as common user items and are needed on recurring basis by various units of AWEIL. RCs can be finalized through LTE with PSUs in respect of items which are known to be manufactured only by them. Ordnance factories may procure these items, as Direct Demanding Officer, under the RC concluded by AWEIL. The AWEIL, on a case-to-case basis, may also specifically authorise the Units to conclude RCs under their delegated powers.

c) When RCs are concluded the specifications, prices and other salient details of the rate contracted items shall be posted on the AWEIL intranet, and appropriately updated, for use by all units of AWEIL. The RCs concluded shall be operated to the maximum extent possible.

d) The rate contract may normally be concluded for one year. However, if necessary, shorter or longer period, not exceeding five years, with PV clause if feasible can also be considered after recording the reasons for the decision. 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.

#### 6.4 Competent Financial Authority

Assessed annual value of off-take plus 10% additional off-take, over the period of the rate contract, shall be considered for determining the level of CFA for conclusion of rate contract/ price agreement. The rate contract during its validity can be operated up to a maximum of 10% in excess of the assessed off-take. Any additional quantity is required to be approved by next higher CFA.

#### 6.5 Estimate/ Indent/ Requisition

A rate contract can be concluded based on the assessed annual requirements of various users under the authority processing an RC proposal. The contract concluding authority shall obtain assessed annual requirement from user units of AWEIL duly approved by its HOD along with the detailed specifications.

#### 6.6 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 unregistered firms bidding for Rate Contract for the first time, their technical and financial capabilities must be verified. Past performance of the firm shall be taken into account before finalising the RC.

#### 6.7 Price Negotiation

While concluding RC, it may be required to conduct price negotiations by the relevant TPC to obtain best value for money and confirm clearly the RC terms & conditions to avoid ambiguity and dispute at a later stage.

#### 6.8 Conclusion of a RC

RC concluded will be signed for and on behalf of AWEIL by the authority delegated powers to enter into RC or an officer authorized to sign financial documents on his behalf, after CFA's approval.

#### 6.9 Conclusion of Parallel RC

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 or required by more than one factory in such cases parallel RCs with more than one firm at the same rate may be concluded. In order to ensure the vendor base intact, minimum order quantity may be prescribed in TE.

RC may be concluded area/zone wise at the same rate, if vendors are available for various area/zone. The preferred choice of zone/area may also be asked from the vendors in TE. It is preferred to have more than one vendor in RCs due to multiple locations of AWEIL units. The CFA, based on the merit of each case, may decide the number of firms to be awarded RC for an item so that the DDO will have a wider choice. If the intention is to conclude parallel RC the same shall be indicated in the tender documents. In all such cases, the proposal to distribute the order will be part of the tender, and the bidders other than L1 have to match the L1 price.

#### 6.10 Operating RCs

Orders against a RC concluded by any authority may be placed on the terms & conditions of the RC by all Direct Demanding Officers. To facilitate such operation, a suitable provision should be made in the RCs and the details of the RCs posted on the website.

#### 6.11 Special Conditions Applicable for RC

Some conditions of rate contract differ from the usual conditions applicable for other contracts. Some such important special conditions of rate contract are (i) Earnest Money Deposit (EMD) is not applicable (ii) the Schedule of Requirement may indicate only the anticipated off-take without any commitment (iii) purchaser reserves the right to conclude more than one rate contract for the same item (iv) purchaser as well as the supplier may withdraw the rate contract by serving suitable notice (30 days' notice period) to each other (v) 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) normally the terms of delivery in rate contracts are FOR, since the users are spread all over the country (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) purchaser and the authorized users of the rate contract are entitled to place supply orders up to 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 shall incorporate a Fall Clause.

#### 6.12 Fall Clause

a) 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 Govt or Govt. owned 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 & time and further action taken as per standard procedure.

b) 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. It is, however, necessary that the purchaser 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 up to the mark, appropriate action should be taken against them including deregistering them, suspending business dealing with them, terminating the contract, etc.

#### 6.13 Performance Security

Depending on the assessed overall off-take against a rate contract and, also, assessed number of parallel rate contracts to be issued for an item, the authority concluding the RC (s) may consider obtaining performance security of reasonable amount from the RC holders. RC Firms should submit the Performance Security within 30 days of issue of RC Order, failing which order will be cancelled. In case of cancellation of RC, for the reason of any default, RC can be concluded with the next eligible firms (participated in the TE) for balance quantity at the same L1 rate. 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 by Factories against rate contracts.

#### 6.14 Renewal and Extension

It should be ensured that new rate contracts are made operative immediately after the expiry of the existing rate contracts without any gap. In case, however, it is not possible to conclude new rate contracts due to some 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 downward, if so extension may be made provided the RC holder agrees to reduce the price commensurate with the drop in prices.

#### 6.15 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 purchaser may revoke it at any time during its currency. However, reasonable opportunity shall be given to the supplier to represent against any revocation/ cancellation of RC.

#### 6.16 Payment Terms

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

- i. Up to 95 % on receipt of stores at consignee's premises against despatch documents (provisional receipt and copy number 1 of Inspection Note). However, in case it becomes essential to

despatch stores by train, 90% payment can be released against proof of despatch (copy of the RR and inspection note).

- ii. Balance on accounting of stores by the consignee.
- iii. Payment should be made 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.

#### 6.17 Paying Authority

The AWEIL HQ or their units or any paying authority authorized by AWEIL HQ to make payment for such procurements will be the paying authority.

#### 6.18 Long-term Umbrella Agreements/Contracts

- a) Generally, MTO items are being considered for concluding a Long-term Umbrella Agreements/Contracts. The items considered suitable for Long-term Agreements/Contracts are those (i) which are exclusively manufactured for OFs (ii) required by one or more than factories on recurring basis.
- b) The provisions/guidelines contained in para 2.6 items may also be considered while initiating the Long-term Umbrella Agreements/ Contracts. Prior approval of the Director Operation shall be taken for initiating Long Term procurement proposals.
- d) AWEIL units are authorised to conclude long term contract up to 5 years.
- e) Staggered delivery schedule of the consignee shall be periodically to the suppliers on whom the long-term umbrella agreement/contracts are concluded, in such a way that no point of time neither stock-out situation shall arise nor the inventory level shall exceed that authorised.
- f) Based on the capacity of the firms, the annual requirement and criticality of the stores parallel Long term umbrella agreement/contract may be finalised keeping prices and other terms & conditions same so that factories can operate the contracts depending on economy of transportation charges, landing charges and the availability of capacity with the firms. The condition on parallel contracts should be mentioned in the Tender Enquiry.

#### 6.19 Processing Long-term umbrella agreement/contract by Nodal Factory

- i. Where the consumption will be by more than one unit/factory within AWEIL, Director Operation shall decide a nodal factory for each of the items for which long-term umbrella agreement contract is to be concluded on the basis of maximum consumption of the store. The nodal factory shall be responsible for the tendering process. For Items that are common for factories, the nodal factory shall be decided depending on the approximate value of Annual requirement of all Factories.

- ii. Nodal factory will collect the approximate annual estimated requirement from all the Factories/Units concerned and consolidate the same.
- iii. Nodal Factory will collect the list of established suppliers for the item from all the Factories/Units, and short list suppliers based on the past performance, capacity and registration status.
- iv. In case the number of established suppliers is less than three, one of the concerned factories (other than the nodal factory) shall take action for further source development through OTE. LTE (as decided by VSL TPC) to be issued to the shortlisted suppliers with unambiguous terms & conditions.
- v. LTE (as decided by VSL TPC) to be issued to the short listed suppliers with unambiguous terms & conditions.
- vi. Price shall be obtained with price variation clause, for which an appropriate price variation formula shall be indicated in the tender duly indicating the period for which the long-term contract is being proposed.
- vii. Prices shall be obtained on FOR destination basis (with clear break-up of basic, taxes & duties, transportation etc.) at the concerned consignee factories.
- viii. After opening the tenders, case shall be forwarded to AWEIL HQ / TPC recommendations, in case the case exceeds powers delegated to the factory on the basis of the value of average annual requirement.

#### 6.20 Long-term Product Support

Long-term (up to 5 years) Price Agreement for product support can also be concluded with the OEM by AWEIL/OFs (as per DFP) for the items having firm long-term requirement supported by indents or Roll-on-Plans or Lol or contract or deemed contract. CFA shall however be decided on the basis of the value of average annual requirement (Average annual requirement = Total tendered quantity divided by multi year period). The procedure/ mechanism for long-term product support shall be similar to that for long-term umbrella agreement/ contract. For IT turnkey projects concluded by AWEIL or anodal factory nominated by AWEIL, the period of long-term contracts/agreements up to 7 years may be considered with the prior approval of AWEIL Board.

#### 6.21 Long-term Contract for Transportation in case of Import through ocean/sea route

Long-term (up to 5years) contract for transportation in case of import of general liner cargoes (project cargoes, heavy lift, container, break bulk cargoes etc.) may be concluded by AWEIL or a nodal factory nominated by AWEIL on FOB (Free on Board)/ FAS (Free Alongside Ship) or C&F (Cost & Freight)/ CIF (Cost, Insurance & Freight) basis through ocean / sea route. The Office Memorandum No. SC-18013/1/2013-ASO-I dated 08.09.2015 or amended from time to time on the matter issued by Ministry of Shipping may be referred.

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## Chapter-7 CONTRACTS

### 7. Contracts

#### 7.1 Elementary Law

a) The principles of contract and the meaning of various legal terms used in contracts are contained in the Indian Contract Act (1872) read along with the Sale of Goods Act (1930). The law relating to redressal of disputes is laid down in the Arbitration and Conciliation (Amendment), Act 2015 No. 3 of 2016 published vide the Gazette of India Notification dated 01-01-2016. Some of the salient principles relating to contracts are set out briefly in this chapter.

b) Contracts (supply orders/ purchase orders are also basically contracts) are governed by the same laws which are applicable to contracts between private parties.

#### 7.2 Contract

The proposal *or* bid *or* offer made by the supplier 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.

#### 7.3 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 bidder is the proposal. The invitation to tender and instructions to bidders do not constitute a proposal.

#### 7.4 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.

#### 7.5 Agreements are Contracts

An agreement is a contract enforceable by law when the following are satisfied (i) competency of the Parties, (ii) freedom of consent of both Parties, (iii) lawfulness of consideration, and (iv) lawfulness of object. A defect affecting any of these renders a contract un-enforceable.

#### 7.6 Competency of Parties

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

#### 7.7 Parties to the Contract

Categories of persons and bodies who can be parties to the contract may be broadly sub-divided as (i) Individuals (ii) Partnerships (iii) Limited Companies, and (iv) Corporations other than limited companies.

#### 7.8 Contracts with Individuals

a) 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.

b) In case, a tender is submitted in a business name, and if the business is a concern of an individual, the constitution of the business and the capacity of the individual should appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

### 7.9 Contracts with Partnerships

a) 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.

b) 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.

### 7.10 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.

### 7.11 Corporation other than Limited Companies

Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative 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.

### 7.12 Parties to Contracts entered into by Factories/Units of AWEIL

The parties to the contracts into by factories/units of AWEIL are CMD as the purchaser, acting through the authority signing the contract/ agreement/ purchase order etc., and the supplier named in the contract.

### 7.13 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 when (i) misunderstanding relates to the identity of the other party to the agreement (ii) it relates to the nature or terms of the transactions (iii) it relates to the subject matter of the agreement.

### 7.14 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.

#### 7.15 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.

#### 7.16 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.

#### 7.17 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 for 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.

#### 7.18 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.

#### 7.19 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.

#### 7.20 Communication of Acceptance

A date is invariably fixed in tender forms up to 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 bidder firm should be obtained to keep the offer open for further period or periods.

#### 7.21 Completion of Communication of Acceptance

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 (or electronically forwarded wherever applicable) and the acceptance is, therefore, complete as soon as it is posted/sent. 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/email ID by some authentic fool-proof mode like registered post/email acknowledgement due, etc.

#### 7.22 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 bidders, 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 fulfilment or is in itself in violation of law such contract is void.

#### 7.23 Withdrawal of an Offer or Proposal

A bidder 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 bidder 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 bidder 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 bidder in consideration of his being supplied the subsidiary contract and withdrawal of offer by the bidder before the specified period would entitle the purchaser to forfeit the earnest money.

#### 7.24 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the bidder. A telegraphic revocation of acceptance, which reaches the bidder before the letter of acceptance, will be a valid revocation.

#### 7.25 Signing of Contracts

All AWEIL/Fys contracts are in the name and on CMD. However, the contract, after due approval of the CFA, may be signed by an officer, duly authorized by the HOD in writing. The specimen signature of such 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.

#### 7.26 Acceptance of the 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 & conditions contained in the tender 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.

#### 7.27 Stamping of 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/ merchandise exclusively is exempt from payment of stamp duty.

## 7.28 Types of Contracts

Contracts can be of many types depending on the nature of the item being procured, work to be executed, and services required to be rendered and support to be provided. The provisions contained in this Manual are applicable to the contracts for activities falling in the scope of this Manual. These will apply to all other types of revenue contracts. The general type of contracts could be (i) purchase order for items of stores, spares or equipment (ii) rate contract (iii) price agreement (iv) service contract (v) annual maintenance contract/ comprehensive maintenance contract (vi) consultancy contract (vii) development contract.

## 7.29 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 (i) the terms of contract must be precise and definite, and there must be no room for ambiguity or misconstruction therein (ii) standard forms of contracts should be adopted, wherever possible, and the terms of the contract should be subjected to close prior scrutiny (iii) 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 (iv) 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 (v) 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 (vi) Whenever practicable and advantageous, contracts should be placed only after tenders have been openly invited (vii) 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 (viii) 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 (ix) adequate provision must be made in the contracts for safeguarding government property entrusted to the service provider.

## 7.30 Changes/Amendments to a Concluded Contract

- a) 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.
- b) 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.

## 7.31 Enhancement in Rates

No enhancement in rates/ prices should be made unless the contract specifically provides for it. Such situations may arise in those cases where the contract provides for price variation clauses or the change is due to variation in GST/ Custom Duties/ other Government taxes & levies and the contract provides for payment of these duties on the basis of actual rates, provided the supplies are made during the original/ re-fixed /extended delivery period. Consultation with F&A in such cases would be required if the original contract was concluded with the concurrence of Finance or after increase in value, the contract falls within the delegated powers of the CFA, exercisable with the concurrence of internal Finance.

## 7.32 Vetting of Price Variation Clause

F&A should be consulted for vetting of price variation clauses/ exchange rate variation clauses.

## 7.33 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.

#### 7.34 Liability on account of Taxes & Duties on Grant of Extension of Delivery Period

While granting extension of delivery period, any increase in the taxes and levies, may be payable.

#### 7.35 Consultation with F&A

All amendments to contracts, which have financial implications, including short closing and delivery period extensions without LD should be approved by the CFA as per DFP in consultation with the F&A, where the original contract was concluded with the concurrence of integrated finance. When there is no downward trend in prices, and DP extension with LD is applicable, then CFA can approve the same without financial consultation.

#### 7.36 Termination of a Concluded Contract

A contract may be terminated when (i) the supplier fails to honour any part of the contract including failure to deliver the contracted stores/render services in time (ii) 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 (iii) both parties mutually agree to terminate the contract (iv) 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 (v) any special circumstances, which must be recorded to justify the cancellation or termination of a contract.

#### 7.37 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.

#### 7.38 Conditions of Contract

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

#### 7.39 General Conditions of Contract

In order to facilitate clear understanding of the conditions of contract, a set of general conditions of contract (GCC), generally applicable to all contracts, is formulated and made available to all firms at the time of registration itself. GCC may be published on the website also. The tender format contains reference to the GCC as well as special conditions of the contract (SCC) that the bidders would be required to abide by. The contract must also include the GCC as well as SCC specific to a particular case, as mentioned in the tender. The GCC and SCC of contract are included in the format of the tender as well as the supply order/ contract, respectively.

#### 7.40 Special Conditions of Contract

Special conditions of contract (SCC) 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 Annexure 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 tender as well as the contract/ supply order.

#### 7.41 Applicability of GCC to Supply Orders

The GCC and SCC of contract are applicable to supply orders also. Acceptance of supply order by the firm is essential to make the same as legally valid document.

#### 7.42 Applicability of all Terms and Conditions

The formats of the tender and the contract agreement contain all the general and special conditions of contract. All the general terms & conditions and special conditions should invariably be mentioned in the tender 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. Legal opinion may be sought, if considered necessary, before making any such alteration. However, standard text of clause given in tender and supply order should not be altered without seeking legal opinion.

#### 7.43 Amplification of the Terms and Conditions

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

#### 7.44 Effective Date

Normally, the date of signing of the contract will be the effective date of contract, 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 (i) furnishing of the Performance Bond in the form of PBG by the seller (ii) 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 (iii) receipt of Bank Guarantee for advance payment (iv) date of issue of the End User Certificate. The contract will be valid from the effective date till fulfilment of all contractual obligations by the parties to the contract.

#### 7.45 Arbitration

- a) A tender being issued to Indian private firms should have an arbitration clause as per the Arbitration and Conciliation (Amendment), Act 2015 No. 3 of 2016 published vide the Gazette of India Notification dated 01-01-2016.
- b) All the arbitration should be completed and settled as per timelines given in the Act.
- c) A tender being issued to Indian Private Firms/Vendors should have an arbitration clause stating the following:

“All disputes & differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by CMD AWEIL HQ Kanpur with the mutual consent of the parties. The Arbitrator so appointed shall be a Government Servant / Ex Government Servant (with mutual consent) who had not dealt with matter to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in dispute or differences. The Award of Sole Arbitrator shall be final and binding on the parties.”

#### 7.46 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 in all cases of arbitration.

#### 7.47 Settlement of Disputes

Considering the legal complications, cost involved in litigation and difficulties in enforcing legal awards, all efforts have to be made to settle disputes with overseas contractors through negotiations, especially in small value contracts. The sole-arbitration clauses as laid down in the general conditions of

contract may not be accepted by foreign firms. Where necessary, as an alternative, provision may be made in the contract for arbitration by three Arbitrators, one each nominated by the purchaser and the supplier; and the third, who should not normally be a native of either India or the contractor's country to be chosen by these two Arbitrators. In case of disagreement between the two Arbitrators, the third Arbitrator may be left to be nominated by the Chairman of International Chamber of Commerce, Paris or similar prima facie neutral and reputed institutions.

#### 7.48 Buy-back Offer

When procurements are to replace an existing old item (s) with a new item(s), a suitable clause should be incorporated in the tender so that 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 tender. Suitable provision should also be made in the TE to enable the purchaser either to trade or not to trade the old item (s) while purchasing the new one(s).

#### 7.49 Fall Clause

In cases where contracts have to be concluded with the firms, whose rate contract with any 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.

#### 7.50 Penalties

All contracts whether with domestic or foreign vendors will have provision for Suspension or Banning or debarment. The existing guidelines issued by MoD vide I.D No. 31013/1/2016-D(Vig) Vol.II dated 21.11.2016 & 30.12.2016 (or revised time to time) and MOF guidelines no. F.1/20/2018-PPD dated 2.11.2021 regarding "penalties in business dealing with entities", "Guidelines on Debarment of firms from Bidding" respectively and the suitable procedure (SOP) for levy of financial penalties and/or suspension/banning of business dealings with entities promulgated by DDP/DOO/AWEIL should be followed. Action may be taken by the Head of Department after issuing a show cause notice to the firm(s) and after due consideration of all relevant facts and circumstances of the case, an appropriate decision may be taken. The reasons for the decision should be duly recorded in detail. If the Head of Department is of the view that the gravity of misconduct justifies penal action involved more than one Factory/Unit, then intimation shall be forwarded to other factories/units of AWEIL for their information and suitable similar action, if they feel it necessary.

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## PROCUREMENT OF CONSULTANCY

### 8. Procurement of Consultancy

#### 8.1 Requirement for Engaging Consultants

The requirement for engaging external experts/ consultants may arise due to (i) absence of required in-house expertise (ii) need for high quality services (iii) need for economy/efficiency. External professionals, consultancy firms or consultants may be engaged as consultant for a specific job that is well defined in terms of (i) scope & content (ii) time frame for completion. The CFA for engaging consultants is provided in the DFP as amended from time-to-time. The provisions contained in GFR 2017 (or amended from time to time) in conjunction with “Manual on Policies and Procedure on Employment of Consultants” brought out by the Ministry of Finance (available in the website of Ministry of Finance), which contains detailed procedure are to be followed.

#### 8.2 Procedure for Engagement of Research Assistance

For procuring of research assistance from Government institutions and laboratories for R&D work in the AWEIL units, a detailed procedure has been approved by the Department of Defence Production vide MoD ID No.5(10)/2010/D(Prod) dated 10 February 2011 (copy in annexure) or revised from time to time.

#### 8.3 Conflict of Interest

To eliminate conflict of interests, the consultants and (or) his associates should not be engaged for implementation of downstream services, supplies or works related to the consultancy. This provision shall be included in the consultancy contract.

\* \* \* \* \*

**List of Acronyms used in this Manual**

1	ACASH – Association of Corporations and Apex Societies of Handloom
2	AHSP – Authority Holding Sealed Particulars
3	AMC – Annual Maintenance Contract
4	AON – Acceptance of Necessity
5	ASSOCHAM – Associated Chambers of Commerce and Industry of India
6	AVHQ – Armoured Vehicles Head Quarters
7	AWB – Airway Bill
8	BC – Base Currency (i.e. INR)
9	BE – Bill of Entry
10	BL – Bill of Lading
11	CC – Cash and Carry
12	CD – Customs Duty
13	CFA – Competent Financial Authority
14	CIF – Cost, Insurance and Freight
15	CII – Confederation of Indian Industries
16	CIP – Carriage and Insurance Paid
17	CMD – Chairman & Managing Director
18	COTS – Commercially-Off-The-Shelf
19	CPSUs – Central Public Sector Undertakings
20	CST – Central Sales Tax
21	CST – Comparative Statement of Tenders
22	CVC – Central Vigilance Commission
23	DAVP – Directorate of Advertisement and Visual Publicity
24	DBT – Direct bank Transfer
25	DCF – Discounted Cash Flow
26	DDO – Direct Demanding Officer
27	DFP – Delegation of Financial Powers to Ordnance Factory Board and its units
28	DGOF – Director General of Ordnance Factories
29	DICCI – Dalit Indian Chamber of Commerce and Industry
30	DP – Delivery Period
31	DPE – Department of Public Enterprises
32	DPM - Defence Procurement Manual
33	DPP - Defence Procurement Procedures
34	DRDO – Defence Research and Development Organization
35	ECS – Electronic Clearance Service
36	ED – Executive Director/ Excise Duty
37	EFT – Electronic Fund Transfer
38	EMD – Earnest Money Deposit
39	EPF – Employees Provident Fund
40	ERV – Exchange Rate Variation
41	ESI – Employees State Insurance
42	FAS – Free Alongside Ship
43	FE – Foreign Exchange

44	FICCI – Federation of Indian Chambers of Commerce and Industry
45	FOB – Free on Board
46	FOR – Free on Rail
47	GCC – General Conditions of the Contract
48	GeM – Government e-Marketplace
49	GFR - General Financial Rules
50	GST – Goods and Services Tax
51	GTE – Global Tender Enquiry
52	IFA – Integrated Financial Advisor
53	IFD – Inter Factory Demands
54	INCOTERMS – International Commercial Terms
55	ITJ – Indian Trade Journal
56	JRI - Joint Receipt Inspection
57	JSS - Joint Services Specifications
58	KVIC – Khadi Village Industries Commission
59	LAO - Local Accounts Office
60	LC – Letter of Credit
61	LD – Liquidated Damages
62	LoI – Letter of Intent
63	LPC – Local Purchase Committee
64	LPP – Last Paid Price
65	LTE – Limited Tender Enquiry
66	MHA – Ministry of Home Affairs
67	MIS – Management Information System
68	MSEs – Micro and Small Enterprises
69	MSMEs – Micro, Small and Medium Enterprises
70	MM – Material Management
71	MOD – Ministry of Defence
72	MP – Material Planning
73	MTO – Made to Order
74	NEFT – National Electronic Fund Transfer
75	NIC – National Informatics Center
76	NIT – Notice Inviting Tender
77	NPV – Net Present Value
78	NSIC – National Small-scale Industries Corporation Ltd
79	OC – Option Clause
80	OEFHQ – Ordnance Equipment Factories Head Quarters
81	OEM – Original Equipment Manufacturer
82	OFB – Ordnance Factory Board
83	OFBPM - Ordnance Factory Board Procurement Manual
84	OTE – Open Tender Enquiry
85	P&MM – Planning & Material Management
86	PAC – Proprietary Article Certificate
87	PBG – Performance Bank Guarantee
88	PSD – Performance Security Deposit
89	PSU – Public Sector Undertaking

90	PV – Price Variation
91	QA - Quality Assurance
92	QC - Quality Control
93	QR – Qualitative Requirements
94	RC – Rate Contract
95	RO - Repeat Order Clause
96	RST - Resultant Single Tender
97	RTGS – Real Time Gross Settlement
98	SCC – Special Conditions of the Contract
99	SDOTE – Source Development Open Tender Enquiry
100	SHIS – Store Holders Inability Sheet
101	SIH - Stores-in-hand
102	SKS – Single Known Source
103	SO – Supply Order
104	SOP - Standard Operating Procedure
105	STE – Single Tender Enquiry
106	SWOD - Supplementary Work Order Draft
107	TAC - Tender Advisory Committee
108	TE – Tender Enquiry
109	TEC - Technical Evaluation Committee
110	TPC - Tender Purchase Committee
111	TT – Telegraphic Transfer
112	TReDS – Trades Receivables Discounting System
113	VAT – Value Added Tax
114	VSL TPC – Vendor Selection TPC
115	WIP - Work-in-progress
116	UAM – Udyog Aadhaar Memorandum

## DEFINITIONS

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

1. **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 some other items issued to the defence and/or non-defence indentors. 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 drawing / specifications drawn up by the AHSP.
2. **Competent Financial Authority:** The Competent Financial Authority (CFA) is an authority duly empowered by the Government of India, AWEIL to sanction and approve expenditure from public accounts up to 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.
3. **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.
4. **Direct Demanding Officers:** The authorities in the Ordnance Factories & other establishments under AWEIL, 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 AWEIL or central purchase organizations.
5. **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.
6. **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.
7. **Inspecting Authority:** Consequent upon delegation of responsibility to AWEIL for inspection of revenue items, Executive Director of Ordnance Factories will act as Inspecting Authority for items needed by them.
8. **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.
9. **Integrated Finance:** While Finance Division of AWEIL functions as Integrated Finance for CFAs in AWEIL, officers from Local Accounts Office at the appropriate level in the factories constitute Integrated Finance for the CFAs in the Factories/other establishments under AWEIL.
10. **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.

11. Paying Authority: In respect of procurements made under this Manual, Paying Authority means any of the following authorities:
  - a. Office of Finance & Accounts attached with the factories.
  - b. An authority holding cash assignment/imprest and duly authorized to make payment for procurement.
12. 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 1.4 of this Manual.
13. Procurement Agency: The Procurement or Procuring Agency is the material management group at factory/establishment that is responsible for the actual procurement as per the prescribed procedure to meet the requirement of the unit.
14. Purchaser: The Executive Director 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 CMD, AWEIL. Where the context so warrants, other terms such as the 'buyer', have also been used in this Manual.
15. 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 Officer (DDO) on the Supplier based on actual requirement.
16. Stores: The terms 'Stores' would include all items mentioned in scope of the Manual.
17. 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.
18. Authority for Procurement: Indent / Extract / IFD / SWOD / Annual Supply Plan given by AWEIL/ purchase requisition given by user section will be taken as authority for procurement.
  - a. Extract: Extract is an authority given by AWEIL to Ordnance Factory / Factories to undertake production of the items mentioned therein. This is placed based on Indent.
  - b. SWOD: Supplementary Work Order Draft is placed by other Defence Department on AWEIL / Ordnance Factory.
  - c. IFD: Inter Factory Demand is placed by one Ordnance Factory on another Ordnance factory which is the supplier of the item.
  - d. Annual Supply Plan: Annual Supply Plan is issued by AWEIL to Ordnance Factories for making supplies to indentors/ Ordnance factories. This is issued based on the annual plan of supply of various items to various indentors.
  - e. Purchase Requisition: Purchase Requisition is the demand raised by user section on purchase department to procure off the shelf items, tools, consumables, maintenance items and other miscellaneous items, service contracts, whole job contracts, transport services, maintenance contracts and other similar outsourcing contracts etc.
19. E-Bid: Bid received through OFB e-Procurement System.
20. Registered Vendor: A vendor registered as per the Standard Operating Procedure for

Vendor Registration issued by AWEIL as updated from time to time.

21. Certain terms like *Low Value/Low Tech items, High Value & High technology items* have been used in the manual. Considering the diverse range of inputs procured by the Ordnance Factories, generic definition of these terms is not feasible. The relevant TEC/TPC, after due deliberations and recording reasons, shall carry categorize appropriately at the relevant procurement stage.
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.

## Format for Proprietary Article Certificate

## PROPRIETARY ARTICLE CERTIFICATE

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

It is certified that:

1. The indented goods are manufactured by M/s .....
2. No other make or model is acceptable for the following reasons  
.....
3. \*Approval of the Operating Member has been obtained vide .....
4. Estimated value of the case.....

Controlling Officer  
MM

Group Officer  
MM

Controlling Officer  
User

Group Officer  
User

Finance Member

HOD / Executive Director

*\*for cases exceeding the financial powers delegated to ED/ Head of Department*

## Format for Single Known Source Certificate

## SINGLE KNOWN SOURCE CERTIFICATE

1. Nomenclature of Item:
2. Specifications of Item:
3. Total Quantity required:
4. 2/3rd of the Quantity required:
5. End Use:
6. Name and Address of the Firm:
7. It is certified that the indented item has been developed and supplied by M/s .....against Open Tender Enquiry\*\* number ..... dated and said firm is the only known and established source on date.
8. The action taken for development of more sources and its/ their present status is as follows (indicate here the SDOTE details and its/ their present status):  
.....
9. Estimated value of the case:
10. \*Approval of the Operating Member has been obtained vide .....

Controlling Officer  
MM

Group Officer  
MM

Controlling Officer  
User

Group Officer  
User

Finance Member

HOD / Executive Director

*\* for cases exceeding the financial powers delegated to ED/ Head of Department*

*\*\*if the Source was not developed through OTE, then brief detail on how it was developed to be indicate*

**PRE-CONTRACT INTEGRITY PACT**  
(for cases valuing above Rs. 100 Cr)

**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 Store/ Equipment), hereinafter referred to as Defence Stores, and M/s \_\_\_\_\_, represented by, Mr /Mrs\_\_\_\_\_, Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignees), hereinafter referred to as the Bidder/Seller and the second party, is willing to offer/has offered the stores.
2. Whereas the Bidder is a private company/public company/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a Departmental Organisation under Ministry of Defence, 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 by avoiding the high cost and the distortionary impact of corruption on public procurement, and
  - 3.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

**Commitments of the Buyer**

4. The Buyer Commits itself to the following: -
  - 4.1 The Buyer undertakes that no official of the Buyer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

- 4.2 The Buyer will, during the pre-contract stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.
- 4.3 All the officials of the Buyer will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
5. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Buyer with full and verifiable facts and the same is prima facie found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Buyer the proceedings under the contract would not be stalled.

#### **Commitments of Bidders**

6. **The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:-**
- 6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.
- 6.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contractor 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) HOD of the factories.

(ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Buyer, a Departmental Organisation under 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.

Note: - In case of foreign supplies, the vendor may, if required, furnish the Bank Guarantee from a first class International Bank provided the same is confirmed/verified by the State Bank of India.

(iii) Any other mode or through any other instrument (to be specified in the RFP/TE).

\* At present, the amount of pre-contract EMD/SD is Rs. 1 Cr in cases where the cost as estimated by the Buyer is "above Rs. 100 Cr & up to Rs. 300 Cr", and Rs. 3 Cr if the cost as estimated by the Buyer is above Rs. 300 Cr.

Note: - The option of all acceptable instruments needs to be retained. However, the Buyer should consider the validity of the instrument and the need for revalidation while obtaining the same.

- 8.2 The Earnest Money/Security Deposit shall be valid up to a period of five years beyond the bid validity specified in the TE (or subsequent request made by the buyer for validity extension) 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 does not qualify (do not qualify) after the stages of TEC/TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/TPC on bid(s) after an evaluation.
- 8.3 In the case of successful bidder a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.
- 8.4 The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.
- 8.5 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.

## **9. Company Code of Conduct**

- 9.1 Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

## **10. Sanctions for Violation**

- 10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:-

- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.
- (ii) The Earnest Money/Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.
- (iv) To recover all sums already paid by the Buyer, and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of Prime Lending Rate), while in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder from the Buyer in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash the advance bank guarantee and performance-cum-warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.
- (vi) To cancel all or any other Contracts with the Bidder.
- (vii) To ban the Bidder from entering into any bid from the Government of India for a minimum period of five years and not more than ten years at the discretion of the Buyer.
- (viii) To recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the contract.
- (ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to

disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependent upon Government servant.

- (x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.
- (xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.2 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purposes of this Pact.

## **11. Fall Clause**

11.1 The Bidder undertakes that he has not supplied/is not supplying the similar systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Ministry/Department of the Government of India at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the Bidder to the Buyer, if the contract has already been concluded.

11.2 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

## **12. Independent Monitors**

12.1 The Buyer has appointed Independent Monitor(s) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given):

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12.2 As soon as the Monitor notices, or believes to notice, a violation of this Pact, he

will so inform the CMD, AWEIL, Ordnance Factory Kanpur, Kalpi Road, Kanpur – 208009.

### **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. the nearest location from the seat of the Buyer of a High Court or a Bench of High Court.

### **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

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

Designation:

Ordnance Factory \_\_\_\_\_

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

Chief Executive Officer

Name of Firm: \_\_\_\_\_

Witness

Witness

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

**PRE-CONTRACT INTEGRITY PACT**  
(for cases valuing above Rs. 5 Cr and up to 100 Cr)

**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 Store/ Equipment), hereinafter referred to as Defence Stores, and M/s \_\_\_\_\_, represented by, Mr /Mrs\_\_\_\_\_, Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignees), hereinafter referred to as the Bidder/Seller and the second party, is willing to offer/has offered the stores.
2. Whereas the Bidder is a private company/public company/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a Departmental Organisation under Ministry of Defence, 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 by avoiding the high cost and the distortionary impact of corruption on public procurement, and
  - 3.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

**Commitments of the Buyer**

4. The Buyer Commits itself to the following: -
  - 4.1 The Buyer undertakes that no official of the Buyer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

- 4.2 The Buyer will, during the pre-contract stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.
- 4.3 All the officials of the Buyer will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
5. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Buyer with full and verifiable facts and the same is prima facie found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Buyer the proceedings under the contract would not be stalled.

#### **Commitments of Bidders**

**6. The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:-**

- 6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.
- 6.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contractor 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 All **procurement cases above Rs. 5 Cr and up to Rs. 100 Cr, Integrity Pact is required to be executed without any additional Financial Guarantee.** The EMD/SD/PBG required to be submitted by the vendor as prescribed in the respective Procurement Manual shall only act as the financial guarantee for the IP.

- 8.2 The validity of the IP will be the validity of the EMD/SD/PBG 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 does not qualify (do not qualify) after the stages of TEC/TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/TPC on bid(s) after an evaluation.
- 8.3 In the case of successful bidder a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.
- 8.4 The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.
- 8.5 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.

## **9. Company Code of Conduct**

- 9.1 Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

## **10. Sanctions for Violation**

- 10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:-
- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.
  - (ii) The Earnest Money/Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.
  - (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.
  - (iv) To recover all sums already paid by the Buyer, and in case of an Indian

Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of Prime Lending Rate) and in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder from the Buyer in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

- (v) To encash the advance bank guarantee and performance-cum-warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.
- (vi) To cancel all or any other Contracts with the Bidder.
- (vii) To ban the Bidder from entering into any bid from the Government of India for a minimum period of five years and not more than ten years at the discretion of the Buyer.
- (viii) To recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the contract.
- (ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependent upon Government servant.

- (x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.
- (xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.2 The decision of the Buyer to the effect that a breach of the provisions of this

Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purposes of this Pact.

## **11. Fall Clause**

11.1 The Bidder undertakes that he has not supplied/is not supplying the similar systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Ministry/Department of the Government of India at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the Bidder to the Buyer, if the contract has already been concluded.

11.2 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

## **12. Independent Monitors**

12.1 The Buyer has appointed Independent Monitor(s) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given):

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12.2 As soon as the Monitor notices, or believes to notice, a violation of this Pact, he will so inform the CMD, AWEIL, Ordnance Factory Kanpur, Kalpi Road, Kanpur – 208009.

## **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.

**the nearest location from the seat of the Buyer of a High Court or a Bench of High Court.**

## **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 will remain valid upto the validity of the PBG or the complete conclusion of contractual obligations to complete 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

( \_\_\_\_\_ )  
Designation:  
Ordnance Factory\_\_\_\_\_

( \_\_\_\_\_ )  
Chief Executive Officer  
Name of Firm:\_\_\_\_\_

Witness

Witness

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

TIME FRAME FOR PURCHASE CASE (SINGLE COMMERCIAL BID)

Sl.No.	Activities	Time Frame
<b>WORKING OUT &amp; VETTING OF REQUIREMENT (to be taken at Factories)</b>		
1.	Preparation and Vetting of SHIS	1 Week
2.	Vendor Selection TPC	2 Weeks
3.	Approval of TPC members and floating of LTE/STE	1 Week
4.	Preparation of TE and floating of LTE/STE & Notification of Tender through CPP Portal/OFB E-proc /GeM etc	2 Weeks
<b>PROCUREMENT ACTION (to be taken at Factories)</b>		
5.	Time allowed for submission of offer in a single bid system (Commercial bid only)	Minimum as per portal or 5 days for STE/LTE and 2 Weeks for OTE
6.	Opening of commercial offers, preparation of CST, Tech vetting etc.	1 Week
7.	Proposal for procurement/scheduling of TPC with CFA approval	1 Week
8.	Brief for TPC, Notice for TPC and TPC meetings	1 Week
9.	TPC Minutes and signatures	1 Week (3 Weeks in cases of Counter offer/Negotiation)
10.	F&A concurrence and CFA Approval of Purchase Proposal (for cases within ED's power)	1 Week
11.	Sending Proposal including soft copy to AWEIL along with relevant papers for cases within AWEIL power	1 Week
<b>PROCUREMENT ACTION (to be taken at AWEIL) for AWEIL cases</b>		
12.	Preparation & distribution of brief at AWEIL, holding of TPC at AWEIL and issuing approval letter to Factory	3 Weeks (6 Weeks in cases of Counter offer/Negotiation)
<b>PROCUREMENT ACTION (to be taken at Factories)</b>		
11.	Preparation of SO and Despatch of SO	1 Week
	Total Time Frame	
	i) Cases within GM/ED/ED's Power	16-18wks
	ii) Cases within AWEIL's Power	20-25wks

**NOTE:**

In case of delay in finalization of cases during TPC stage, reason for delay with justifications is to be recorded in TPC minutes.

**TIME FRAME FOR PURCHASE CASE (TWO BIDS – TECH/COMMERCIAL)**

Sl.No.	Activities	Time Frame
<b>WORKING OUT &amp; VETTING OF REQUIREMENT (to be taken at Factories)</b>		
1.	Preparation and Vetting of SHIS	1 Week
2.	Vendor Selection TPC	2 Weeks
3.	Preparation of TE and floating of OTE/GTE & Notification of Tenderthrough CPP Portal/OFB E-proc /GeM etc	2 Weeks
<b>PROCUREMENT ACTION (to be taken at Factories)</b>		
4.	Time allowed for submission of offers in a Two bid system(Commercial bid and Tech bid)	Minimum as per portal or 5 days for LTE, 2 Weeks for OTE and 6 Weeks (GTE)
5.	Opening of Tech Bids and Technical Evaluation by TEC (to be done at the Factory)	3 Weeks
6.	Capacity Verification & Registration of firm	13 Weeks
7.	Scheduling of TEC, TEC minutes and signature	3 Weeks
8.	Sending Proposal including soft copy to AWEIL along with relevant papers for cases within AWEIL's power	1 Week
<b>PROCUREMENT ACTION (to be taken at AWEIL) for AWEIL cases</b>		
9.	Preparation & distribution of brief at AWEIL, holding of TEC at AWEIL and issuing approval letter to Factory for opening of price bid	3 Weeks
<b>PROCUREMENT ACTION (to be taken at Factories)</b>		
10.	Opening of Commercial offers, preparation of CST, Tech Vetting etc.	1 Week
11.	Proposal for Procurement / Scheduling of TPC	1 Week
12.	Brief for TPC, notice for TPC and TPC meetings	1 Week
13.	TPC minutes and signature	1 Week (3 Weeks in cases of Counter offer/ negotiation)
14.	F&A concurrence and CFA Approval of Purchase Proposal (for cases within GM/ED's power)	1 Week
15.	Sending Proposal including soft copy to AWEIL along with relevant papers for cases within AWEIL's power –for TPC	1 Week
<b>PROCUREMENT ACTION (to be taken at AWEIL) for AWEIL cases</b>		
16.	Preparation & distribution of brief at AWEIL, holding of TPC at AWEIL and issuing approval letter	3 Weeks (6 Weeks in cases of Counter offer/ negotiation)
<b>PROCUREMENT ACTION (to be taken at Factories)</b>		
17.	Preparation of SO and Despatch of SO	1 Week
	Total time frame	OTE cases      GTE Cases
	(i) Cases within GM/ED's power	35 - 37 wks      37 - 39 wks
	(ii) Cases within AWEIL's power	43 - 48 wks      45 - 50 wks

**Note:**

1. In case of Advance Vendor Registration, Capacity Verification & Registration of firm are required to be completed before issue of Source Development OTE.
2. 13 weeks is maximum time frame for capacity verification but Factory will try to make it as minimum as possible.
3. In case of delay in finalization of cases during TEC/TPC stage, reason for delay with justifications is to be recorded in TEC/TPC minutes.

**Detailed Procedure for Acquisition of Contract Services for R&D**

**1. Procedure for placement of Contract for Acquisition of Research Services:**

**1.1 Generation and Approval of Research Service Qualitative Requirement (RSQR):** The requirement for acquisition for research services will be raised through a statement of case, internal to Factory/ODC, by those who need that service. The requirement shall be in the form of a Research Service Qualitative Requirement (RSQR). The officer not below Jt.GM/Director/ODC of the factory/ODC will approve the RSQR.

**1.2 Solicitation of offers for provision of Research Services Provider (RSP):**

- a) The approved RSQR will be sent to potential providers of research services, as identified by the approver of the RSQR, and formal offers solicited from them. To ensure continuity of work expected to last more than eighteen (18) months, RSPs should be asked to identify at least two key personnel who will engage in the work.

*Note: The task of identifying the potential providers of research services is exclusively matter of technical judgment alone based on the knowledge and experience of the approver of the RSQR. This judgment will be exercised by the approver in the light, inter alia, of previous experience with pedigree of intellectual resources of, uniqueness of facilities and quality and technical merit of research personnel available at the institution(s) solicited to provide the research service.*

- b) The offers of provision of research services, and their revisions, from such solicited RSPs shall be made by them in the format at Annex 1.
- c) The validity of an Offer from an academic institution for the provision of research services shall not be invalidated merely on account of the date of its receipt by Factory/ODC.

**1.3 Selection and nomination of RSP:** Selection and nomination of RSP based on the offer made by each potential Research Service Provider (RSP) will be made by the competent authority (Based on the value of acquisition, competent authority has been defined in the last para of the proposal separately). Reasons for nomination will be recorded on file.

**1.4 Placement of Contract for Acquisition of Research Services:**

- a) The Contract for Acquisition of Research Services shall be placed by the factory/ODC on the nominated RSP, following acceptance of its Offer by competent authority.
- b) All Contract for Acquisition of Research Services shall be placed in the form in Annex 2.

**1.5 Acceptance of Contract for Acquisition of Research Services by Academic Institution:** The Contract for Acquisition of Research Services as placed by the factory/ODC on the institution, shall be deemed accepted by the Institution when a copy of Contract for Acquisition of Research Services is returned to issuing factory/ODC by the RSP, signed by the latter's competent authority.

**1.6 Amendments to Contract for Acquisition of Research Services:**

- a) Normally, a need for financial amendments to Contract for Acquisition of Research

Services should not arise. However, such amendments can be made in cases in which unforeseen circumstances/events predicate additional expenditure. Approval of such amendments shall be put up by approver of RSQR to next higher competent authority with justification for approval.

- b) All amendments to Contract for Acquisition of Research Services shall be in the form specified at Annex 3.
- c) All amendments to Contract for Acquisition of Research Services shall be authorized by CA (Competent Authority), except that amendments resulting in an increase in the Total Financial Commitment shall require the approval as per(a) of para 1.6 above, to accept an Offer.

## **2. Financial provisions in Contract for Acquisition of Research Services:**

### **2.1 Advances, work-in progress and schedule of payments**

- a) The factory/ODC may take payments of advances and/or make progress payments for executing the contract. Such payments shall be made against the Contract for Acquisition of Research Services and after certification by the cognizant Financial Authority of the RSP that the monies already released against previous demands have been utilize
- b) Advances or progress payments are interim payments, which shall be deducted from the total sums due to the research provider institution.
- c) Except with the specific written pre-agreement of the factory/ODC, the research d for the purposes for which they were provided.
- d) provider institution shall not use for any purposes other than those specified in the Contract for Acquisition of Research Services, any material or services for which advances or progress payments have been made.

### **2.2 Financial guarantee**

- a) No bank or other financial guarantees are requirement for Contract for Acquisition of Research Services.
- b) For Work whose estimated time for completion is six (6) months or less, the RSP shall submit only those reports as relate to the purchase of equipment by the RSP, within thirty (30) days of such purchase.
- c) For Contract for Acquisition of Research Services in which the estimated time for submission of the final report is more than six (6) months, the research provider institution shall provide the factory/ODC, not later than thirty (30) days after end of each half-yearly financial statement showing the actual expenditure incurred, against each of the entries at 'item 9.1' in the CARS, for the execution of the contract up to the end of the preceding half- year.
- d) Books of accounts pertinent to each Contract for Acquisition of Research Services shall be maintained separately by the RSP and those shall be open to the factory/ODC. The factory/ODC, or other authority specified by them may inspect all such books, bills, vouchers and other financial records at any time until the accounts relating to the

Contract for Acquisition of Research Services are settled. The research service provider shall supply the factory/ODC with such financial documents as are necessary for final settlement of claims, without explicit request by the factory/ODC, within three (3) months after submission of the final report.

**3. Delivery schedule:**

- 3.1 The outcome, of the contract (invariably a set of reports/documents/records in hard-copy or machine- readable form/sub-systems etc) shall be delivered at the time or times and in the manner specified in the contract.
- 3.2 The research provider institution shall inform the factory/ODC promptly of any occurrence that is likely to cause delay in delivery of contracted outcomes. The factory/ODC shall determine, in the light of circumstances reported, the extent of change(s) required in the delivery schedule of the contract.

*Note: The above covers only unexpected technical difficulties, gross delays in deliveries by suppliers of purchased equipment or consumables, illness or other justifiable cause of unavailability of research personnel and similar unforeseen circumstances.*

- 3.3 An extension of the time limit for execution of the contract, or as a postponement of delivery shall require the explicit approval of the Competent Authority who has approved the contract.

**4.1 Short-closure of Contract for Acquisition of Research Services:** The Contract for Acquisition of Research Services may be short-closure at any time during the currency of its execution if the factory/ODC feels that no useful purpose will be served by continuing the implementation of contract for Acquisition of Research Services. The short-closure of Contract for Acquisition of Research Services will be approved by the AWEIL and after receiving justification for the same recorded in the file. This is to be put up by Competent Authority who has approved the contract in form of a Board Paper to full Board. The short-closure will be deemed to be effective from the day the short-closure order is received by the institution. Subsequent to this short-closure the RSP will submit a technical report on the work done till short-closure. The monies left unspent on the date of receipt of short-closure order by the RSP shall be returned to factory/ODC. All equipment and unused consumables acquired out of contract monies shall also be returned to factory/ODC.

*Note: The factory/ODC will ensure delivery of any short-closure order to the institutions (with a copy to the investigator(s) within ten (10) working days of the decision to short-close by OF Board.*

**5. Reports:**

- 5.1 Reports giving details of the progress of the work shall be sent to the factory/ODC at intervals as specified in the conditions of the contract.
- 5.2 On completion of the contract, the RSP will submit a final report (Contractor Report).
- 5.3 All reports shall be in a format conforming to Indian Standard IS : 1064-1980, bound with Bibliography Description sheet conforming to IS : 9400-1980.

**6. Ownership of Intellectual Property:**

- 6.1 The ownership of intellectual property, whether or not legally protected (e.g. by patent), generated by research performed under a Contract for Acquisition of Research Services shall vest in AWEIL.
- 6.2 Notwithstanding the above, all documents and information detailing the technical performance of Contract for Acquisition of Research Services (including pertinent laboratory notebooks, sketches, photographs, video tapes of experiments, electronic data acquisition records and other similar shall be the property of AWEIL, whether or not in the physical possession of AWEIL.
7. **Disclosure and use of information by the research provider institution:** The research provider institution will ensure that the documents supplied by the factory/ODC are not disclosed to any person other than a person authorized by the factory/ODC. Any pattern, sample or information supplied by factory/ODC to the RSP in documentary or other physical form is the property of the factory/ODC and shall be returned to the factory/ODC after execution of the contract, unless their disposal is otherwise provided for in the Specific Conditions of Contract.
8. **Publicity relating to contracts:** The existence of the contracts or the status of their execution shall not be published by the RSP in the media or in its Periodic/ Annual Report except with the written consent of AWEIL.
9. **Communications:** All communications affecting the performance of the contract, or its terms and conditions, shall be contractually valid only when confirmed by formal amendments to Contract for Acquisition of Research Services made by the original signatories to the contract.
10. **Compliance with law:** Notwithstanding anything contained in a Contract for Acquisition of Research Services, the RSP shall be solely responsible for complying with all laws in force in India.
11. **Settlement of disputes:** All disputes relating to a Contract for Acquisition of Research Services shall be settled mutually between the RSP and agency placing the Contract for Acquisition of Research Services. Any remaining unresolved disputes shall be referred to final binding settlement by CMD/AWEIL or his authorized representative.

Competent Authority (CA) is the Authority competent to accept an Offer. This authority shall be three levels as follows:

CA-I : The Jt. GM nominated by GM/ED of the factory for this purpose/Director ODC where the estimated expenditure of the offer received from RSP is up to 5 Lakhs.

CA-II : The Controlling Executive Director of the factory for this purpose/Director ODC where the estimated expenditure of the Offer received from the RSP is up to 20 Lakhs.

CA-III : Director/AWEIL where the estimated expenditure of the Offer received from the RSP is up to 50 Lakhs.

**Summary Offer of Provision of Research Services**

1. Title of Service qualitative Requirement (RSQR):				Office Number:		
				Date received:		
				Revised on:		
2. RSQR Document Ref. Nos.		Date of Issue		Issuing Factory/ ODC:	Remarks of RSQR initiation	
		YY	MM			DD
3. Name of Research Service Provider (RSP) making this offer:				4 RSP's Ref. No.		
3. (a) RSP's address for correspondence:				Date:		
Pin code:						
Telephone: Fax:				5. (a) Key personnel of RSP to be deployed:		
Email.				5. (b) RSP's sub-contractors/consultants		
				a) Name:		
				Institute/Comp		
				any:		
				b) Name:		
				Institutes/Company:		
6. Principal technical feature of offer as related to RSQR:						
7. Equipment that RSP requires to be positioned by Factory/ODC:						
8. Estimated time to complete provision research services and submit Final Report:					Months:	
9.1 Estimated expenditure (as enclosed on revise) on:					Rs. in lakhs	
a) Personal:						
b) Equipment:						
c) Others:						
Total:						
9.2 Required schedule of payments (Rs. in lakhs)						
a) Initial advance:						
b) at Performance Milestone I of RSQR:						
c) at Performance Milestone II of RSQR:						
d) at Performance Milestone III of RSQR:						
e) On submission of Final Report						
Total:						
10. Reference rates to R&D work being performed by RSP for Armed Services/DRDO/other S&T (including foreign) agencies:				11. Offer as above valid till date:		
				12. Signature of competent authority of RSP:		
				Name:		
				Designation:		

**Contract for Acquisition of Research Services**

1. Short title of Research Service to be provided:  In response to:				Contract Number:Date:	
2. RSQR Document Ref. Nos.	Date of Issue			Issuing Factory/ ODC: Lab/Estt/Project:	Dates for contract for Acquisition of Research Services Amendments, if any:
	YY	MM	DD		
3. Name and address of Research Service Provider (RSP):				4. RSP's Ref. No.  Date:	
5.(a)This contract will require a formal amendment if the following key professionals are not available to RSP: (b)RSP is authorized to engage these professionals as research consultants (names, institutions/companies):					
6. Principal technical feature of Research service to be provided:					
7. Factory/ODC will make available the following equipment to RSP:					
8. The technical performance of this contract shall be complete when RSP submits the Final Report before (date):					
9.1 Expenditure on items below, shall not exceed sums shown against each					Rs. in lakhs
a) Personal:					
b) Equipment:					
c) Others:					
Total:					
9.2 Schedule of payments (Rs. in lakhs)				Date	Payment
a) Initial advance:					
b) at Performance Milestone I:					
c) at Performance Milestone II:					
d) at Performance Milestone III:					
e) On submission of Final Report (Refer also entry 8 above)					
Payments will be made within 45 days of receipt by Factory/ODC				Total:	
10. AWEIL will deem this contract, including amendmentsthereto, to have been consummated when signed below by the authority of academic institution (e.g. Registrar) competent to enter into this contract:  Name: Designation:  Sign over seal				11. Signature of Factory/ODC contract administrator:  Name: Designation: Address: Telephone: Email:	

**Amendment of Contract for Acquisition of Research Services**

1. Short title of Research Service to be provided:  In response to:				Contract Number: Date:	
2. RSQR Document Ref. Nos.	Date of Issue			Issuing Factory/ ODC: Lab/Estt/Project:	Dates of amendment of contract for Acquisition of Research Services:
	YY	MM	DD		
3. Name and address of Research Service Provider (RSP):				4. RSP's Ref. No.  Date:	
5.(a)Reason for which amendment in the contract is being sought and justification thereof for the amendment:					
9.1 Amended expenditure on items below, shall not exceed sums shown against each					Rs. in lakhs
a) Personal:					
b) Equipment:					
c) Others:					
Total:					
9.2 Amended Schedule of payments (Rs. in lakhs)				Date	Payment
a) Initial advance:					
b) at Performance Milestone I:					
c) at Performance Milestone II:					
d) at Performance Milestone III:					
e) On submission of Final Report (Refer also entry 8 above)					
Payments will be made within 45 days of receipt by Factory/ODC				Total:	
10. AWEIL will deem this contract, including amendments thereto, to have been consummated when signed below by the authority of academic institution (e.g. Registrar) competent to enter into this contract:  <div style="text-align: center;">Sign over seal</div> Name: Designation:				11. Signature of Factory/ODC contract administrator:  Name: Designation: Address: Telephone: Email:	

## INCOTERMS 2010

In INCOTERMS 2010, the delivery and transportation of goods are grouped into four categories as under: -

- (a) "E" – Terms - Implies Ex-works, where under, the seller only makes the goods available to the buyer at the seller's own premises. The responsibility of providing the carrier is that of the buyer.
- (b) "F"-Terms- FCA, FAS and FOB are various clauses of "F" terms under which the seller is called upon to deliver the goods to a carrier appointed by the buyer. The responsibility of providing the carrier is that of the buyer.
- (c) "C"-Terms- CFR, CIF, CPT and CIP are various clauses of "C" terms under which the seller has to contract for carriage, but without assuming the risk of loss of or damage the goods or additional costs due to events occurring after shipment and dispatch.
- (d) "D"- Terms- DAT, DDP and DAP 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.

### RULES FOR ANY MODE OR MODES OF TRANSPORT

- EXW Ex Works

"Ex Works" means that the seller delivers when it places the goods at the disposal of the buyer at the seller's premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable. 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.

- FCA Free Carrier

"Free Carrier" means that the seller delivers the goods to the carrier or another person nominated by the buyer at the seller's premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.

- CPT Carriage Paid To

“Carriage Paid To” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

- CIP Carriage and Insurance Paid To

“Carriage and Insurance Paid to” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.

- DAT Delivered at Terminal

“Delivered at Terminal” means that the seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination. “Terminal” includes a place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

- DAP Delivered at Place

“Delivered at Place” means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.

- DDP Delivered Duty Paid

“Delivered Duty Paid” means that the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

## RULES FOR SEA AND INLAND WATERWAY TRANSPORT

### (i) FAS Free Alongside Ship

“Free Alongside Ship” means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.

- FOB Free On Board

“Free On Board” means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

### (a) CFR Cost and Freight

“Cost and Freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

- CIF Cost, Insurance and Freight

“Cost, Insurance and Freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.”

INCOTERMS® 2010	EXW	FCA	CPT	CIP	DAT	DAP	DDP
SERVICES	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Export Packing	Shipper	Shipper	Shipper	Shipper	Shipper	Shipper	Shipper
Marking & Labeling	Shipper	Shipper	Shipper	Shipper	Shipper	Shipper	Shipper
Block and Brace	1	1	1	1	1	1	1
Export Clearance (License, EEI/AES)	Buyer	Shipper	Shipper	Shipper	Shipper	Shipper	Shipper
Freight Forwarder Documentation Fees	Buyer	Buyer	Shipper	Shipper	Shipper	Shipper	Shipper
Inland Freight to Main Carrier	Buyer	2	Shipper	Shipper	Shipper	Shipper	Shipper
Origin Terminal Charges	Buyer	Buyer	Shipper	Shipper	Shipper	Shipper	Shipper
Vessel Loading Charges	Buyer	Buyer	Shipper	Shipper	Shipper	Shipper	Shipper
Ocean Freight / Air Freight	Buyer	Buyer	Shipper	Shipper	Shipper	Shipper	Shipper
Nominate Export Forwarder	Buyer	Buyer	Shipper	Shipper	Shipper	Shipper	Shipper
Marine Insurance	3	3	3	Shipper	3	3	3
Unload Main Carrier Charges	Buyer	Buyer	4	4	Shipper	Shipper	Shipper
Destination Terminal Charges	Buyer	Buyer	4	4	4	Shipper	Shipper
Nominate On-Carrier	Buyer	Buyer	5	5	5	5	Shipper
Security Information Requirements	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Customs Broker Clearance Fees	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Shipper
Duty, Customs Fees, Taxes	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Shipper
Delivery to Buyer Destination	Buyer	Buyer	5	5	5	5	Shipper
Delivering Carrier Unloading	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Notes:

- 1 – Incoterms® 2010 does not allocate this task to the Buyer or the Seller and therefore it should be addressed in the sales contract.
- 2 – FCA Seller's Facility – Buyer pays inland freight; other FCA qualifiers. Seller arranges and loads pre-carriage carrier and pays inland freight to the "F" delivery place.
- 3 – Marine Insurance – The obligation to arrange insurance is only covered under CIP & CIF. Under all other terms it must be addressed in the sales contract.
- 4 – Terminal Charges paid by Buyer or Seller depending on Carrier practice to include/exclude in transport charges.
- 5 – Delivery to Buyer Destination paid by Seller if through Bill of Lading or door-to-door rate to Buyer's destination.

Government of India  
Ministry of Shipping  
1, Parliament Street  
New Delhi- 110 001

No. SC-18013/1/2013-ASO-I

Dated : 08<sup>th</sup> September, 2015

OFFICE MEMORANDUM

Subject: Decentralization of shipping arrangements in respect of ocean transportation of Cargoes under the control of Government/Public Sector Undertakings

The undersigned is directed to say that as per the existing policy of the Government of India, all import contracts are to be finalized on FOB (Free on Board)/FAS (Free Alongside Ship) basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/ State Governments and Public Sector Undertakings under them and in case of any departure thereon, prior permission is required to be obtained from the Chartering Wing of the Ministry of Shipping on a case-to-case basis.

2. Based on the growing demand of various Government Departments/PSUs to allow them to organize their own shipping arrangements so as to take quick decisions in efficiently managing their cargo supply and logistics chain operations, it has now been decided by the Government that:

- All importing Government Departments/PSUs will make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping subject to following:
  - (i) the import of bulk cargoes, both dry and liquid, will continue to be made on FOB/FAS basis by importing Government Departments / PSUs and shall remain subject to extant Government policy notified vide this Ministry's OM No. SC-11011/1/1994-ASO-II/Vol.III dated 27<sup>th</sup> February, 1996 (Annexure-I) and OM No. SC-11021/3/1999-ASO-I/Vol.III dated 15<sup>th</sup> November, 2001 (Annexure-II) and that in case of any departure therefrom, prior permission and No objection Certificate will have to be obtained from the Ministry of Shipping on a case-to-case basis with the approval of the concerned administrative Ministry/Department.

- (ii) the import of general liner cargoes (project cargoes, heavy lift, container, break bulk cargoes etc.) can now be made by Government Departments/PSUs on FOB (Free on Board)/FAS(Free Alongside Ship) or C&F (Cost & Freight)/CIF (Cost, Insurance & Freight) basis which shall otherwise remain subject to extant Government policy notified vide this Ministry OM No. SC-11011/1/1994-ASO-II/Vol.III dated 27<sup>th</sup> February, 1996 (Annexure-I) and OM No. SC-11021/3/1999-ASO-I Vol.III dated 15<sup>th</sup> November, 2001 (Annexure-II). In case of C&F/CIF import, there is no need of obtaining NOC from the Ministry of Shipping.

3. Until the various Government Departments/PSUs organize their own chartering arrangements, the services of the Chartering Wing of the Ministry of Shipping will remain available during the transition period only until 31.12.2015.

4. It is requested that the above decision taken by the Government of India may kindly be brought to the notice of all the Public Sector Undertakings/projects/autonomous bodies/purchasing and selling organizations under the administrative control of Ministries and Departments concerned. Government Departments/PSUs may utilize the services of the Chartering Wing of the Ministry of Shipping till 31<sup>st</sup> December, 2015, if required.

5. A copy of the instructions issued may please be endorsed to this Ministry.

sd/-

(Barun Mitra)

Joint Secretary to the Government of India

To,

- (1) All Ministries/Departments of Government of India
- (2) The Chief Secretary to all the State Governments including the Union Territories

Government of India  
Ministry of Surface Transport  
(Chartering Wing)

No. SC-11011/1/94-ASO.II/ Vol.III

New Delhi, the 27<sup>th</sup> February, 1996

OFFICE MEMORANDUM

Subject: Ocean Transportation of cargo under the control of Government / Public Sector Undertakings - review of the policy regarding.

The undersigned is directed to say that as per the existing policy of the Government of India, all import contracts are to be finalized on FOB (Free on Board)/FAS (Free Alongside Ship) basis and those for exports on C&F (Cost and Freight)/CIF (Cost, Insurance, freight) basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/ State Governments Departments and Public Sector Undertakings under them and in case of any departure therefrom, prior permission is required to be obtained from the Chartering Wing of the Ministry of Surface Transport on a case to case basis. The shipping arrangements are centralized in the Ministry of Surface Transport. These instructions about FOB/FAS purchases and C&F/CIF sales and entering into contracts where the element of foreign exchange expenditure is minimum already stand incorporated in the General Financial Rules of the Government.

2. Based on the difficulties/problems, as intimated by certain Government Departments / Public Sector Undertakings in the changed context of economic liberalization, the thrust on performance improvement and competitiveness of Public Sector Undertakings, decanalisation of certain cargoes, Government has undertaken a through review of the above policy at various levels and it has now been decided by the Government that: -

- (i) Government policy for import contracts to be finalized on FOB/FAS basis and for exports on CIF basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/State Government Departments and Public Sector Undertakings under them and centralized shipping arrangements through the Ministry of Surface Transport (Chartering Wing) in association with the concerned user Ministry / Department / PSU may continue.
- (ii) Prior permission is required to be obtained from Ministry of Surface Transport on a case to case basis in case of any departure from the above policy. However, Ministry of Surface Transport shall ensure disposal of such requests within four working days

on receipt of the complete information/request from the concerned Ministry/PSU.

- (iii) Ministry of Surface Transport, Chartering Wing to ensure full utilization of suitable Indian vessels in case they are able to meet the indenter's requirements at competitive rates and are able to maintain the time schedule.
- (iv) In case of import of bulk quantities like fertilisers, coal, food grains etc. where freight element is substantial, a representative from Ministry of Surface Transport may be invited to participate in the discussions for advising on the shipping aspects of import/export contracts.
- (v) Ministry of Surface Transport should make all out efforts to finalise vessels, Indian or foreign, at the most competitive rates and before fixing the vessels, prior approval of the indenting department/PSU should be obtained.
- (vi) In order to make imports and exports cost-effective and for judicious use of foreign exchange, Ministries / Departments should ensure imports on FOB/FAS and exports on CIF basis failing which necessary No Objection Certificate (NOC) should be obtained from Ministry of Surface Transport (Chartering Wing) while applying for release of necessary foreign exchange for the purpose of chartering foreign vessels and for making freight payment in foreign currency.
- (vii) The tendering system to be followed by Ministries/Departments/PSUs will be standardized. The Cabinet secretariat will initiate appropriate action in this regard.

3. It is requested that above decision taken by the Government of India may kindly be brought to the notice of all the Public Sector Undertakings / Projects / Autonomous Bodies / Purchasing & Selling Organisations under the administrative control of Ministries and Departments concerned and they may be advised to follow the prescribed procedure for arranging shipment of their cargoes through Chartering Wing (popularly known by its Cable Address "TRANSCHART" in the shipping circle, the world over) of this Ministry and incorporating the prescribed Shipping Clauses in the purchase orders/contracts. They may also be instructed to send two copies of each of the contracts in respect of both exports as well as imports, along with cargo particulars like weight, volume, loading port, discharging port, loading rate, discharging rate, period of shipment, parcel size and any other specific condition relating to shipment of cargoes etc. to this Ministry as soon as the same are finalized, for taking further necessary action with regard to the shipping arrangements.

4. A copy of the instructions issued may please be endorsed to this Ministry.

sd/-

(T.V.Shanbhag)

Chief Controller of Chartering

To,

- (1) All Ministries/Departments of Government of India
- (2) The Chief Secretary to all the State Governments including the Union Territories

Government of India  
Ministry of Shipping  
Chartering Wing

No. SC-11021/3/99-ASO-I. VOL.III

New Delhi, Dated the 15<sup>th</sup> November, 2001

OFFICE MEMORANDUM

Subject: Ocean Transportation of cargo under the control of Government / Public Sector Undertakings review of – The policy regarding.

The undersigned is directed to say that as per the existing policy of the Government of India, all import contracts are to be finalized on FOB (Free on Board)/FAS (Free Alongside Ship) basis and those for exports on C&F (Cost and Freight)/CIF (Cost Insurance, freight) basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/ State Governments Departments and Public Sector Undertakings under them. In case of any departure therefrom, prior permission is required to be obtained from the Chartering Wing of the Ministry of Shipping. These instructions about FOB/FAS purchases and C&F/CIF sales and entering into contracts where the element of foreign exchange expenditure is minimum already stand incorporated in the General Financial Rules of the Government.

2. Based on the difficulties/problems, intimated by certain Government Departments / Public Sector Undertakings for exporting their cargoes in the changed context of economic liberalization, Government has undertaken a thorough review of the above policy at various levels. It has now been decided by the Government that:-

- (i) The present policy for placing import contract on FOB/FAS basis and Centralised shipping arrangements through Ministry of Shipping (Chartering Wing) notified vide this Ministry's O.M. No. SC.11011/1/94-ASO.II/VoL.III dated 27<sup>th</sup> February, 1996 in respect of government owned / controlled cargoes on behalf of Central Government Departments/State Government Departments and Public Sector Undertakings under them will continue.
- (ii) The policy of centralized shipping arrangements through Chartering wing has been relaxed in case of exports. Government Departments/PSUs are free to finalize export contracts on FOB/FAS basis without seeking prior clearance from Ministry of Shipping (Chartering Wing).

3. It is requested that above decision taken by the Government of India may kindly be brought to the notice of all the Public Sector Undertakings/Projects/Autonomous Bodies / Purchasing & Selling Organizations under the administrative control of Ministries and Departments concerned and they may be advised to follow the prescribed procedure described above. They may also be instructed to send two copies of Import contracts along with cargo particulars like weight, volume, loading port, discharging port, loading rate, discharging rate, period of shipments, parcel size and any other specific condition relating to shipment of cargoes etc. to this Ministry as soon as the same are finalised for taking further necessary action with regard to the shipping arrangements in respect of import cargoes.

4. A copy of the instructions issued may please be endorsed to this Ministry.

sd/-

(T.V.Shanbhag)

Chief Controller of Chartering

To,

- (1) All Ministries/Departments of Government of India
- (2) The Chief Secretary to all the State Governments including the Union Territories

Government of India  
Ministry of Micro, Small & Medium Enterprises  
O/o the Development Commissioner (MSME)  
Nirman Bhavan, A-Wing, 7<sup>th</sup> Floor  
Maulana Azad Road  
New Delhi- 110 108

Policy Circular No. 1(2)(1)/2016-MA

Dated : 10<sup>th</sup> March, 2016

To

All Central Ministries/Departments/CPSUs/All concerned

Subject: Relaxation of Norms for Startups and Micro & Small Enterprises in Public Procurement on Prior Experience – Prior Turnover criteria

- 1) The Government of India has notified Public Procurement Policy for Micro and Small Enterprises (MSEs) Order 2012 with effect from 1<sup>st</sup> April, 2012 and 20% procurement from Micro & Small Enterprises of the total procurement by Central Ministries/Departments/CPSUs has become mandatory with effect from 1<sup>st</sup> April, 2015.
- 2) The Government of India has announced ‘Startup India’ initiative for creating a conducive environment for Startup of India.
- 3) The Startups are normally Micro and Small Enterprises which may not have a track record. These will have technical capability to deliver the goods and services as per prescribed technical & quality specifications, and may not be able to meet the qualification criterion relating to prior experience-prior turnover.
- 4) In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises Order 2012, it is clarified that all Central Ministries/Departments/Central Public Sector Undertakings may relax condition of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurements subject to meeting of quality and technical specifications.
- 5) This issues with the approval of Union Minister of Micro, Small and Medium Enterprise.

sd/-

(Surendra Nath Tripathi)

Additional Secretary & Development Commissioner-MSME  
Ministry of Micro, Small & Medium Enterprises

Ministry of Finance  
Department of Expenditure  
Procurement Policy Decision

516, Lok Nayak Bhawan, New Delhi

Dated the 25<sup>th</sup> July, 2016

OFFICE MEMORANDUM

Subject:- Relaxation of Norms for Startups Medium Enterprises in Public  
Procurement regarding Prior Experience – Prior Turnover criteria.

The Government of India has announced 'Startup India' initiative for creating a conducive ecosystem for the growth of Startups in India. The Startups are defined in Annexure A of the "Action Plan for Startups India". The same is available on the website of Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry.

2. Ministry of Micro, Small & Medium Enterprises (MSMEs) vide Policy Circular No. 1(2)(1)/2016-MA dated 10<sup>th</sup> March, 2016 has clarified that all Central Ministries/Departments/Central Public Sector Undertakings (CPSUs) may relax condition of prior turnover and prior experience with respect of Micro & Small Enterprises (MSEs) in all public procurements subject to meeting of quality and technical specifications.

3. As per Rule 160(i)(a) of GFR, 2005, there is already a provision that the bidding documents should contain criteria for eligibility and qualification to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc. In view of above, it is further clarified that all Central Ministries/Departments may relax condition of prior turnover and prior experience in public procurement to all Startups (whether MSEs or otherwise) subject to meeting of quality and technical specifications in accordance with the relevant provisions of GFR, 2005.

sd/-

(Vinayak T.Likhar)

Under Secretary to Government of India

To

The Secretaries of all Central Government Ministries/Departments.

Copy to:-

Financial Advisors of all Central Government Ministries/Departments.

No. F.20/2/2014-PPD(Pt)  
Ministry of Finance  
Department of Expenditure  
Procurement Policy Decision

516, Lok Nayak Bhawan, New Delhi  
Dated the 20<sup>th</sup> September, 2016

OFFICE MEMORANDUM

Subject:- Relaxation of Norms for Startups Medium Enterprises in Public  
Procurement regarding Prior Experience – Prior Turnover criteria.

The undersigned is directed to refer to this Department O.M of even number dated 25<sup>th</sup> July, 2016, wherein it was clarified that all Central Ministries/Departments may relax condition of prior turnover and prior experience in public procurement to all Start-ups[whether Micro & Small Enterprises (MSEs) or otherwise] subject to meeting of quality and technical specifications in accordance with the relevant provisions of GFR, 2005.

2. A doubt has arisen if it makes optional for Central Ministries / Departments to relax condition of prior experience and prior turnover in public procurement to Startups. In this regard, it is again clarified that normally for all public procurement, the Central Ministries / Departments have to ensure that criteria of prior turnover and prior experience for all Startups is relaxed subject to their meeting of quality and technical specifications.

3. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipments etc.) where procuring entities may prefer the vendors to have prior experience rather than giving orders to new entities. For such procurements, wherever adequate justification exists, the procuring entities may not relax the criteria of prior experience/turnover for the Startups.

4. This issues with the approval of Finance Secretary.

sd/-  
(Vinayak T.Likhar)  
Under Secretary (PPD)

To  
The Secretaries of all Central Government Ministries/Departments.

Copy to:-

(i) Financial Advisors of all Central Government Ministries/Departments.

(e-14538)

E.No. 1(3)/2018-MA, Part-III  
Government of India  
Office of Development Commissioner  
(Micro, Small & Medium Enterprises)  
(Public Procurement Policy)

Dated: 27<sup>th</sup> January, 2022  
Nirman Bhavan, New Delhi

**OFFICE MEMORANDUM**

**Subject: Revised FAQs in respect of Public Procurement Policy for MSEs Order, 2012-reg.**

This office has been receiving a number of enquiries/ issues/ questions/ interpretation on the provisions of the Public Procurement Policy for MSEs Order, 2012 from the Ministries/ Departments/ CPSUs/ Industry Associations/ MSEs. In this connection, frequently asked questions and their answers have been prepared and circulated hereby for effective implementation of the policy. This is in supersession of previous FAQs issued vide O.M.No.22 (1)/2012 dated 24<sup>th</sup> October, 2016 by this Ministry in this regard.

This issues with the approval of Hon'ble Minister (MSME).

Encl.: As above

*(D Mann)*  
(Anisha Mann)  
Dy. Director  
(Public Procurement Policy)

1. All the Concerned Secretaries of Ministries/ Departments
2. Chairman-Cum-Managing Director, all the Central Public Sector Undertakings
3. Sh.SanjayAggarwal, Economic Advisor, Department of Expenditure, M/o Finance New Delhi
4. Asstt. Director, Senat of the O/o DC (MSME) with request to upload the same on the DC (MSME) website under Public Procurement Policy section.
5. All the Director incharge, MSME-DIs.

Office (Micro, Small & Medium Enterprises)  
Director (MSME) Secretariat  
Copy No. 1330-L  
Date 01/2/22

**FREQUENTLY ASKED QUESTIONS  
ON  
PUBLIC PROCUREMENT POLICY FOR MSEs, ORDER 2012**

Dated: 27<sup>th</sup> January, 2022

**Q.No.1: What is the share of procurement from MSEs out of the total procurement made by Central Government Ministries/ Departments/ Public Sector Undertakings?**

Ans. Under amended Public Procurement Policy for MSEs, Order 2012 a minimum 25 percent share out of the total annual procurement by Central Government Ministries / Departments / Public Sector Undertakings are to be made from MSEs.P

**Q. No.2: Is there any reservation for MSEs owned by SC/ST/ Women entrepreneurs?**

Ans. Yes, out of 25% target of annual procurement from MSEs (**Not in the specific tender**), a sub-target of 4% (within the 25%) of annual procurement from MSEs is earmarked for procurement from MSEs owned by Scheduled Caste (SC) / Scheduled Tribe (ST) entrepreneurs and 3% (within the 25%) of annual procurement from MSEs is earmarked for procurement from MSEs owned by women entrepreneur. However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, 4% sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneur will also be met from other MSEs.

**Q No.3: Who is eligible for availing the benefits under the Public Procurement Policy?**

Ans. As mentioned in Section 7(4) of Ministry of MSME's Notification No. S.O2119(E) dated 26th June, 2020, an enterprise registered with any other organization under the Ministry of MSME shall register itself under Udyam Registration. With effect from 01.07.2020, MSEs registered under Udyam Registration are eligible to avail the benefits under the Policy. MSEs registered under Udyog Aadhaar Memorandum (UAM), validity of which is till 31.03.2022, are also eligible to avail the benefits under the Policy.

**Q.No.4: What is the date of implementation of the policy?**

Ans. The policy is applicable with effect from 1.4.2012 and became mandatory with effect from 1.4.2015 onwards.

**Q.No.5: Is the Policy transparent, competitive and cost effective?**

Ans. The Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

**Q.No.6: Is the policy implemented in parts or fully from its inception?**

Ans. As per Gazette Notification(S.O. 5670(E) dated 8<sup>th</sup> November, 2018, it is mandatory for all Central Government Ministries / Departments/ CPSUs to procure at least 25% of their annual procurement from MSEs including 4% (within the 25%) from MSEs owned by SC/ST entrepreneur and 3% (within the 25%) from MSEs owned by women entrepreneur.

**Q.No.7: Is there any monitoring system for assessing the Government procurement from MSEs?**

Ans. To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the **MSME Sambandh Portal** on 8<sup>th</sup> December, 2018 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.

**Q.No.8: Is there a price matching facility for procurement from MSEs over large scale?**

Ans. In tender, participating MSEs quoting price within the band of L1+15% shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than an MSE. Such MSEs shall be allowed to supply at least 25% of total tendered value.

In case L1 is not an MSE and there is more than one MSE within the range of L1+15%, only the lowest MSE shall be considered for 25% order in case of divisible item **(or 100% in case order quantity is not divisible)**, subject to matching the L1 prices. Only on refusal of such lowest MSE to accept L1 price, second lowest MSE within the range of L1+15%, shall be considered. This process shall be continued till a MSE in the range accepts the L1 price or the MSEs in the L1+15% range are exhausted. In case no MSE accepts the L1 price or there is no MSE available, in L1+15% range, then the order shall be placed without applying this principle.

**Q.No.9: What steps are to be taken by the Central Government Ministries/ Departments/ CPSUs to develop MSE Vendors so as to achieve their targets for MSEs procurement?**

Ans. The Central Government Ministries/ Departments/ Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the GeM Portal.

In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme.

**Q.No.10: What steps are to be taken by the Central Government Ministries/ Departments/ CPSUs to develop vendors from MSEs owned by SC/ST/Women entrepreneurs?**

Ans. For enhancing the participation of MSEs owned by SCs / STs/ Women in Government procurement, Central Government Ministries / Departments / CPSUs have to take the following steps:

- i. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
- ii. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
- iii. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
- iv. A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

**Q.No.11: What are the other benefits /facilities available to the MSEs under the policy?**

Ans. To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender sets free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring in transparency in tendering process. However, exemption from paying of Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process.

**Q.No.12: Is there any review mechanism for monitoring and reviewing of the policy?**

Ans. A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments, CPSUs for exemption from 25% target on a case to case basis and monitor achievements under the Policy.

**Q. No.13: What is the grievance redressal mechanism in case of non-compliance of the Policy by any Government Department?**

Ans. To redress the grievances of MSEs related to non-compliance of the Policy a Grievance Cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

**Q. No.14: Whether there is any kind of purchase that has been kept out of the purview of procurement under the Policy? If yes, how is the monitoring of the set goal done?**

Ans. Given their unique nature, Defense armament imports will not be included in computing 25% goal for M/o Defense. In addition, Defense Equipments like weapon systems, missiles, etc. will remain out of purview of such policy of reservation. Monitoring of goals set under the policy will be done, in so far as they relate to the Defense sector, by Ministry of Defense itself in accordance with suitable procedures to be established by them.

**Q.No.15: From where can the details of the Policy be obtained?**

Ans. Policy details are available on the website of this office at [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.No.16: Is this policy mandatory under any Act?**

Ans. Yes, the Policy is mandatory and notified under the MSMED Act, 2006.

**Q.No.17: How many items are reserved for exclusive purchase from MSEs?**

Ans. There are 358 items reserved for exclusive purchase from MSE Sector.

**Q.No.18: Whether this policy is applicable for works/ trading activities also?**

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of Public Procurement Policy for MSEs Order, 2012.

**Q.No.19: Whether the Policy is applicable for MSEs registered with NSIC?**

Ans. The Policy is applicable for all MSEs registered under Udyam Registration and Udyog Aadhar Memorandum (valid till 31.03.2022).

**Q.No.20: Whether the Policy provides benefits for exemption from Security Deposit/ Performance Bank Guarantee to MSEs?**

Ans. No, there is no exemption on Security Deposit/ Performance Bank Guarantee under the Policy.

**Q.No.21: Can MSEs quoting a price within the band L1+15% be given complete supply to tender in case tender item cannot be split /divided?**

Ans. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

**Q.No.22: Which are the MSEs owned by SC/ST enterprises?**

Ans. The definition of MSEs owned by SC/ ST is as given under:

- (a) In case of proprietary MSE, proprietor(s) shall be SC /ST.  
(b) In case of partnership MSE, the SC / ST partners shall be holding at least 51% shares in the unit.  
(c) In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.

**Q.No.23: Can the Central Government Ministries/ Departments/ CPSUs who have a meagre value of total procurement be exempted from the Policy?**

Ans. The Policy is applicable to all the Central Government Ministries / Departments / CPSUs, irrespective of the volume and nature of procurement.

**Q.No.24: Does the Policy have a provision for exemption from 25% procurement target?**

Ans. The Review Committee may consider any request of Ministries / Departments / CPSUs for exemption from the present 25% procurement targets on a case to case basis.

**Q.No.25: Does laminated paper Gr. I, II and III fall under the paper conversion product (Sl.No.202) and is a reserved item for exclusive procurement from MSEs?**

Ans. As per Policy Circular No. 21(6)/2016-MA dt. 26th May, 2016, it is clarified that only paper bags, envelopes, ice-cream cups, paper cups and saucers and paper plates are covered under the head "Paper Conversion products" at Sl. No. 202 of the list of reserved items under the Public Procurement Policy for MSEs Order-2012. Accordingly, the description of Sl. No. 202 as indicated in the English version of the Reserved List will be applicable.

**Q.No.26: Are MSEs having Udyam Registration Certificate eligible for availing benefits under the PP Policy?**

Ans. Yes, Udyog Aadhar has been replaced with Udyam Registration Certificate w.e.f 01.07.2020. Udyam Registered MSMEs can avail the benefits under the Public Procurement Policy. The UAM will also remain valid till 31.03.2022.

**Q.No.27: Does the Ministry give any certificate for MSEs having Udyam Registration?**

Ans. The Erstwhile Udyog Aadhaar Memorandum (UAM valid till 31.03.2022) has been replaced by Udyam Registration Certificate (w.e.f. 01.07.2020). As part of ease of doing business, Udyam Registration Certificate (URC) has been introduced through a dedicated portal on self certification basis. An acknowledgement of URC is generated online instantly which is accepted by all Central Government Ministries / Departments / CPSUs and State Govts.

**Q.No.28: Is the Public Procurement Policy applicable to State Governments/ State Departments/ State PSUs?**

Ans. The Public Procurement Policy for MSEs Order, 2012 is applicable to Central Government Ministries/ Departments and CPSUs. This Policy is not applicable to State Government Ministries/ Departments/ PSUs.

**Q.No.29: Are the benefits of Public Procurement Policy applicable to MSEs who are not registered for the tendered items?**

Ans. The benefits of the Policy in respect of a particular item should be given only to those MSEs which are registered for that item group (NIC code) under Udyam Registration or UAM, the validity of which is till 31st March, 2022.

**Q.No.30: Can the relaxation of norms for start ups and MSEs in Public Procurement Policy in prior experience and prior turnover criteria be given to all MSEs?**

Ans. It is clarified that all Central Government Ministries/ Departments/ Central Public Sector Undertakings may relax conditions of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurement, subject to meeting of quality and technical specifications (*In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises, Order 2012*).

However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities (**O.M.No.F.20/2/2014-PPD(Pt.)dated 20.09.2016 issued by DoE**).

**Q.No.31: Has the Ministry clarified the sub target of procurement from SC/STs/Women entrepreneurs under amended Public Procurement Policy for MSEs, Order 2012?**

Ans. It is clarified that sub-targets of 4% (within 25% of annual procurement target) and 3% (within 25% of annual procurement target) have been earmarked for procurement from MSEs owned by SC&ST and Women entrepreneurs, respectively under the amended Public Procurement Policy for MSEs Order, 2012.

**Q.No.32: Are Works Contracts a part of Services? What is the difference between Works and Services?**

Ans. Works Contracts are not covered under the purview of Public Procurement Policy for MSEs. The definition is available in **GFR Rules 130, 143, 177 & 197**.

**Q.No.33: Is there any provision to take action against the defaulting MSEs under the Policy?**

Ans. There is no such provision under the Policy. The procuring entity may take appropriate action as per terms and conditions (T&C) of the tender documents and/or as per GFR Rules.

**Q.No.34: Are financial institutions/ autonomous bodies included in the PP Policy?**

Ans. The Policy is applicable for all Central Government Ministries/ Departments and CPSUs.

**Q.No.35: Can the Ministry take action against the procuring agency for Delay in return of the Security Deposit of the MSEs?**

Ans. There is no such provision under the Policy. The matter can be referred to the department concerned for taking appropriate action in the interest of the MSE complainant.

**Q.No.36: Is it mandatory for MSEs to disclose their status as SC/ST/Women in Udyam Registration Certificate (URC)?**

Ans. Yes, it is mandatory to disclose the status as SC/ST/Women for in Udyam Registration.

**Q.No.37: Have the State Governments been asked to frame a Public Procurement Policy for MSEs?**

Ans. Yes, all the State Governments have been requested to frame the Public Procurement Policy on similar lines.

**Q.No.38: Have all the CPSUs been uploading their monthly and annual procurement details, on MSME SAMBANDH Portal?**

Ans. Most of the CPSUs are uploading their procurement details on the portal.

**Q.No.39: Is there any provision to take action against the procuring agency for non-compliance of PPP-MSE under the Policy?**

Ans. No, there is no such provision in the Policy.

**Q.No.40: What is the objective of the Policy?**

Ans. The objective of the Policy is to promote Micro and Small Enterprises (MSEs) by improving their market access and competitiveness through:-

- Increased participation in Government purchase.
- Encouraging relationship (including product development) between MSEs and Public Sector Undertaking (PSUs).
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSUs.
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSUs.

**Q.No.41: What are the items or goods which can be procured from MSEs to achieve the target of 25% from MSEs ?**

Ans. To achieve the target Government / CPSUs they can procure

- i. The items from the list of 358 items reserved for procurement from MSEs.
- ii. Items which are being manufactured by MSEs, besides reserved items.

**Q.No.42: How is the status of Enterprises as MSEs be verified?**

Ans. The status of enterprises as MSEs can be verified through their Udyam Registration Certificate or UAM certificate, which is valid till 31st March, 2022. As per notification No. S.O. 2119(E) dated 26.06.2020, in case of any discrepancy or complaint, the General Manager of the District Industries Centre of the District concerned shall undertake an inquiry for verification of the details of Udyam Registration/UAM submitted by the enterprise and thereafter forward the matter with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who after issuing a notice to the enterprise and after giving an opportunity to present its case and based on the findings, may amend the details or recommend to the Ministry of MSME, Government of India, for cancellation of the Udyam Registration Certificate/UAM.

**Q.No.43: Can sub-contracting be considered under the procurement target from MSE?**

Ans. Yes, if subcontract is given to MSEs, it will be considered as procurement from MSEs.

**Q.No.44: If MSEs participate in tender but the procuring agency denies providing benefits under the Policy, how can the problem be addressed?**

Ans. The problem can be resolved through the Grievance Cell constituted to tackle such situations and the matter may be referred to the procuring agency concerned to redress the problem.

**Q.No.45 What are the steps taken by the Ministry of MSME to promote marketing through GeM portal for supply of Goods or rendering services from MSEs to Government Departments and CPSUs?**

**Ans:**

- CEO, GeM has been requested to make a provision in the GeM portal for procurement of goods and services from MSEs through linking URC.
- Udyam Registration Portal has a facility through which an entrepreneur can opt for linking itself with Government e-market (GeM) place by selecting an option on Udyam Portal. The enterprise will be linked to GeM portal and flow of information will start between these two portals. With this facility, MSEs can link themselves with the Government's procurement system and can participate in Government's mandatory procurement programme from MSEs
- All CPSUs have been requested to procure goods and services from MSEs, through GeM portal only.
- The Ministry of MSME has signed an MOU with CEO, GeM, for mobilizing MSEs for onboarding themselves on the GeM portal for supply of goods & services from MSEs.
- All UAM holders had been requested to register themselves on GeM portal for supply of goods and services through GeM portal.

**Q.No.46: What is the difference between PPP-MII Order, 2017 and PPP-MSE Order, 2012?**

Ans. The Public Procurement Policy for MSEs Order, 2012 is a delegated legislation deriving authority from the Act of Parliament. PPP-MII, Order, 2017 is an executive Order.

**Q.No.47: Can Joint Ventures take the benefits of the Public Procurement Policy for MSEs Order, 2012?**

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Joint Ventures. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

**Q.No.48: Can Consortiums with Foreign Company takes the benefits of the Public Procurement Policy for MSEs Order, 2012?**

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Consortium. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

**Q.No.49: Can trader benefits from Public Procurement Policy, for MSEs Order, 2012?**

Ans. No, as mentioned in O.M. No. 5/2(2)/2021-E/P & G/Policy dated 02.07.2021, Retail and Wholesale traders can register on Udyam Registration Portal for the purpose of Priority Sector Lending (PSL) only.

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## **SETTLEMENT OF DISPUTES/CLAIMS ARISING OUT OF THE CONTRACTS THROUGH ARBITRATION/COURT PROCEDURE**

### **1. Settlement of Disputes through Sole Arbitrator:**

- 1.1 The General Terms & Conditions of T.E/Contracts issued to Indian private firms/vendors have an arbitration clause states that all disputes & differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by CMD, AWEIL, Ordnance Factory Kanpur, Kalpi Road, Kanpur – 208009 with the mutual consent of the parties. The Arbitrator so appointed shall be a Government Servant / Ex Government Servant (with mutual consent) who had not dealt with matter to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in dispute or differences. The Award of Sole Arbitrator shall be final and binding on the parties. Further the arbitration proceedings would be subject to the provisions of the Arbitration and Reconciliation Act, 1996 (or amended from time to time) and the rules thereon.
- 1.2 With a view to obtaining the consent of the contractor to the arbitration clause as mentioned above the contractor to give his acceptance/or rejection to the said clause at the time of submission his quotation. It is stipulated that an omission to answer specifically in this regard will be deemed as an acceptance of the clause.
- 1.3 Where the contractor has answered or is deemed to have answered the question specified above, in the affirmative, the words, “Including Arbitration Clause of TE/Contracts thereof” are to be added, at the appropriate place, in the clause relating to the conditions of Contract in the schedule to the Acceptance of Tender. Where the contractor has not accepted the Arbitration Clause, the words, “Excluding Arbitration Clause of TE/Contracts thereof” are to be inserted in the Acceptance of Tender. Once the contractor has accepted Arbitration clause of the General Terms & Conditions of TE/Contract, any dispute/claim arising out of the contract by either side becomes adjudicable by the Sole Arbitrator to be appointed by the CMD/AWEIL.
- 1.4 Occasion may arise where in respect of a contract, the supplier had earlier not agreed to the Sole Arbitration Clause but later agrees to the settlement of the disputes(s) arising out of the contract through Arbitration by signing an agreement to refer the dispute to the Sole Arbitrator by an officer appointed by the CMD. Before the agreement is executed the factory will undertake an exercise, in consultation with the Legal Adviser to determine whether the case is fit for reference to Arbitration. If the view arrived at is to refer the dispute to Arbitration, administrative approval of the competent authority will be obtained. After such an approval is obtained, the concerned GM/ED will be competent to sign the agreement irrespective of the value of the contract.

**2. Settlement of Disputes/Claims through Arbitration in the case of Contracts entered into with Public Sector Undertakings:**

2.1 The above provisions are not to be applied in the case of disputes/claims arising out of contracts entered into with Public Sector Undertakings of the Central Government. As per the instructions issued by the Department of Public Enterprises, disputes regarding commercial and other contracts between the Government Department and a Public Sector Enterprises (excluding those relating to income tax, customs and central excise) are to be referred to permanent arbitration machinery set up in the Department of Public Enterprises.

2.2 As the arbitration machinery is designed to be financially self supporting, the disputants are required to share equally the cost of the service rendered by the machinery and would be intimated to them.

2.3 In case the Department of Public Enterprises fails to settle the dispute/claim, the matter may be referred to the Cabinet Secretariat through Department of Defence Production in line with the instructions issued by the Cabinet Secretariat vide their Office Memorandum No. 53/3/91-Cab dated 31.12.1991 (or amended time to time) for settlement of disputes. Further it has to be ensured that no litigation involving such disputes is taken up in a Court or Tribunal without the matter having been first examined by the above constituted Committee and the Committee's clearance for litigation is obtained. The Committee consists of:

- 1) Cabinet Secretary
- 2) Secretary, Department of Industrial Development
- 3) Secretary, Department of Public Enterprises
- 4) Secretary, Department of Legal Affairs
- 4) Finance Secretary
- 5) Secretary of the concerned Ministry/Department.

2.4 The concerned Ministry /Department should refer the cases of dispute with the Public Sector Undertaking to the Cabinet Secretariat with a self-contained note for placing before the above constituted Committee for decision.

2.5 Accordingly, in so far as contracts entered into with Public Sector Enterprises are concerned, a suitable clause should be included in the Acceptance of Tender that in the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, 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 .

**3. Settlement of Disputes through Court of Law of Competent Jurisdiction:**

Where a contractor has not agreed to Sole Arbitration Clause of the General Conditions of Contract, the dispute/claims arising out of the contract entered into with him/her will be subject to the jurisdiction of the competent court of law as per the provisions of clause of the General Conditions of Contract. In the Acceptance of Tender under the heading "Jurisdiction" below the entry relating to conditions of contract, the following should be inserted:

"This contract is subject to jurisdiction of Courts at \_\_\_\_\_ only". The name of the place from which A/T is issued should be inserted in the blank space.

**4. Procedure leading to the appointment of the Arbitrator when the contractor/supplier seeks to refer the dispute to Arbitration:**

4.1 On receipt of a request from the contractor/supplier to refer the dispute to arbitration, the factory will verify that the arbitration clause is included in the contract. On such verification, the factory will prepare a self contained note giving points put forward by the contractor and the points of the purchaser in reply thereto and refer this note to the Legal Adviser for advice whether the purchaser's stand is tenable and whether the case is fit to be referred to arbitration. It should be ensured that all doubtful points requiring a ruling are clearly brought out by the Purchase Section in the self contained note. If the advice of the Legal Adviser is in the affirmative, the case will be put up along with the advice of the Legal Adviser to the Arbitration Cell of AWEIL for referring the dispute to arbitration. All relevant papers including a copy of Supply Order shall be forwarded to Arbitration Cell of AWEIL.

4.2 The Arbitration Cell of AWEIL thereupon will submit the file to CMD/AWEIL for appointment of Arbitrator and arrange to issue a letter appointing the Arbitrator with a copy to both the parties involved in the contract.

**5. Procedure leading to the Appointment of Arbitrator when it is proposed to refer Dispute on behalf of the Purchaser:**

5.1 In the case of Government claims where the Ordnance Factory contemplates taking recourse to arbitration, the factory should first verify the financial standing of the party and the prospect of recovery of the amount claimed, where the amount to be recovered is less than Rs. 5,000/-. A certificate will be given by the factory after that they are satisfied that recovery is possible. In respect of claims over Rs. 5,000/- no verification of the financial standing of the party need to be made. In cases where the amount to be recovered is less than Rs. 5,000/- and the firms are registered with Ordnance Factory, the financial scrutiny may be carried out with reference to the registration records only. Claims of this magnitude from unregistered firms and in the case of those registered firms where no conclusion can be formed with reference to the registration records, full scrutiny should be done as laid down below:

- 1) Report from the Bankers who originally reported on the financial status of the firm.
- 2) Report from the Income Tax Officer whether they are prompt in paying income tax if not, whether they are in arrears.
- 3) Report from the Wealth Tax Officer regarding payment of wealth tax by its Directors.
- 4) Report from the Registrar of Companies as to the balance sheets showing Profit and Loss Account of the concern.
- 5) Report from the Registrar of Partnership firms regarding the names and addresses of the partners if the firm is partnership concern.
- 6) Details about attachable assets/financial condition of the firm from the Deputy Commissioner/Collector of the District concerned.

5.2 After the financial standing of the party has been done, where required, a complete summary of the case will be prepared and referred to the Legal Adviser for opinion as to whether or not the Government has got a tenable and strong case fit for reference to arbitration. If the Legal Adviser advises that the case is fit for reference to arbitration, the factory should refer the case to Arbitration Cell of AWEIL for appointment of Arbitrator.

5.3 If the contractor has not complied with the Demand Notice served on him/her by the Purchaser Demand Notice to deposit the Government dues along with interest within 15 days from the date of issue of the Notice.

5.4 Thereafter the file will be referred to the Arbitration Cell of AWEIL to take necessary steps for appointing an arbitrator on behalf of the Government.

## **6. Reference of Disputes to Arbitration on the Direction of Courts:**

6.1 The Ordnance Factory contracts are usually governed by the standard arbitration clause. On a request received from the contractor/supplier, effort should be made to ensure the appointment of an arbitrator and not to compel the firm to go to the Court unless; there is any objection to it. In certain cases, the firms file petitions in courts for directions to the Union of India for reference of disputes to arbitration in terms of the Arbitration Clause. On receipt of such an order of the Court, the factory will examine the case and obtain the administrative approval of the competent authority.

6.2 The value of the contract shall be taken into account for deciding as to the officer competent to accord such approval.

6.3 Immediately after obtaining administrative approval as above the factory will send the file to Arbitration Cell of AWEIL for appointment of Arbitrator as per the procedure.

6.4 The reference to particulars of the suit filed by the firms and the order of the Court in terms of which disputes are being referred to arbitration shall be indicated in the file.

**7. Preparation, Examination and Finalisation of Pleadings to be filed before the Arbitrators:**

- 7.1 The concerned factory will specify the documents in support of the claims preferred by them. It will also be the responsibility of the concerned factory to collect the particulars from Accounts Officer, the concerned QA officer in respect of any items necessary for formulating the claim on behalf of the Union of India or any other purchaser shown in the contract. It will also be the responsibility of the concerned factory to give the list of officers who have dealt with the contract during the relevant period.
- 7.2 In the cases in which the Government is the Respondent, a copy of the claim statement, as and when received from the claimant contractor, will be forwarded by the Arbitrator to the concerned factory. The concerned factory has to admit or deny categorically all the allegations made in the firm's claim statement and should also give explanatory notes about the stand and should also give explanatory notes about the stand taken by the factory giving reference to the advice of the Legal adviser which might have been obtained earlier. The concerned factory will also examine the copies of the documents, filed on behalf of the claimant firms and will also give explanatory notes, whether documents, the copies whereof have been filed by the claimant firm, are available in the purchase files and whether they are true and correct copies of the original available with the factory.
- 7.3 If, there are some mistakes in the copies filed by the claimant firm, the same should also be pointed out. The factory will also consult the Accounts office, the QA officer if some particular item referred to in the claim statement or some particular item necessary for substantiating the Government's counter claim, is required to be ascertained from the said offices.
- 7.4 In cases where Government counsels are engaged, the detailed para-wise comments offered by the factory or the self contained statement of facts offered by the factory will be submitted before the Government Counsel so appointed and the said Counsel will be requested to prepare the claim/counter statement of claim.
- 7.5 If the Government Counsel engaged for conduct of the case, requires prior consultation with the conversant officer of the factory to enable him to prepare or settle the claim/counter claim, the concerned factory shall depute the conversant officer for such consultation. The officer so deputed shall record on the file the date, time and duration of the discussions held with the Government Counsels to enable verification of the bills of the Counsels.
- 7.6 After the draft claim/counter statement of claim is settled by the officer, the same will be fair typed as many copies as may be required in each case. The fair typed copies/counter statement of claim will thereafter be signed by the factory Officer dealing with the contract after verification of the factual position and swearing in of affidavits, where required, by presenting themselves before the Oath Commissioner. The pleadings shall then be signed and filed by the Officer/Government counsel, conducting the case.

- 7.7 List of documents referred to in the statement/ counter statement of claim/replication/rejoinder as also in the advice of the Legal Adviser to support the claims of Government shall be prepared and finally settled with the approval of the Officer/Counsel who is to conduct the case.
- 7.8 It will be the responsibility of the factory to arrange for the presence of witness to give evidence on behalf of the Government where so desired by the Government Counsel. The factory will be completely responsible for watching the progress of each case, for production of evidence, and shall render all assistance to the Government counsel as hemay require and to see to the successful conduct of the cases.
8. **Examination of Awards/Decrees and Action thereafter:** Arbitration awards may be classified as:
- (a) **Declaratory Awards:** This is an award which either dismisses claim made but awards no sum of money whether by way of cost or otherwise or only declares an interpretation of the contract. In the case of such an award, the factory will take steps promptly to cause the award to be filed in the competent court to make it a rule unless it is advised by the Legal Adviser and a suit relating to the dispute referred to arbitration has become barred by time.
- (b) **Other Awards:** These are awards which direct payment of a sum of money by one party to other. If the award is wholly in favour of the purchaser, actions should be taken for recovery of the awarded amount and the Demand Note as in "Form A" at Annexure-11A should be issued.
9. **Speaking Awards:** The speaking awards made by an Arbitrator contain reasons for admission or rejection of claims.
10. **Non-Speaking Awards:**
- 10.1 Non-speaking awards do not contain reasons for admission or rejection of claims. When the arbitrator/the court has delivered the award, the factory will arrange to obtain copies of the award.
- 10.2 Government Counsels conducting the cases, would examine the awards very carefully and after the detailed study pin point any unusual features, defects, infirmity or weaknesses and refer to the factory for obtaining the approval of the competent authority for acceptance or otherwise of such awards.
- 10.3 In cases where the sole arbitrator makes a non-speaking award directing the Government to pay a certain sum to the party in full and final settlement of all the claims and counter claims of all the parties against each other, the examination of every cases as towwhy the Government did not get its full claim before the arbitrator would involve labour which would not be commensurate with the results achieved as the award is a non-speakingaward.

- 10.4 In respect of Arbitration cases covered under the new Act, 1996 request for any correction, interpretation or additional award can be made under section 33 of the Act within 30 days from receipt of the award unless another period of time has been agreed upon by the parties.

**11. Procedure of Follow-Up Action - Award in favour of the Government:**

- 11.1 Immediately on receipt of the award or the decree as the case may be by the factory, it will initiate action to obtain the decision of the competent authority as to the acceptance or otherwise on behalf of the Government of India. Reference to the Legal adviser would not be necessary where;
- (a) the Arbitrators/court has allowed the claim of the Union of India to the full extent;
  - (b) the Arbitrator/court has dismissed the claim of the contractor against the Union of India and the Union of India preferred no claim.
- 11.2 If the award is fully in favour of the Union of India, the question of challenging the same does not arise and the file need not be sent to the Legal Adviser unless advised or any question of Law is still required.
- 11.3 An Arbitrator has to make an award within 4 months of the date of which he enters upon reference or within such time as is extended by the parties through mutual consent. Where an award is made after the time allowed as referred to above, an application shall also be made under section 28 of the Arbitration Act for the extension of time for making the award. Such an application for Extension of time for making the award can also be made along with the application under section 14 and 17 of the Arbitration Act for making the award a rule of the court.
- 11.4 In respect of cases, coming under Arbitration Act 1996 an application for setting aside an award is to be made under section 34 of the Act within 3 months from the date on which the party making that application have received the arbitral award or, if a request has been made under section 33 of the new Act, from the date on which that request had been disposed off by the Arbitral Tribunal.
- 11.5 The factory concerned who shall thereupon serve a demand notice for recovery of the awarded amount from the contractor as per Form A at Annexure-11A. The factory shall at the same time explore the possibility of effecting recovery in full or part of the awarded amount from the pending bills of the firm and report the result to the Operating Division. In case payment is not made within 30 days of the issue of the demand notice the factory shall forthwith institute investigations through appropriate civil and police authorities to find out financial assets of the judgements debtors and also ascertain the immoveable properties and other assets held by them and intimate the same to the Operating Division along with certificate that recovery through normal channels could not be possible so that

immediately after award is converted into a decree, execution proceedings may be initiated for getting an order of the court for attachment of the properties in question in satisfaction of the decree. It must be noted that complete details and location of all such properties are to be given in the execution petition itself to enable the court to pass the requisite order of attachment.

**12. Procedure of Follow-Up Action - Award Not in Favour of the Government:**

- 12.1 Where the award is against Government or partly in favour and partly against the Government as for example where it directs the Government to pay a sum lesser than the sum claimed by the Contractor it is not necessary to cause the award to be filed in court, if the Government accepts the award and other party accepts payment thereof in full and final settlement of all claims forming the subject matter of reference in pursuance of an offer made in accordance with the procedure laid down.
- 12.2 The factory shall, immediately after obtaining the approval of the competent authority to accept the award communicate to the contractor in "Form B" at Annexure-11B the fact of such acceptance and offer payment in terms of the award. If the contractor communicates acceptance of the award within specified time, payment so made will bar the contractor from using again in respect of the same dispute vide decision of the Supreme Court reported in Kashinath Shah and Narsing Shah AIR 1961 SC 1077.
- 12.3 It may be clarified that a letter of consent from the firm can serve the purpose and in cases where an amount has to be paid to the firm by the Union of India or by the firm to the Union of India, for, in such cases discharge is obtained by payment of the amount by either of the parties in pursuance of the award. In cases where there is simply a declaratory award, it is always advisable to have the award made a rule of court. In the latter category of cases, it would not be possible to urge that the letter of consent from the firm operates as a discharge.

**13. Procedure for making Provisional Payment of Charged Expenditure:**

- 13.1 The provisional payments in respect of decretal amount awarded by Courts should not be released without specific allotment of funds under charged expenditure for making payments. As soon as a copy of the judgement of Court is received, immediate action may be initiated by the factory to get allotment of funds under the head Charged Expenditure. Such proposal should be sent to Finance/Budget section (of AWEIL) through the concerned Operating Division along with following:
  - (i) A copy of the Judgement/Award on the basis of which payment has been made.
  - (ii) Precise amount needed to satisfy the Judgement/Award. In case the amount could not be precisely calculated, tentative amount indicating the variable

parameters should be intimated for allotment of funds.

- 13.2 In order to avoid any delay, the factory should ensure that immediately after the allotment of funds by AWEIL/Finance the payment is released on a provisional basis and the case submitted to AWEIL/Finance for ex-post facto sanction along with the following documents:
- a) A copy of self – contained statement of case.
  - b) A copy of account statement/calculation should duly vetted by F&A.
  - c) Details of payment.
  - d) Amount for which M of D sanction has to be obtained.
  - e) Date of payment.
  - f) Code Head of booking.
  - g) Financial year in which the payment has been made.
  - h) Other relevant documents if any.
- 13.3 To ensure sufficient allotment of funds for such payments factories should anticipate the requirement of funds under charged expenditure based on the pending Court/Arbitration cases and project their requirements for the next year along with the FE, Budget Estimate submitted during the previous year as well as periodical projections in the current year (PR/PRE/RE/MA).

**DEMAND NOTE TO FIRM WHEN ARBITRAL AWARD IS IN FAVOUR OF PURCHASER**

To,

M/s .....

Sub: Award dated ..... made by ..... the Arbitrator in regard to  
dispute arising out of Supply Order No. .... dated ..... and  
Arbitration Case No. ....

Dear Sir/Madam,

With reference to the award mentioned above, I hereby on behalf of  
\_\_\_\_\_ (name of purchaser) call upon you to remit the awarded amount by  
demand draft in favour of (CMD/AWEIL, GM/ED ....) on the RBI or SBI within 15 days of  
receipt hereof by you.

Please note that in the event of your failure to do so the Government shall take steps  
to cause the award to be filed in the Court and obtain a decree in terms thereof, for the cause  
and consequences of which you will be responsible.

Yours faithfully,

Sd/-  
For and on behalf of CMD, AWEIL

DEMAND NOTE TO FIRM WHEN ARBITRAL AWARD IS AGAINST THE PURCHASER  
AND IT HAS BEEN DECIDED NOT TO GO FOR APPEAL

To,

M/s .....

Sub: Award dated ..... made by ..... the Arbitrator in regard  
to dispute arising out of Supply Order No. .... dated .....  
and Arbitration Case No. ....

Dear Sir/Madam,

With reference to the award mentioned above, you are requested to intimate by  
\_\_\_\_\_ (the date to be specified) that you agree to accept the award and remit the  
sum awarded in full and final settlement of all your claims constituting the subject matter of  
the reference to arbitration in the above cited cases.

Yours faithfully,

Sd/-  
For and on behalf of CMD, AWEIL

**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 disputes or differences arising out of or in any way touching or concerning this agreement (except those for which specific provision has been made therein) shall be referred to Sole Arbitrator to be appointed by the CMD, AWEIL, Ordnance Factory Kanpur, Kalpi Road, Kanpur – 208 009 with the mutual consent of the parties. The Arbitrator so appointed shall be a Government Servant / Ex Government Servant (with mutual consent) who had not dealt with matter to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in dispute or differences. The Award of Sole Arbitrator shall be final and binding on the parties.
- (iii) The venue of the arbitration shall be at place of concerned Factory.

**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 for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-Charge of the Department of Public Enterprises.

The Arbitration and Conciliation Act, 1996 shall not be applicable to the disputes, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to be Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary, when so authorised by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator. 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 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 disputes, disagreement or question arising out of 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 ninety (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 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 failing 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 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 or amended time to time.)

Ministry of Defence  
D(Vigilance)

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Subject: Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities.

Please find enclosed the guidelines of Ministry of Defence for penalties in business dealings with entities applicable for both Capital and Revenue Procurement of Goods and Services, duly approved in the meeting of DAC held on 07.11.2016, for compliance.

Encl: As above.

sd/-  
(Atul Kumar Singh)  
Director (Vigilance)

SA to RM	Secretary (DP)	Secretary (Defence Finance)		
VCOAS	VSNS	VCAS	DG(Coast Guard)	CISC
DG(Acquisition)	AS(R)	AS(P)	JS&AM(LS)	JS&AM(MS)
JS&AM(Air)	JS(Army)	JS(Air)	JS(E/CAO)&CVO	

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MoD ID No. 31013/1/2016 D (Vig) Vol.II dated 21.11.2016

Copy to

PS to RM  
PS to RRM  
SO to Defence Secretary

Copy also to: NIC with the request to upload the guidelines on the website of the Ministry

**GUIDELINES OF THE MINISTRY OF DEFENCE FOR PENALTIES IN  
BUSINESS DEALINGS WITH ENTITIES**

(A) Introduction

A.1 It is imperative that the highest standards of propriety be maintained throughout the process of procurement of defence equipment.

A.2 The procurement process needs to proceed without loss of credibility and therefore, there is a need to put in place appropriate measures to deal with act of impropriety.

A.3 The following paragraphs lay down the policy and guidelines for Levy of Financial Penalties and/or Suspension/Banning of business dealings with entities seeking to enter into contract with / having entered into a contract for the procurement of goods and services by the Ministry of Defence.

A.4 In applying the measures provided for under the guidelines, the concerned authorities shall be guided by the need to ensure probity, transparency, propriety and compliance in the defence procurement process. Equally, the concerned authorities shall also ensure fairness, impartiality, rigour and correctness in dealing with entities, keeping in view the overall security interests of the country.

(B) General

B.1 Ministry of Defence will include Department of Defence, Department of Defence Production, Department of Defence Research & Development, HQ IDS, Armed Forces Headquarters and their attached / subordinate offices.

B.2 "Entities" will include companies, trusts, societies, as well as individuals and their associations with whom the Ministry of Defence has entered into or intends to enter into or could enter into contracts or agreements.

B.3 All firms/companies which come within the sphere of effective influence of the entities shall be treated as its allied firms. In determining this, the following factors may be taken into consideration:-

- (i) Whether the management is common or the majority interest in the management is held by the partners or directors of the entities.

- (ii) Majority shares are owned by the entity, their directors/shareholders and by virtue of this it has a controlling voice.

B.4 Effect of actions, viz. levy of financial penalties and/or suspension/banning of business dealings with an entity in accordance with these guidelines may, with the approval of competent authority also apply when an entity participates in the procurement process as a member of consortium.

B.5 The competent authority for the purpose of these guidelines will be Raksha Mantri.

B.6 The Competent Authority may constitute Committees as necessary, to examine and make recommendations on any matter provided for under the guidelines.

(C) Causes for Suspension and Banning of Business Dealings with Entities

C.1 The competent authority may levy financial penalties and/or suspend/ban business dealings with an entity for one or more of the grounds listed below:-

- a) Violation of Pre-Contract Integrity Pact (PCIP) (where such PCIPs are entered into between the Ministry of Defence and an entity).
- b) Resort to corrupt practices, unfair means and illegal activities during any stage of bid/ contract to secure a contract, even in cases where PCIP is not mandated.
- c) Violation of Standard Clause in the contract of agent/agency commissions.
- d) If national security considerations so warrant.
- e) Non-performance or under performance under the terms and conditions of contract(s) or agreements(s) not covered in grounds listed in (a) to (c) above in accordance with provisions in contract or arrangement.
- f) Any other ground for which the Competent Authority may determine that suspension or banning of business dealings with an entity shall be in the public interest.

(D) Suspension

D.1 Suspension of business dealing with an entity may be ordered by the competent authority pending a full proceedings into allegations or facts related to any grounds enumerated in paragraph C.1(a) to (f) above.

D.2 The competent authority may suspend business dealings with an entity when it refers any complaint against the entity to CBI or any investigating agency or when intimation is received regarding initiation of criminal investigation or enquiry against any entity.

D.3 An order of suspension of business dealings with an entity will be issued for such period as the competent authority may deem fit. The period of suspension shall not ordinarily exceed one year. A review of the Order of suspension of business dealings with an entity shall be undertaken within six months of the issue of such an Order and before expiry of the period specified therein. The suspension of an entity may be extended beyond the period of one year, on the order of the Competent Authority for subsequent periods of six months each. The total period of suspension of business dealings with an entity shall not exceed the maximum period of banning of business dealings with an entity for the same cause of action.

(E) Effect of Suspension of Business Dealings with an Entity

E.1 An order of suspension of business dealings with an entity shall result in immediate ineligibility of the entity from participating in future bids. No RFP will be issued to such an entity.

E.2 Any on-going procurement process where L1 determination has not yet been done will be progressed after excluding the bid involving an entity with which business dealings are suspended. In case there are only two bidders, one being the entity with which business dealings are suspended, the procurement will be progressed as per extant provisions of DDP after excluding such an entity.

E.3 Any on-going procurement process where the lowest bid involves the entity with which business dealings are suspended by order of competent authority, will be held in abeyance till decision of revocation of such order or banning of business dealings with an entity or till expiry of the validity of the existing bid, whichever is earlier. Extension of the validity of the bid involving such entity will not be permitted. On expiry of the bid validity, the procurement process will be terminated and fresh procurement process, if required, may be initiated. In cases of operational urgency, the procurement process may be foreclosed prior to the expiry of the bid validity and a fresh process initiated, excluding the entity with which business dealings are suspended.

E.4 Order of suspension of business dealings with an entity may be extended to its allied firms by specific order of the competent authority.

(F) Banning of Business Dealings with an Entity / Debarment of an Entity

F.1 Banning of business dealings with an entity may be ordered by the competent authority on acceptance of misconduct related to any of the grounds enumerated in paragraph C.1(a) to (f) above by the entity or establishment of such misconduct by a competent court/ tribunal / authority.

F.2 Banning of business dealings with an entity may be ordered by the competent authority on receipt of information regarding filing of charge-sheet in the court of law by CBI or any other investigating agency.

F.3 The order of banning of business dealings with an entity will be issued for such specified period as the competent authority may deem fit. For the grounds listed in paragraph C.1(a) to (d) above, the period of banning business dealings with an entity shall not be less than five years. For the grounds listed in paragraph C. 1(e) and (f) above, banning of business dealings may be resorted to if, in the view of the competent authority, the grounds for action are such that continuation of business dealings with an entity would be detrimental to public interest. In such cases, the period of banning of business dealings with an entity shall not ordinarily exceed three years. The period of Banning of business dealings with an entity in both the categories will be inclusive of period of suspension of business dealings with an entity, if any, for the same cause of action. In exceptional cases and those involving national security considerations the competent authority may order a longer period of banning of business dealings with an Entity, as deemed appropriate.

(G) Effect of Banning of Business Dealings with an Entity/Debarment of an Entity

G.1 An order of banning of business dealings with an entity shall result in immediate ineligibility of the entity from participating in future bids for a specified period with effect from the date of such order. No RFP will be issued to such an entity.

G.2 Any on-going procurement process where L1 determination has not yet been done will be progressed after excluding the bid involving entity with which the business dealings are banned. In case there are only two bidders, one being the entity with which business dealings are banned, the procurement will be progressed as per extant provisions of DPP after excluding such an entity.

G.3 Any on-going procurement process where the lowest bidder involves an entity with which business dealings are banned, will be terminated and fresh procurement process, if required, may be initiated.

G.4 Orders of banning of business dealings with an entity may be extended to its allied firms by specific order of the competent authority.

(H) Employees / Agents of an Entity

H.1 Any employee or agent of an entity, who is convicted for any act of impropriety, will not be allowed to engage in any bid process in any capacity with the Ministry of Defence

anytime in the future.

H.2 Any employee or agent of an entity with which business dealings are suspended or banned and who is involved in a case of alleged impropriety for which investigation or judicial proceedings is in progress, will not be allowed to engage in any bid process in any capacity with the Ministry of Defence even after the expiry of the period of suspension / banning of business dealings with an entity.

(I) Miscellaneous

I.1 The entity with which business dealings are suspended or banned may with the approval of competent authority, participate in the future RFPs for spares, upgrades, maintenance etc. for the equipment/weapon systems supplied earlier by it, if the equipment which is the object of the Contract is a proprietary item and there are no available alternate sources of supply.

I.2 In cases wherein Transfer of Technology (ToT)/Licenses production has been taken in the past for manufacturing of equipment/weapon systems in India from the entity with which business dealings are suspended or banned, may with the approval of the competent authority participate in the future RFPs related to components / rotables / additional items of such equipment/weapon systems for which the ToT/Licenses production has been taken.

I.3 Any contract(s) related to the procurement process(es) in connection with which business dealings with an entity have been suspended will be held in abeyance. Any contract(s) related to the procurement process(es) in connection with which business dealings with an entity have been banned shall be cancelled. However, other contracts involving such entity shall continue unless a decision to the contract is taken by the competent authority, on a case to case basis.

I.4 If it becomes necessary on grounds of national security and operational preparedness/export obligations, to deal with an entity with which business dealings have been suspended or banned in a procurement process and which is the only source that can supply/manufacture an equipment/weapon systems, the Competent Authority will be approached for approval of issuance of RFP or conclusion of contract with such an entity. Certificates (as provided in Annexure-I) signed by the Vice Chief of the service concerned / CISC / Additional Secretary (Defence Production) will be placed before the Competent Authority SHQ/ Department of Defence Production may propose special conditions to conclude a contract with such an entity.

I.5 The entity with which business dealings have been suspended or banned will not be permitted to transact contracts or agreements under a different name or division either

through a transfer of assets of such an entity to another legal entity or otherwise.

I.6 An updated list of entities with which business dealings have been suspended or banned by the competent authority and/or against which financial penalties have been imposed shall be maintained on the official website of the Ministry of Defence.

(J) Application

J.1 These guidelines shall come into force with immediate effect.

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Annexure-I  
(Fefer I.4 of Guidelines)

CERTIFICATE

1) The ..... (equipment/weapon system) is inescapably required for national security and operational preparedness / export obligations and no other alternative / combination of equipment / weapon system can fulfill the requirement.

2) The ..... (equipment/weapon system) is not available from any other source.

3) It is absolutely necessary to deal with ..... (name of the entity) with which business dealings have been suspended or banned for meeting the instant requirement.

\*\*Certificates as above signed separately by the Vice Chief of the Service concerned / CISC are to be placed before the Competent Authority.

\*\*Certificate for inescapable requirement on account of export obligations, signed by AS(DP) is to be placed before the Competent Authority.

## Ministry of Defence

## D(Vigilance)

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Subject: Amendment to the guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities.

Reference is invited to MoD ID Note of even number dated 21.11.2016 on the subject cited above forwarding the Guidelines of Ministry of Defence for penalties in business dealings with entities for compliance.

2. With the approval of the Competent Authority the following amendment is made to Para F.3 of the said guidelines:-

For

Para F.3, 2<sup>nd</sup> Sentence: For the grounds listed in paragraph C.1(a) to (d) above, the period of banning of business dealings with an entity shall not be less than five years.

Read

Para F.3, 2<sup>nd</sup> Sentence as: For the grounds listed in paragraph C.1(a) to (d) above, the period of banning of business dealings with an entity shall not be less than five years and not more than ten years.

sd/-

(Atul Kumar Singh)

Director (Vigilance)

SA to RM	Secretary (DP)	Secretary (Defence Finance)
VCOAS	VSNS	DG(Coast Guard) CISC
DG(Acquisition)	AS(R)	AS(P) JS&AM(LS) JS&AM(MS)
JS&AM(Air)	JS(Army)	JS(Air) JS(E/CAO)&CVO

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MoD ID No. 31013/1/2016-D (Vig) Vol.II dated 30.12.2016

Copy to

PS to RM

PS to RRM

SO to Defence Secretary

Copy also to: Director(IT) with the request to get the above amendment to the guidelines uploaded on the website of this Ministry.

No.F.1/20/2018-PPD  
Government of India  
Department of Expenditure  
Ministry of Finance  
Procurement Policy Division

169-A, North Block, New Delhi,  
2<sup>nd</sup> November, 2021.

**OFFICE MEMORANDUM**

**Subject: Guidelines on Debarment of firms from Bidding**

Attention is drawn towards Rule 151 of General Financial Rules (GFRs), 2017 regarding 'Debarment from Bidding' which is reproduced as under:

*(i) A bidder shall be debarred if he has been convicted of an offence—*

*(a) under the Prevention of Corruption Act, 1988; or*

*(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.*

*(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*

*(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/ Department will maintain such list which will also be displayed on their website.*

*(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.*

2. This department has received a reference from Department of Commerce with a proposal that the task of universal banning of firms as per Rule 151 (ii) of GFRs as above may be undertaken by Department of Expenditure or should be decentralized to individual line Ministries/ Departments as DGS&D had been wind up on 31.10.2017. Central Public Procurement Portal (CPPP) or the Department of Expenditure can then maintain a master data of all such banned firms and it can be made available in public domain.

3 In context of above, all issues regarding debarment have been reviewed in consultations with major procuring Ministries/ Departments and it is decided to issue attached 'Debarment Guidelines' in suppression to all earlier instructions on this subject.

4. This issues with the approval of Finance Secretary.



2.11.21

(Sanjay Aggarwal)

Advisor/ Procurement Policy Division

Email: sanjay.aggarwal68@nic.in

Tel: 23093224

To,

Secretaries, All Central Ministries/ Departments.

Secretary/ Department of Public Enterprises with a request to circulate these instructions to all Central Public Sector Undertakings (CPSUs).

### **Guidelines on Debarment of firms from Bidding**

1. The Guidelines are classified under following two types:
  - (i) In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
  - (ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

#### **Definitions**

2. **Firm:** The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
3. **Allied firm:** All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
  - a. Whether the management is common;
  - b. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
  - c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
  - d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
  - e. All successor firms will also be considered as allied firms.
4. The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

#### **Debarment by a Single Ministry/ Department**

5. Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/ organizations, keeping in view of the following:
  - a. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
  - b. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.

- c. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/ Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
  - d. It shall **not** be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
  - e. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
  - f. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.
  - g. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
  - h. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
  - i. Debarment is an executive function and should not be allocated to Vigilance Department.
6. Code of Integrity as contained in Rule 175 of the GFRs is reproduced as under:

*No official of a procuring entity or a bidder shall act in contravention of the codes which includes*

*(i) prohibition of*

- (a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.*
- (b) any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.*
- (c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.*
- (d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.*
- (e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.*
- (f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.*
- (g) obstruction of any investigation or auditing of a procurement process.*

*(h) making false declaration or providing false information for participation in a tender process or to secure a contract;*

*(ii) disclosure of conflict of interest.*

*(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.*

7. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department.

8. Ministries/ Departments at their option may also delegate powers to to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 5 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies.

9. Similarly, Government e-Marketplace (GeM) can also debar bidders upto two years on its portal.

10. In case of debarments under para 8 as above, revocation the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

#### **Debarment across All Ministries/ Departments**

11. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

12. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.

13. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that

sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.

14. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances

15. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.

16. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

#### **Revocation of Orders**

14. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.

15. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

#### **Other Provisions (common to both types of debarment)**

16. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

17. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

18. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.

19. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".

20. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
21. The period of debarment shall start from the date of issue of debarment order.
22. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
23. Ordinarily, the period of debarment should not be less than six months.
24. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavor should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
25. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines within two months of issue of these Guidelines. Further, bidding documents must also be suitably amended, if required.

XXXXXXXX

No. P-45021/2/2017-PP(BE-II)  
Government of India  
Ministry of Commerce and Industry  
Department of Industrial Policy and Promotion  
(Public Procurement Section)

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Dated 28<sup>th</sup> May 2018  
Udyog Bhawan, New Delhi

To  
All Central Ministries/Departments/CPSUs/All concerned

ORDER

Subject: Public Procurement (Preference to Make in India), Order 2017 –  
Revision; regarding.

Department of Industrial Policy and Promotion, in partial modification of Order No. P-45021/2/2017-B.E.-II dated 15.06.2017, hereby issues the revised “Public Procurement (Preference to Make in India), Order 2017’ with immediate effect:-

Whereas it is the policy of Government of India to encourage ‘Make in India’ and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

Whereas procurement by the Government is substantial in amount and can contribute towards this policy objective, and

Whereas local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

Now therefore the following Order is issued:

1. This Order is issued pursuant to Rule 153(iii) of General Financial Rules 2017.
2. Definitions: For the purpose of this Order:

‘*Local content*’ means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

*‘Local supplier’* means a supplier or service provider whose product or service offered for procurement meets the minimum local content as prescribed under this Order or by the competent Ministries / Departments in pursuance of this order.

*‘L1’* means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

*‘margin of purchase preference’* means the maximum extent to which the price quoted by a local supplier may be above the L1 for the purpose of purchase preference.

*‘Nodal Ministry’* means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services of works.

*‘Procuring entity’* means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

*‘Works’* means all works as per Rule 130 of GFR-2017, and will also include ‘turnkey works’.

3. Requirement of Purchase Preference : Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to local suppliers in all procurements undertaken by procuring entities in the manner specified hereunder”
  - a. “In procurement of goods, services or works in respect of which the Nodal Ministry has communicated that there is a sufficient local capacity and local competition, and where the estimated value of procurement is Rs. 50 lakhs or less, only local suppliers shall be eligible. If the estimated value of procurement of such goods or services or works is more than Rs. 50 lakhs, the provisions of sub-paragraph b or c, as the case may be, shall apply”.
  - b. “In the procurements of goods or works which are not covered by paragraph 3a and which are divisible in nature, the following procedures shall be followed”;
    - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract for full quantity will be awarded to L1.
    - ii. If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity subject to the local supplier’s quoted

price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.

- c. "In procurement of goods or works not covered by sub-paragraph 3a and which are not divisible, and in procurement of services where the bid is evaluated on price alone, the following procedure shall be followed":-

i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.

ii. If L1 bid is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such local supplier subject to matching the L1 price.

iii. In case such lowest eligible local supplier fails to match the L1 price, the local supplier with the next higher bid within the margin of purchase preferences shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.

4. Exemption of small purchases: Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
5. Minimum local content: The minimum local content shall ordinarily be 50%. The Nodal Ministry may prescribe a higher or lower percentage in respect of any particular item and may also prescribe the manner of calculation of local content.
6. Margin of Purchase Preference: The margin of purchase preference shall be 20%.
7. Requirement for specification in advance: The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.

8. Government E-marketplace: In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. Verification of local content:
  - a. The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.
  - b. In cases of procurement for a value in excess of Rs. 10 crores, the local supplier shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
  - c. Decisions on companies relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement related complaints relating to the procuring entity.
  - d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/accountant's certificates on random basis and in the case of complaints.
  - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
  - f. False declaration will be breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151(iii) of the General Financial Rules along with such other actions as may be permissible under law.
  - g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraphs 9h below.
  - h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
    - (i) The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry / Department or in some other manner;

- (ii) on a periodical basis such cases are consolidated and centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
  - (iii) in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.
10. Specifications in Tenders and other procurement solicitations:
- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
  - b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of local suppliers who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
  - c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.
  - d. If a Nodal Ministry is satisfied that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign procurement, it may, if it deems appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and / or other items relating to that Nodal Ministry. A copy of every instruction or decision taken in this regard shall be sent to the Chairman of the Standing Committee.
  - e. For the purpose of sub-paragraph 10 d above, a supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or (ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the total value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India."
11. Assessment of supply base by Nodal Ministries: The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
12. Increase in minimum local content: The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
13. Manufacture under license / technology collaboration agreements with phased indigenization: While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the

product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement /transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase of local content.

14. Powers to grant exemption and to reduce minimum local content: Ministries / Departments of Government of India and Board of Directors of Government companies or autonomous bodies may, by written order,

- a. reduce the minimum local content below the prescribed level;
- b. reduce the margin of purchase preference below 20%;
- c. exempt any particular item or procuring or supplying entities or class or classes of items or procuring or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be marked to the Member-Convenor of the Standing Committee constituted under this Order.

15. Directions to Government companies: In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

16. Standing Committee: A standing committee is hereby constituted with the following membership:

Secretary, Department of Industrial Policy and Promotion – Chairman

Secretary, Commerce – Member

Secretary, Ministry of Electronics and Information Technology – Member

Joint Secretary (Public Procurement), Department of Expenditure – Member

Joint Secretary (DIPP) - Member Convenor.

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issue under its consideration.

17. Functions of the Standing Committee: The Standing Committee shall meet as often as necessary but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this order.
- c. Shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters

- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures.
  - f. may examine cases covered by paragraph 13 above relating to manufacture under license / technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization.
  - g. May consider any other issue relating to this Order which may arise.
18. Removal of difficulties: Ministries/Departments and the Board of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.
19. Ministries having existing policies: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1<sup>st</sup> January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
20. Transitional provision: This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

Sd/-  
(B.S.Nayak)  
Under Secretary to Government of India

**STANDARD TENDER ENQUIRY FOR PROCUREMENT OF STORES**

1. The Tender Enquiry (TE)/RFP is issued without any financial commitment. The Buyer reserves the right to amend *or* modify any part of the TE at any stage. Such amendments/ modifications to the TE, if any, shall be duly notified similarly as the TE. Buyer reserves the right to withdraw the TE at any stage, should it so become necessary.
2. Effective Date of the Contract: Unless the consequent Contract specifically defines a different effective date-of-the-contract, the effective date-of-the-contract shall be the date on which the Parties to the Contract have affixed their respective signatures on the Contract or the date of Supply Order. The Contract shall come into effect on the effective date and remain valid until the completion of the obligations of the Parties under the Contract. The deliveries, supplies and performance of the services under the Contract shall commence from the effective date-of-the-contract.
3. The TE is divided into the following five Parts:
  - a) Part I – Contains general information and instructions for the Bidders about the TE such as the date, time, place of submission and opening of tenders, validity period of Tenders, etc.
  - b) Part II – Contains essential details of the stores/ items/services required, such as the Schedule of Requirements, Technical Specifications, Delivery Period, Mode of Delivery and Consignee details, which will form part of the consequent Contract with the successful Bidder.
  - c) Part III – Contains standard conditions of TE, which will form part of the consequent Contract with the successful Bidder.
  - d) Part IV – Contains special conditions applicable to this TE and which will also form part of the consequent Contract with the successful Bidder.
  - e) Part V – Contains evaluation criteria and format for price bids.
4. All procurements are normally processed through GeM. However, in certain situations, the Buyer may consider it necessary to resort to the conventional manual system even if the procurement is with the approval of competent authority. The web address of the e-procurement portal is <https://eprocure-ofb.gov.in>.
5. Prospective Suppliers are supposed to enroll themselves through the e-procurement portal. The system is accessible through the internet by (i) Digital Signature Certificates (ii) user login ID & password. Tender Management activities through the e-procurement system includes:
  - a) Online enrolment by vendors
  - b) Publication of Tenders and amendments/ modifications, if any, thereafter
  - c) Bid submission by the Bidders
  - d) Seeking and publication of clarifications, including clarifications resulting out of pre-bid meeting, if scheduled
  - e) Opening of bids (*both technical and commercial bids*)
  - f) Technical evaluations of the Bids and automatic generation of Comparative Statement of Technical Bids
  - g) Commercial evaluations of the technically qualified Bids and automatic generation of Comparative Statement of Commercial Bids
6. The e-procurement portal has a centralized Help Desk facility with toll free number, online customer complaint facilities and full-fledged operational manuals. The portal also contains the manual for e-procurement as well as the OFBPM 2018. These operational & procedure manuals provide requisite information on using the portal as well as an insight into the

procurement procedure followed by the Ordnance Factory Organization.

7. Tender fees shall not be applicable for tenders processed through e-procurement. However, in procurements made through the conventional manual system a nominal Tender fee is applicable in advertised (*Open/ Global*) tenders. Micro and Small Enterprises (MSEs) having UAM number (to be submitted by MSEs) as defined in MSE Procurement Policy issued by Department of MSME are exempted for tender fee. The requisite Tender fees in the prescribed form needs to be submitted either along with the application for Tender documents *or* along with the Bid. Non submission of requisite Tender fee in the prescribed form may result in rejection of the Bid. There is no provision for providing Tender fees subsequent to the Tender opening. In cases where the drawings, specifications, etc., are priced, the same shall be so stated in the TE, which is applicable for both systems of procurement.
8. The usage of the term 'Bid' in the TE, unless repugnant to the context, refers to the Bids (*including the documents, financial instruments, etc., required to be submitted*) in the e-procurement as well as the conventional manual system.
9. The usage of the term 'Seller' in the TE, unless repugnant to the context, refers to the successful Bidder (s) in the TE on whom the consequent Supply Order/ Contract has been placed.
10. The usage of the term 'Contract' in the TE, unless repugnant to the context, refers to the consequent Supply Order/ Contract.
11. All dates and times specified in this TE are in *date/month/year* and *24 Hrs* formats, respectively.

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## PART I – GENERAL INFORMATION AND INSTRUCTION FOR BIDDERS

Part I of the Tender Enquiry (TE) contains general information and instructions about the TE such as the date, time, place of submission and opening of tenders, validity period of tenders, etc.

- 1.1. The ..... (*the Buyer*), through this TE No. .... dated....., issued as ..... [*Advertised Tender (Global/ Open) / Limited Tender/ Single Tender(SKS/PAC)*], invites Bids, on ..... (*Single Bid/ Two Bid*) basis, from all eligible Bidders for supply of ..... (*Title of the TE*).
- 1.2. The pre-qualification/ eligibility criteria, if any *has been prescribed by the Buyer*, shall be indicated under this paragraph as sub-paragraphs (*a*), (*b*), ... (*n*), *if none has been indicated under this paragraph*, the TE shall be open to any bidder desirous of participating in the tender.
  - a) .....
  - b) ..... , *etc.*
- 1.3. Bidders shall be solely responsible for ensuring timely submission of their sealed Bids (*and their related final instruments & documents*) by the specified date & time, and in the manner prescribed in the TE. If due to any exigency, the due date for Tender opening is declared as a closed holiday, the Tender opening will be held on the next working day at the same time *or* on any other day/time, as intimated by the Buyer. Should it so become necessary for the Buyer to extend the Tender opening date, such extended date shall be duly intimated/ notified. In e-Procurement, the tenders shall be opened online.
- 1.4. In the e-procurement system of procurement various procurement activities mentioned in paragraph 5 above are performed online. In conventional manual system, the relevant details to facilitate submission of Bids are given below:
  - a) The last date and time for Bid submission is ..... (*date*) at..... (*time*)
  - b) Bids & queries to be addressed to: .....
  - c) Postal address for sending the Bids: .....
  - d) Location of the Tender Box is ....., marked as .....
  - e) Tender shall be opened on ..... (*date*) at..... (*time*)
  - f) Place of opening of Bids is .....
  - g) Name/ designation of the contact personnel: .....
  - h) Telephone number (*s*) of the contact personnel: .....
  - i) Official e-mail ID (*s*) of contact personnel: .....
  - j) Fax number (*s*): .....
- 1.5. Bids (*including the related financial instruments, etc.,*) received with a lower validity than that specified in the TE can be treated as invalid and may be rejected. The prescribed validity for financial instruments is given in subsequent Parts of the TE. Bids should necessarily remain:
  - a) valid for..... days from the specified last date for Bid submission
  - b) valid till ..... (*date*)
- 1.6. Submission of Earnest Money Deposit (*EMD*) is an essential requirement to be fulfilled. Bids not accompanied by the EMD specified in the TE shall be treated as invalid Bids. In the instant TE Bidders are required to submit along with their Bids, EMD for an amount equal to Rs. .... in the prescribed form (*refer to Part III of the TE*). The EMD shall be in favour of ..... (*GM/ED/HOD*).

- 1.7. In e-procurement, the Bidders shall upload along with their Bid, the scanned copies of the instrument of their EMD and forward the original EMD instrument by post in a separately sealed envelope clearly mentioning the 'EMD for TE No ..... and due date of opening of technical bid.....' on the envelope. However, if the physical original instruments is not received by the Buyer prior to the specified Tender opening date & time, the Bid being incomplete on Tender opening, shall be treated as invalid/ late tender and rejected.
- 1.8. Bidders requiring clarifications on the contents of the TE may request the Buyer in writing or through e-Procurement System (*so as to reach the Buyer not later than fourteen days prior to the date of Tender opening*) bringing out unambiguously the specific clarifications needed. Copies of the clarifications requested by the Bidder and the clarifications provided by the Buyer shall be sent to all prospective Bidders who have been issued TE.
- 1.9. Manual Bidders should forward their Bids under their original memo/ letter pad *inter-alia* furnishing details like GST number, Bank details with NEFT account details, complete postal & e-mail address, telephone & fax numbers, etc., of their office. In e-procurement bids shall be submitted through e-procurement portal.
- 1.10. When Bids are called on Single Bid basis the technical and financial/ commercial bids shall be submitted in the same bid. However, when Bids are called for on Two Bids basis, the Bids shall comprise of two parts, namely (i) Technical Bid, and (ii) Financial/ Commercial Bid. In manual bidding, the Technical Bid and the Financial/ Commercial Bid should be sealed by the Bidder in separate covers duly super-scribed to indicate the appropriate Bid. Both these sealed covers are to be put in a bigger cover, which should also be sealed and super-scribed as prescribed below.
- 1.11. Bids, for supply of the item (s) listed in Part II of the TE, shall be submitted through the e-procurement portal *or* in sealed cover in case of procurements on conventional manual system. In conventional manual system, the sealed cover of the Bids should neatly and legibly be super-scribed with the details of (a) Title of the TE (b) TE No. and date (c) Tender opening date. Lack of these superscription may result in the Bid being declared invalid.
- 1.12. In conventional manual system, Bidder may modify *or* withdraw his bid after submission provided a written notice of modification *or* withdrawal is received by the Buyer prior to the deadline prescribed for Bid submission. The withdrawal notice may be sent by fax provided it is followed by a signed confirmation copy to be sent by post and such signed confirmation reaches the purchaser not later than the Bid submission deadline. In case of e-procurement, a bidder can change, withdraw or cancel earlier submitted offer before the bid submission closing date and time. In case tender specifications or price bid format is revised the submitted bids will become null and void & the vender need to re-submit the bids. TE closing date & time, opening date & time will also change. Information for the same will be sent to vendor through e-mail.
- 1.13. Bids cannot be modified after the Bid submission deadline. Similarly, after the Bid submission deadline, Bids cannot be withdrawn till expiry of the Bid validity.
- 1.14. In conventional manual system, only Bids that are found in the specified Tender Box shall be opened. Bids, if any, dropped in a wrong Tender Box shall be treated as invalid Bids.
- 1.15. In conventional manual system, Bidders may depute their representatives, duly authorized in writing, to attend the opening of Bids on the due date and time. Rates and other 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 the absence of the

representative of any Bidder. In case of e-procurement, the tenders shall be opened online and bidders, who participated in the TE can view the spot CST also online through OFB e-procurement portal.

- 1.16. In Two-bid system, only the Technical Bids will be opened on the specified Tender opening date and time. Financial Bids of only those firms will be opened, whose Technical Bids are found technically compliant/ suitable on Technical Evaluation by the Buyer. Date of opening of the Financial Bids shall be separately intimated after evaluation of the Technical Bids.
- 1.17. During evaluation of Bids, the Buyer may, if so required, ask the Bidder (s) for clarification on the Bid submitted. The request for such clarification shall be in writing (or through e-Procurement System). The clarification furnished by the Bidder should not result in any change in prices *or* substance of the Bid *nor* will the same be permitted. No post-bid clarification at the initiative of the Bidder will be entertained.
- 1.18. In procurements where it is necessary to physically verify the facilities & capacities of the Bidder, the Buyer may depute Capacity Verification Teams for carrying out such physical verification of facilities & capacities as per AWEIL Standard Operating Procedure (SOP) for Capacity Verification and Vendor Registration as available on the Ordnance Factory Board website and e-procurement portal. However, for the items valuing up to Rs. 2.5 Lakh the said SOP will not be mandatory.
- 1.19. Canvassing in any form by the Bidder, unsolicited letter and post-bid amendment/ modifications/ corrections shall attract summary rejection of the Bid with forfeiture of EMD.
- 1.20. Bidder should comply with all the Parts of this TE and confirm acceptance of all the clauses of Part II, Part III, Part IV and Part V of the TE, which shall automatically be part of the consequent contract with the successful Bidder (s) (*i.e. Seller in the consequent contract*). Failure to confirm acceptance to the clauses mentioned under Part II, Part III, Part IV and Part V of the TE may result in rejection of the Bid submitted by the Bidder. Conditional Bids shall be treated as invalid and rejected. In the manual system, the bidder should sign on each page of the tender document.
- 1.21. In case of LTE, Bidders not willing to participate in the TE should ensure that an intimation to that effect reaches the Buyer before the date and time prescribed for opening of Bids, failing which the defaulting Bidder may be delisted for the range of items for which the TE is issued.
- 1.22. The Buyer reserves the right to reject/cancel/scrap the Tender Enquiry or change the quantity of tendered item(s) without notifying any reason whatsoever.
- 1.23. In case of any dispute, the decision of the Buyer shall be final and binding on all participants in the tender.
- 1.24. In e-Procurement cases, Bidders have to submit their bids through OFB e-Procurement portal only. Bids submitted by any other mode shall be treated as invalid.

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## PART II – ESSENTIAL DETAILS OF STORES REQUIRED BY THE BUYER

Part II of the TE contains essential details of the Stores/ Services required, such as the Schedule of Requirements, Technical Specifications, Delivery Period, Mode of Delivery, Consignee details, etc.

2.1. The Schedule of Requirements, duly indicating the Stores/ Services required, is given below:

Sl. No.	Nomenclature of the Stores/ Service	Specification of the Store/Description of the Service	Quantity Required

2.2. Technical details of the stores/ service required are given below.

a) Specifications/drawings details *or* Type of Service required:

.....  
.....

b) Technical details duly covering all technical parameters *or* detailed Scope of Service required:

.....  
.....

c) Evaluation, Inspection and Factory Acceptance Trial criteria *or* Minimum Acceptable Service Level (MASL):

.....  
.....

d) Installation/ commissioning requirements:

.....  
.....

e) Pre-site/ Pre-dispatch inspection requirements *or* basis of assessing MASL:

.....  
.....

f) Warranty and post-warranty requirements:

.....  
.....

g) Training/on-job training requirements:

.....  
.....

h) Technical documentation required:

.....  
.....

i) Details of any other requirements:

.....

2.3. If the Buyer finds it necessary to hold a pre-bid Conference (*refer Part IV*) to familiarise the prospective Suppliers with the requirement of the TE, then the notice of such pre-bid Conference shall be provided as hereunder. If such notice for pre-bid Conference is not specified as hereunder then it should be considered that the Buyer does not intend to hold any pre-bid Conference.

### Notice for Pre-bid Conference

i) Date: .....

ii) Time: .....

iii) Venue: .....

2.4. For strategic reasons the quantity tendered in this TE may be distributed as per the distribution ratio .....(*refer Part IV*).

- 2.5. In cases where the Buyer issues material to the Supplier under the consequent Contract, the issued material will be duly secured by obtaining a Bank Guarantee, from a bank authorized to carry out government business, of value equal to the 110% of the value of the issued material and validity till delivery of supplies accepted by the Buyer. The details pertaining to such issued material is given below:
- Batch size of issue material, if applicable .....
  - Value of issue material for the Batch size
  - BG value .....
  - Other special instructions .....
- 2.6. The Bidders shall furnish along with their Technical Bid a clause-by-clause Compliance Statement bringing out the compliance (*without disclosing the price*) of their offer to the TE specifications and duly indicating unambiguously the deviations, if any. The detailed Compliance Statement shall be provided in the format attached herewith.
- 2.7. Delivery period for supply of the Stores/ Services shall be .....from the effective date (*refer Part III*) of the consequent Contract placed on the successful Bidder. The mode/terms of delivery shall be reckoning the date of delivery on the basis of the mode/ terms of delivery shall be as given below.
- 2.8. Staggered deliveries (*where applicable*) required in the TE is given below. In TE with staggered deliveries, the Buyer shall clearly specify hereunder as to whether the consequent Contract will be an "Entire Contract" or a "Severable Contract". If nothing is specified the consequent Contract shall be an "Entire Contract".

Sl. No	Quantity to be Delivered	Date of Delivery/ Delivery Period	Remarks/ Special Instructions for Delivery

- 2.9. Inspection Authority in the consequent Contract shall be .....The mode of Inspection applicable in the consequent Contract shall be ..... (*Buyers Inspection/ Joint Inspection/ Self-certification*). The Inspection applicable in the consequent Contract shall be ..... (*Pre-dispatch Inspection/ Joint Receipt Inspection / Buyers Receipt Inspection*). The .... Shall be the Inspection Officer. The firm should furnish the test report of chemical and physical parameters of raw materials used for manufacture of components, fabricated stores, tools and gauges along with chalan. The instruments used for carrying out test as above shall have national traceability and evidence of the same will be furnished in the certificate.
- 2.10. The mode/ terms of delivery required in the TE is ..... To enable equitable comparison of Bids received against the TE, it is necessary that the Bidders quote as per the mode/ terms of delivery specified in the TE.
- 2.11. The applicable Rules & Regulations for delivery & transportation of Stores (*domestic and from foreign countries*) shall be as per the contemporary version of International Commercial Terms (*INCOTERMS*). Reckoning the date of delivery from the terms of delivery shall be as given below.

Sl. No	Mode/ Terms of Delivery	Reckoning of the Date of Delivery
a)	Local Delivery at Site	The date on which the delivery is made at the Buyers site mentioned in the contract
b)	Ex-works	The date the Seller delivers the goods to the Buyer at the Sellers Works mentioned in the contract
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)	FCA (Airport)	The date of Air-way Bill
f)	F.O.R. Destination	The date on which the goods reach the destination 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 mentioned in the contract. This date is reflected in Bill of Lading
i)	F.O.B. Port of Shipment	The date on which the Seller delivers the goods at the Port of shipment mentioned in the contract, the dated as reflected in the Bill of Lading
j)	C.I.F. Port of Destination	The date on which the goods actually arrived at the destination Port mentioned in the contract

- 2.12. The FAS, FOB & CIF terms of delivery are applicable only for Stores directly imported from foreign countries against the consequent Contract and not for imports by the Seller under its own arrangement. The CIP terms of delivery are applicable both for domestic as well as imported supplies.
- 2.13. Special instructions on consignee details & other special conditions pertaining to shipment, transportation, etc., if any applicable under this TE, shall be as indicated hereunder.
- Consignee details: .....
  - Packing instructions: .....
  - Shipment/ Transportation instructions: .....
  - Other Special instructions, if any: .....
- 2.14. Bidders shall offer their quotes only on firm and fixed basis, unless otherwise the Buyer has specifically invited the TE on variable price basis duly prescribing the Price Variation (PV) formula in Part III. In such TEs with the Price Variation formula specified, the Bidders shall quote strictly in accordance with the Price Variation formula prescribed. Quotes not conforming to the prescribed Price Variation formula shall be treated as unresponsive and rejected.
- 2.15. Time being the essence of the contract, Bidders should note that the consequent Contract can be cancelled unilaterally by the Buyer in case deliveries are not received within the contracted delivery period. In this regard the provisions of the Risk & Expense clause in Part IV may be perused.
- 2.16. Extension of contracted delivery period due to reasons attributable to the Seller of the consequent Contract shall be at the sole discretion of the Buyer, with applicability of Liquidated Damages (LD) clause as mentioned in Part III.

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## PART III – STANDARD CONDITIONS OF THE T.E

Part III of the TE contains the Standard Conditions of the TE.

- 3.1. Scope of Supply – Technical Description/Requirement/Quality requirement etc.: The stores supplied shall be of the best quality and Workmanship, shall be in strict conformity with all the drawings and specifications furnished with the Purchase Orders and shall address the Technical description in all respects. Where tenders are called for in accordance with 'particulars', the seller's tender to supply in accordance with such 'particulars' shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and no claim on his part which may arise on account of non-examination or insufficient examination of the 'particulars' will in any circumstances be considered. The items not specifically listed but required for completeness of stores / system deemed to be included. All supplies should be accompanied by Sellers works inspections/ test certificates duly certifying, the Stores are in strict conformity with the drawings/specifications. The final acceptance will be subject to inspection and approval at Buyer's premises. Once the material are rejected and communicated to the Seller, no request shall be entertained for re- inspection or acceptance of the stores. However, Buyer reserves the right to re-inspect the stores and consider acceptance at his discretion.
- 3.2. Price: The rates offered shall be 'Firm & Fixed' with full and detailed breakup of various applicable cost elements like Basic Price, packing charges, freight/ transport, forwarding charges, handling charges, landing & clearing charges, installation & commissioning, training, technical assistance, etc.; and duly indicating all the applicable Taxes & Duties alongwith the relevant taxation rate and value for each of the applicable Tax/ Duty, till the execution of the total quantity on the order. To facilitate assessment of reasonability of price quoted, the Bidder shall indicate split-up details of the cost elements of the Basic price. No increase shall be permissible on any account after finalization of the order / till delivery of total quantity of the order. Price quoted should be on F.O.R. Destination basis, for delivery at Buyer premises inclusive of all charges including transit insurance. Foreign sellers will quote the prices on the FOB/FCA Port of dispatch basis, as applicable (INCOTERMS 2010).

Seller should clearly mention whether the prices hold good when the full quantity of enquiry is not ordered but only a part of it. Unless otherwise mentioned, it would be assumed that the rates hold good even when lesser quantities than those enquired of are ordered. Any increase in prices at a later date for ordering lesser quantities will not be agreed to.

### 3.3. Price Variation Clause:

Invariably, Purchase Orders shall be placed on a firm price basis. In exceptional cases, where the firm insists on escalation or on price ruling at the time of despatch, the purchase order should contain a clause to this effect for admissibility. The Purchase order should clearly specify the formula for determining the quantum of escalation admissible with reference to a fixed base period and prices ruling at that period taken as a base for deciding the escalations. The base period and prices should be mutually agreed based on necessary documentary evidence. The claims shall be supported by necessary documentary evidence, as compared to the base prices for admitting the escalation claims. Price Escalation Clause needs to clearly define applicability of Escalation up to point of ordering or point of delivery. Whether the escalation to be calculated on year to year basis or point to point basis, same to be specified. Methodology of calculation of escalation is to be specified.

PV formula may specify cut-off dates for material and labour, as these inputs taper off well before the scheduled delivery dates. The Price Variation formula may also provide for a ceiling on the price variations as a percentage per annum or an overall ceiling or both.

If advance or stage payments have been allowed, no price variations will be admissible on such portions of the price, after the dates of such payment. No price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. 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 the purchaser.

When 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.

Where contracts are for supply of 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 & 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 & taxes, foreign exchange rates, and the documents to be produced in support of claims for such variations should also be stipulated in the contract.

Price Variation formula will vary from Contract to Contract. However, a suggested price variation formula could be as follows:

$$P = P_o \{ (A + B(L/L_o) + C (M/M_o)) \}$$

P = Final price payable in the year of delivery

P<sub>o</sub> = The base price at \_ (year) economic conditions

L<sub>o</sub> = Average Labour Index of the base \_ (year)

M<sub>o</sub> = Average Material Index of the base \_ (year)

L = Average Labour Index ..... Months prior to date of delivery (as applicable at Seller's country).

M = Average Material Index ..... Months prior to date of delivery (as applicable at Seller's country).

A, B & C = Percentages corresponding to fixed elements, labour and material respectively.

Escalation cap (+/-) applicable (percentage) with the above price variation formula to be indicated.

The indices incorporated in the escalation formula should be Govt. Published/ in public domain and capable of being verified.

Escalation/Revision in price shall not be admitted for the delayed supplies.

- 3.4. Packing Conditions: The stores should be properly packed for tropical storage and for transport by rail, road, sea or air so as to ensure and to protect them against loss, damage, corrosion in transit on arrival at their destination. The packing and marking of packages shall be done by and at the expense of the seller. Each package shall contain a Packing Note quoting Purchase Order number and date showing its contents in detail. Each package shall be properly marked with Purchase Order No., Consignee's name & address, gross weight, package-handling instructions etc. The package shall have adequate provision for handling during transit and at destination.

The packing, shipping, storage and processing of the delivery must comply with the prevailing legislation and regulations concerning safety, the environment and working conditions. In case of Imports, items packed with raw/ solid wood packing material should be treated as per ISPM-15

(fumigation) and accompanied by Phytosanitary/ Fumigation certificate. If safety information sheets exist for a delivery or the packaging, the seller must always supply these sheets direct (at the same time). The packing shall allow for easy removal and checking of goods on receipt and comply with carrier's conditions of packing or established trade practices. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material should be notified as such and their packing, transportation and other protection must conform to relevant regulations.

3.5. Inspection and Technical documents requirements:

- (a) The supply made against respective orders will be subject to Buyer inspection at his premises. The Seller shall be responsible for items supplied till the same have been inspected and accepted by Buyer. In case the goods / services are rejected at the time of inspection at Buyer Place or the rejections are noticed at the time of further processing the Seller will be informed of these rejections. On receipt of this information the Seller shall immediately arrange to collect the rejected items at his cost and risk and arrange for the replacement of goods within the shortest possible time. Under no circumstances the Seller shall compel the Buyer to rework the rejected goods. The rejected material will lie in Buyer factory premises at the risk and cost of the Seller, pending receipt of disposal instruction from them. If so desired by the Seller, the rejected materials, for which no payment made by Buyer may be packed and returned to the Seller for arranging replacement / rectification on 'freight to pay' basis at his cost and risk and the dispatch documents will be forwarded to the Seller directly by Buyer to enable him to arrange insurance and take delivery of the same. Wherever payment is already made by Buyer to the Seller, the rejected material will be returned to the Seller against refund of the amount already paid by Buyer / submission of BG for the value of rejected goods. The packing, freight charges etc., on replacement of returned materials shall be borne by the Seller irrespective of the terms in the purchase order, since such charges were already incurred and borne by Buyer on the original consignment, which got rejected and returned to the Seller. In case the rejected materials are not required to be replaced, freight, insurance charges etc., incurred by Buyer on the original consignment shall be recovered from the Seller's bills.
- (b) Ground Rent: If the material supplied by the vendors is rejected at the factory premises, the vendor is required to lift the rejected material within 30 days of issue of rejection I-Note. Factories have right to recover a charge for the storage space at @1% of the cost of material un-cleared, per week or part thereof, with maximum ceiling of 10% of value of the items. After lapse of 10 weeks, if it is found that firm has not taken any action for lifting of items, the goods may be confiscated and disposed off as per disposal procedure in vogue after sending a notice and giving 30 working days time to the firm. Ground rent shall be calculated from the date of expiry of the period of removal of item. No ground rent should be charged from Central/State Govt/Central PSUs. When the firm fails to pay the applicable ground rent within the prescribed period, factory is entitled to recover the ground rent due and all incidental expenses from EMD/PSD.
- (c) Buyer or his authorized representative shall be entitled at all reasonable times during execution to inspect, examine and test at the Seller's premises the material and workmanship of all stores to be supplied under the Contract, and if the part of the stores are being manufactured at other premises the Seller shall obtain Buyer's or his authorized representative's concurrence to inspect, examine and test as if the said stores are being manufactured at the Seller's premises. Such inspection, examination and testing, if made shall not release the Seller from any obligation under the Contract. If the defects are not remedied

within a reasonable /stipulated time, the purchaser may proceed to rectify the defects at the seller's risk & cost but without prejudice to any other rights which the buyer may have against the Seller in respect of their failure to remedy such defects. All costs related to inspections and re-inspections shall be borne by the Seller. The cost of inspection staff/ third party specified by the Buyer shall be borne by Buyer, unless otherwise specifically agreed. When the Contract provides for tests on the premises of the Seller or any of his Sub- contractor/s, Seller shall be responsible to provide assistance such as, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently. Cost of any type test or such other special tests shall be borne by the Buyer only if specifically agreed. The Seller shall give the authorized representative of the Buyer reasonable prior notice in writing of the date on and the place at which any stores will be ready for inspection/ testing as provided in the Contract.

- 3.6. Acceptance of Goods: Material on arrival at Buyer's premises will be inspected by QA/Inspection Department as per appropriate Quality Assurance Plan and their decision in the matter will be final. The test certificate and relevant supporting documents should be sent along with the consignment.
- 3.7. Training & Technical Assistance: The successful tenderer shall arrange for the training of a reasonable number of the Buyer's technical personnel in shops manufacturing the equipment and in plants where equipment similar to those covered in the tender documents are in operation. The number of such personnel and the period of training will be mutually agreed upon. The travelling and living expenses of the trainees will be borne by the Buyer. Training and technical assistance clause may include:

- i. Manufacturing processes of the stores wherever applicable, as well as quality assurance procedures, programming, operation, mechanical maintenance and electronic/electronic maintenance at seller's work and also during commissioning.
- ii. Duration of training,
- iii. No. of personnel to be trained.
- iv. Place of training.
- v. Charge applicable / or FOC
- vi. Documentation / training material.
- vii. Boarding, lodging & travelling charges etc.
- viii. Free Mandays / Extra Mandays for service engineering.
- ix. Any other aspect related to training & technical assistance.

- 3.8. Payment Terms: The standard payment terms shall be 100% payment against Seller's bill by Account transfer through NEFT/RTGS only for accepted materials within 30 days from the date of receipt of material or submission of bills/documents, whichever is later. Normally no request for Advance Payment is entertained. However, where Advance Payment is considered in select cases, the same may be allowed, subject to furnishing Bank Guarantee (in prescribed format) from a scheduled commercial Bank (other than Cooperative Bank) for an amount equal to 110% of the advance released.

Or

90% of the contract amount shall be paid against provisional receipt of the item at the consignee's premises along with inspection note from NABL accredited /authorised Lab and other relevant documents. Balance 10% shall be paid after the stores have been properly checked and accounted for. Alternatively, where considered necessary, 95% of the contract amount can be paid against provisional receipt of the item at the consignee's premises along with inspection note and other documents. Balance 5% can be paid after the stores have been properly checked and accounted for.

Or

Stage-wise payments (may be considered only in complex cases, provided the stage-wise payments admissible is indicated above) .

Or

Quarterly/ monthly payments for work completed on submission of User Clearance Certificate in respect of AMC/ Service contract.

Or

Payment may also be made through TReDS (Trades Receivable Discounting System) on its implementation

### 3.9. Warranty:

- (a) All the Stores supplied shall be warranted against any defect in material, Workmanship, defective design, materials and non-conformance to intended performance, manufacturing defects, or dimension etc., for a period of \_\_\_\_\_calendar months from the date they are actually put to use or \_\_\_\_\_calendar months from the date of receipt and acceptance of supply in Buyer's place / buyer's designated place, whichever is earlier and the seller shall remedy such defects at his/her own cost or replace free of charge such stores when called upon to do so.
- (b) The seller cannot absolve their responsibility for warranty of material even though it is inspected & approved by Inspection authority.
- (c) In case of defective Stores which need to be re-exported for repairs to the manufacturer's works, To & Fro freight, insurance charges & custom duty for replacement have to be borne by the seller.
- (d) During warrantee period any equipment or component thereof supplied by the seller, suffers due to defective material and or due to improper design and or due to defective drawing or due to faulty workmanship the seller will assume full responsibility of rectification of such defective equipment or component thereof including direct expenses related to removal and re-positioning of the replacement/repaired equipment or component thereof and subsequent test & trial, incurred thereon without any financial implication to Buyer.
- (e) In the event Buyer desires to have extension of Warranty period beyond the stipulated period, as above, the seller shall quote for the same (on monthly basis) for the period of such extension.
- (f) If the defects intimated during the Warranty period are not remedied within a reasonable / stipulated time, the Buyer may proceed to rectify the defects at the seller's risk and cost, but without prejudice to any other rights which the Buyer may have against the Seller in respect of the failure of the Seller to remedy such defects.
- (g) In the event of Seller's failure to attend the Warranty defects within a reasonable period of time, the Performance Bank Guarantee will be encashed by the Buyer. The Buyer's decision shall be final and binding on Seller in this regard.
- (h) All packing, forwarding, insurance and delivery charges arising against this would be borne by the Seller. The guarantee period would be extended by equivalent period for which the

material is not available for the repaired parts, which were repaired & replaced during the Warranty period. The Warranty is subject to proper preservation, maintenance, storage, handling and usage of equipment by Buyer & Buyer's customer and does not covers repairs carried out without the prior consent of the seller / seller rep.

- (i) Warranty calls needs to be attended within\_\_\_\_\_hrs. Warranty of the stores will be extended by residual period

### 3.10. Option Clause:

- (a) The Buyer reserves the right to place orders for additional quantity up to a maximum of 25% of the originally contracted quantity at the same rate and terms of contract within the original Delivery Period (DP) as well as Re-fixed/Extended DP subject to:

- (i) there being a requirement for the item,

- (ii) incorporation of Option clause in the contract,

- (iii) there being no downward trend in price (consent of supplier is not necessary) or if there is a downward trend, the supplier agreeing to reduce the price for the enhanced quantity duly matching with the fall in prices, and

- (iv) if no fruitful result will accrue by floating fresh TE or when the store is urgently required for meeting production targets.

- (b) The Option clause can be exercised (if necessary more than once) provided the cumulative of the Option clause quantities exercised does not exceed the option clause quantity provided in the contract.

- (c) In multi vendor situation, to provide a level playing field to all the vendors, any bid received without compliance to Option clause, may be considered as unresponsive by concerned TPC.

- (d) Option clause may be operated normally on completion of 90% quantity of original supply order (or lesser qty as decided by concerned TPC).

- 3.11. Product Support: The successful Seller should agree to provide product support for the equipment supplied, assemblies/sub-assemblies, fitment items and consumables, Special Maintenance Tools (SMT) / Special Test Equipments (STE) subcontracted from other agencies / manufacturer by the Seller, by making available spare parts, components & tools etc., accessories of equipment and services for a minimum period of \_\_\_\_\_ years from the date of supply.

Seller should supply recommended spares for operator level servicing and should carry out necessary product support activities. Seller should also recommend a list of test equipment / fixtures and special tools required for servicing at \_\_\_\_\_/its customer bases. Seller will extend need based technical assistance to the BUYER for maintenance of the product/System during the warranty period. Seller shall provide an effective Product Support and maintenance services on demand from the BUYER and at mutually agreed financial consideration, for mutually agreed period from the date of supply of the product/System. Product Support covers the following areas:

- Spares Support
- Field Support
- Maintenance Support

#### SPARES SUPPORT:

1. SELLER shall advice on the requirement of spares and stock to be maintained as and when required by the BUYER.
2. Supply spares on demand.
3. Should any of the spares or equipment be earmarked for discontinuance of production, give notification to BUYER one year before the production is discontinued, to allow for a life time purchase. SELLER shall assist the BUYER in establishing alternate source of supplies.

#### FIELD SUPPORT:

On the request of the BUYER, SELLER shall resolve all technical queries and problems on product/System in service and provide the services of its service engineers at base of the BUYER on mutually agreed terms and conditions as and when required to facilitate repair of the product/System or to carry out modifications within the framework of system safety andfor other field services.

#### MAINTENANCE SUPPORT:

SELLER shall carry out scheduled, periodic and unscheduled maintenance and snag rectification and for this purpose maintenance personnel will be deputed at mutually agreedterms and conditions.

In case of prices for long-term supplies of spare parts or price catalogue are not available/applicable, provision for entering into long term business agreements on supply, servicing and repairs like LTSA/LTRA should be provided by Seller in the scope of the contract till establishment of Repair Overhaul Facility at \_\_\_\_\_or in India. Seller should indicate lead time for supply of spares and should authorize \_\_\_\_\_for direct purchase from OEMs/Primary vendors.

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. 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. Any improvement / modification / up gradation by the Seller or their sub supplies 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. 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 asspecified 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.

### 3.12. Taxes & Duties

- a) GST: Rate of GST or any other Tax chargeable should be clearly indicated in the offer/ bid as inclusive in the price quoted or extra. If not indicated, Buyer will assume that the rates quoted are inclusive of taxes.
- b) Wherever Excise Duty is applicable and payable, the same shall be reimbursed at actual against production of qualified Excise Duty gate pass in original as a proof for having paid the duty on the particular consignment. The Seller should ensure that the Gate Pass accompanies each consignment that are sent to us. In addition, a photocopy of Gate Pass, in advance along

with Invoice to be sent to Purchase Department in case of payment through Bank. If the terms of payment is other than the above, the photo copy of the Gate Pass with the bills etc., shall be sent to concerned Accounts Department. The Excise Duty Gate Pass number and date shall be incorporated in the Invoice, Delivery Challan and all other dispatch documents.

- c) Seller is entitled for increase in statutory taxes, duties & levies within original DP and extended DP. However, there is decrease in statutory taxes, duties & levies, the same must be passed on to the Buyer.
- d) Foreign Bidders: All taxes, duties, levies and charges which are to be paid for the delivery of goods in their respective countries, shall be paid by the foreign bidders.
- e) Customs Duty:
  - (i) In case of imported stores offered against forward delivery, the Bidders shall quote prices exclusive of customs duty, duly specifying separately the CIF Price and the customs duty payable. The Bidder shall also indicate the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty actually paid shall be reimbursed on production of necessary documents i.e. (1) copy of Bill of Entry, (2) copy of Bill of Lading, (3) foreign Principals invoice. However, if the Bidder imports the stores in question against his own commercial quota Import license, he will also be required to submit in addition to the triplicate copy of bills of entry, etc., a certificate from his Internal Auditor on the bill, to the effect that the following items/ quantity in the bill of entry are related to the stores imported against the Buyers Contract Number ..... dated .....
  - (ii) Subsequent to the reimbursement of customs duty if the Seller obtains any refund of customs duty, such refund shall immediately be remitted, in full, to the Buyer. In case of failure to do so, the Buyer shall be fully empowered to deduct a sum equivalent to the amount of customs refunded, without any further reference to the Seller, from any of their outstanding bills against the contract or any other pending Government contract and no disputes on this account shall be raised by the Seller.
  - (iii) Subsequent to the reimbursement of customs duty, the Seller shall submit to the concerned Paying Authority a certificate to the effect that he has not obtained any customs duty refund. In addition, Seller shall also submit to the Paying Authority a certificate, immediately after lapse of the period specified in the Customs Act by which application for refund are to be filed with the Customs Authorities, stating that he has not applied for refund of the customs duty.

### 3.13. Pre-contract Integrity Pact:

- a) For purchases exceeding Rs. Five (5) Cr, a Pre-contract Integrity Pact shall be signed between the Buyer and the Bidder. This is a binding agreement between the Buyer and Bidder in which both agree to enter into a pre-contract agreement to avoid all forms of corruption by following a system that is fair, transparent and free from any influence prior to, during and subsequent to the currency of the contract.
- b) Bidder shall submit duly signed Pre-contract Integrity Pact in original, strictly as per the format (without any deviation) enclosed with the T.E/RFP. Bidders not complying with this are liable for rejection and their bids will not be considered for evaluation. In case of two bids system, the Bidder is required to submit the signed pre-contract IP as part of technical bid, failing which offers are liable for rejection.
- c) The Pre-contract Integrity Pact shall be valid, from the date of signing of the contract, for a

period extending up to 5 years or completion of contractual obligations whichever is later.

- d) The Pre-contract Integrity Pact requires every Bidder to deposit along with his Bid the following amount as Security Deposit.
- i) Rs 1 Cr (Additional financial guarantee), if the estimated cost procurement is above Rs 100 Cr and up to Rs. 300 Cr.
  - ii) Rs 3 Cr (Additional financial guarantee), if the estimated cost procurement is above Rs 300 Cr.
  - iii) All procurement cases above Rs. 5 Cr & up to Rs. 100 Cr, Integrity Pact is required to be executed without any additional Financial Guarantee. The EMD/SD/PBG required to be submitted by the vendor as prescribed in OFBPM 2018 shall only act as the financial guarantee for the IP.
  - iv) For procurement cases above Rs. 5 Cr & up to Rs. 100 Cr, in case EMD is exempted and/or PSD is waived, separate Bank Guarantee of the PSD value required to be submitted by the vendor.
  - v) Bidder shall furnish the said EMD/ Security Deposit through any of the following instruments:
    - 1) Bank Draft or Pay Order in favour of the Executive Director of the factory.
    - 2) A Confirmed Guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Buyer, on demand, within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the Buyer shall be treated as conclusive proof for payment.
    - 3) In case foreign suppliers, the Bidder may, if necessary, furnish the Bank Guarantee from a first-class International Bank provided the same is confirmed/ verified by the State Bank of India.
  - vi) The EMD/ Security Deposit shall be valid up to a period of five years beyond the bid validity specified in the TE (or subsequent request made by the Buyer for validity extension) or the complete conclusion of contractual obligations to complete satisfaction of both the Bidder and the Buyer, whichever is later.
  - vii) 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 does not qualify (do not qualify) after the stages of TEC/ TPC, as constituted by the Buyer, immediately after a recommendation is made by the TEC/ TPC on bid(s) after an evaluation.
  - viii) No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.
  - ix) The Buyer has nominated \_\_\_\_\_ (Name & address to be given) as Independent Monitor (IEM) for this Pact.

- 3.14. Liquidated Damages (LD): The time for and the date of delivery of the stores stipulated in the Purchase Order shall be deemed to be the essence of the contract, and delivery must be completed not later than the dates specified therein. Should the Seller fail to deliver the material to our premises or any consignment thereof within the period prescribed for such delivery, Buyer shall be entitled to recover from the Seller agreed liquidated damages, and not by way of penalty a sum of 0.5% per week of delay or part thereof, subject to a maximum of 10% as our claim towards liquidated damages on the undelivered part of the order. The LD along with GST on LD will be charged on the basic cost excluding taxes and duties. Imposition, recovery or settlement of this LD shall not affect Buyer's right to performance, compensation and termination of the agreement. Liquidated Damages in contracts with Price Variation formula shall be levied on the price as varied by the operation of the Price Variation clause.

### 3.15. Earnest Money Deposit:

- a) EMD for a value of Rs. \_\_\_\_\_ to be submitted in the form of Account Payee Demand Draft / Fixed Deposit Receipt / Banker's Cheque / Bank Guarantee (in prescribed format) from any of the Commercial banks / payment online (to be specified, on implementation). EMD should be valid for days beyond the validity of the bid. Bank details are as follows:  
\_\_\_\_\_.
- b) Offers not accompanied with requisite amount of EMD or EMD not submitted in the specified form in original shall be summarily rejected.
- c) EMD will not carry any interest for the period it is retained with Buyer. EMD will be forfeited if a Seller withdraws, amends, impairs and/or derogates within validity period.
- d) EMD is to be submitted by the bidders except Micro and Small Enterprises (MSEs) having UAM number as defined in MSE Procurement Policy 2012 issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department (including OFs) or Start-ups as recognised by Department of Industrial Policy and Promotion (DIPP), irrespective of the store for which they are registered. EMD is also not required from Central PSUs. Bidders/Sellers exempted from submission of EMD must submit certified copy of Govt of India authority for such exemption in lieu of EMD.
- e) EMD of the technically rejected bidder shall be returned immediately after technical evaluation. EMD of balance 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 award of contract/ finalization of the tender. The EMD of the successful bidder would be returned, without any interest whatsoever, after the receipt of PSD from them as called for in the consequent Contract.
- f) In case of two bid system EMD in original form should be enclosed along with the technical bid. Technical bid without EMD in original will be rejected.
- g) EMD remittance document, either in Indian currency or any other convertible currency of the specified amount, can be arranged by the Indian subsidiary / branch office in India of a foreign Seller which shall be submitted along with a certificate confirming the relationship of subsidiary / branch office in the Seller's offer.
- h) EMD shall be submitted in favour of (ED/HOD).

### 3.16. Performance Security Deposit (PSD):

- (a) The Seller (successful bidder awarded contract) shall deposit 5% of the total value of this order /contract value including taxes & duties as Performance Security Deposit which amounts to Rs. \_\_\_\_\_ by way of Account Payee Demand Draft/Banker's Cheque/Fixed Deposit Receipt from a Commercial Bank of India/Bank Guarantee in the prescribed format(enclosed) from a Commercial Bank of India (for Indigenous Sellers)/ Bank of International repute for which counter guarantee is given by Indian Bank (for Foreign Sellers) within specified date (normally 30 days after notification of the award of contract/ date of acceptance). Indemnity Bonds may be accepted as PSD from Central PSUs.
- (b) PSD is not necessary for contracts valuing up to Rs. 10 lakhs / as per GeM.
- (c) The PSD/Performance Bank Guarantee should be valid for additional period of 60 days beyond the delivery date of completion of all contractual obligation including Warranty period (if any). In the event of the Contractual delivery period being extended by the Buyer, the Seller shall be responsible to ensure that the validity of the Performance Guarantee is also simultaneously

extended/re-validated so that it is valid for additional period of 60 days beyond the new delivery date of completion of all contractual obligation including warranty period (if any).

- (d) In the event of non-performance of the item and if Seller fail to attend the defects within reasonable period of time, the PSD will be forfeited /the Performance Bank Guarantee will be encashed. In case any claims or any other contract obligations are outstanding, the Seller shall extend the Performance Bank Guarantee as requested by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee shall also be liable for encashment/forfeited if conditions regarding adherence to delivery schedule and other provisions of the contract are not fulfilled by the Seller. The Buyer decision shall be final and binding in this regard.
- (e) Performance Security Deposit is initially to be given by the supplier for original supply order quantity without option clause quantity. PSD (without interest except FDR) for the original supply order quantity may be returned after 60 days of fulfillment of all contractual obligations of the original supply order quantity including warranty period (if any ). Regarding Option Clause, PSD amount may be worked out based on Option Clause quantity. PSD for Option Clause quantity may be returned after 60 days of fulfillment of all contractual obligations of the Option Clause quantity including warranty period (if any).
- (f) PSD will be submitted in favour of the HOD of the factory.

3.17. Spares Management: Seller should provide Product Support for full lifetime of the product.SELLER:

- a) Shall advice on the requirement of spares and stock to be maintained as and whenrequired by the BUYER.
- b) Supply spares on demand. Should any of the spares or equipment be earmarked for discontinuance of production, give notification to BUYER one year before the production is discontinued, to allow for a life time purchase.
- c) Shall assist the BUYER in establishing alternate source of supplies

3.18. Obsolescence: The Seller shall continue to support the equipment for a minimum period of \_\_\_\_ years from the date of supply by making available spare parts and assemblies of the equipment supplied. For any reason Seller wishes / decides to close / discontinue the line formanufacture of the products or procurement of certain components, sub-components, Seller undertakes to notify such a decision to Buyer by means of a prior \_\_ years notice (before closure of the said production line) in writing so as to enable Buyer to place buy order / a life time buy of all spares before closure of said production line. Seller will transfer tools, drawings etc to Buyer after such notice period. Seller to indicate the source from where Buyer can procure these items. The said aspect would also form an integral part ofthe contract.

3.19. Withholding tax:

- (a) BUYER would be deducting at source applicable Income Tax as per Government of India Rules applicable at the time of making payments in respect of services rendered in India. (Generally on the amounts towards services like training, technical assistance offered by the Seller and license fees). As per the Rules, Income tax has to be borne by the recipient of the Income and relevant certificate to this effect will be issued to the Seller on deduction of suchamounts, if applicable.
- (b) Seller should bear the applicable withholding income tax in India. Tax would be deductedat source by Buyer as per DTAA where the Seller could claim the benefit of double taxationin

their country as per the bilateral agreement between the two countries. Certificate to this effect would be issued by Buyer to enable the Seller to claim the benefit under DTAA.

- (c) Seller is required to indicate the PAN/TAN No. issued by Indian Income Tax Authorities and Permanent Establishment Certificate, If Applicable.

3.20. Product Liability: The Product Civil Liability on the product, for any loss arising in course of its utilization, for which Buyer may be held legally responsible, is the responsibility of Seller. Seller will carry out Product Liability Insurance to the extent set for herein in an amount not less than Rs. \_\_\_\_\_. Buyer will not be responsible for the payment of any premium for this policy.

3.21. Risk Purchase:

- (a) If the equipment / article / service or any portion thereof be not delivered / performed by the scheduled delivery date / period, any stoppage or discontinuation of ordered supply / awarded contract without written consent by Buyer or not meeting the required quality standards, the Buyer shall be at liberty, without prejudice to the right of the Buyer to recover Liquidated Damages / penalty as provided for in these conditions or to any other remedy for breach of contract, to terminate the contract either wholly or to the extent of such default. Amounts advanced or part thereof corresponding to the undelivered supply shall be recoverable from the Seller at the prevailing bank rate of interest.
- (b) The Buyer shall also be at liberty to purchase, manufacture or supply from stock as it deems fit, other articles of the same or similar description to make good such default and or in the event of the contract being terminated, the balance of the articles remaining to be delivered there under at the risk & cost of Seller. Any excess over the purchase price, cost of manufacture or value of any articles supplied from the stock, as the case may be, over the contract price shall be recoverable from the Seller.

3.22. Termination Clause: Buyer reserves the right to cancel the order with 15 days notice without any financial liability in the event of any of the following:

- a) When the item offered by the Seller repeatedly fails in the inspection and/or the Seller is not in position to either rectify the defects or offer items conforming to the contracted quality standards.
- b) When the Seller fails to honour any part of the contract including failure to deliver the contracted stores/ render services in time.
- c) Adulterated supplies as determined according to Prevention of Food Adulteration Act, 1954 and Rules, 1995 as amended from time to time.
- d) Supplies inferior to the specified quality.
- e) Unbranded/deceptively branded / spurious supplies against branded items in the Purchase Order.
- f) Time expired supplies.
- g) When the Seller 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.
- h) Based on the decision of Arbitration Tribunal.
- i) The seller is declared bankrupt or become insolvent.

3.23. Insolvency: If the Seller enters into liquidation, whether compulsory or voluntary (other than or amalgamation or reconstruction with another party taking over all his rights as well as commitments) or becomes insolvent or Suffers a receiver of the whole or part of this asset to

be appointed,

- (i) shall forthwith notify the same to Buyer and the Buyer shall have the right without prejudice to his other rights or remedies to terminate the unexecuted part of this Contract.
- (ii) In such an event, the Buyer shall become entitled forthwith to get the refund within 30 days of all the advance payments received by the Seller and expenditure incurred as a part of its obligations under this contract.

3.24. Appropriation: Whenever under this contract any sum of money is due or recoverable from Seller or payable by the Seller, Buyer shall be entitled to recover such sum by appropriating in part or whole by deducting any sum then due or which at any time thereafter may become due to the Seller in this or any other contract entered by Buyer as a whole its Divisions and Branch Offices etc., held by him/her alone or in partnership with others.

Should this sum be not sufficient to cover the full amount recoverable, the Seller shall pay to Buyer on demand the remaining balance due within 30 days of such written notice. The remaining balance due, if any, will be recovered through due process of law in case seller becomes defaulter.

3.25. Applicable Laws/Jurisdiction: All questions, disputes or differences arising out of or in connection with the contract, if concluded shall be subject to the exclusive jurisdiction of the Court within the local limits whose jurisdiction the place from which the Acceptance of Tender is issued, is situated. This contract shall be governed by and subject to and interpreted and construed in accordance with the Laws of the Republic of India, as may be in force from time to time.

3.26. Arbitration:

- (i) Any dispute or difference whatsoever arising between the parties out of relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by bilateral discussions.
- (ii) Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof, which cannot be settled amicably 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, shall be settled by arbitration.
- (iii) The Arbitration Proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 (amended time to time) and the award of such Arbitration shall be enforceable in Indian Court only. The law applicable to an arbitration shall be Indian law. In case of Foreign Seller, Indian law or Foreign law to be decided by contracting parties is applicable.

For Indigenous Seller: The arbitration tribunal shall be consisting of sole arbitrator. The sole arbitrator shall be nominated by the parties within ninety (90) days of the receipt of the notice mentioned above through mutual discussions and referred to CMD, AWEIL, Ordnance Factory Kanpur, Kalpi Road, Kanpur – 208009 for appointment of the Sole Arbitrator with the mutual consent of the parties. The Arbitrator so appointed shall be a Government Servant /Ex Government Servant (with mutual consent) who had not dealt with matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in disputes or differences. Failing which the arbitrator shall be nominated under the provision of Indian Arbitration and Conciliation Act, 1996 (amended time to time) at the request of either party or by dispute resolution institutions like Indian Council of Arbitration or ICADR, but said nomination would after consultation with both the parties. The Award of arbitration shall be final and binding on the parties to this contract.

For Foreign Seller: The arbitration tribunal shall be consisting of sole arbitrator. The 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 shall be nominated by the parties within ninety (90) days of the receipt of the notice mentioned above, failing which the arbitrator may be nominated under the provisions of Indian Arbitration and Conciliation Act, 1996 (amended time to time) or by dispute resolution institutions like Indian Council of Arbitration and ICADR. In case, nomination of third arbitrator under Indian Arbitration and Conciliation Act, 1996 (amended time to time) or by dispute resolution institutions like ICA and ICADR are not acceptable to the SELLER, then the sole arbitrator may be nominated by the President of International Chamber of Commerce, Paris, but the said nomination would be after consultation with both the parties and shall preclude any citizen with domicile of any country as mentioned above.

The Arbitration Tribunal shall have its seat in \_\_\_\_\_ in India or any suitable place in India as may be decided by the arbitrator.

Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the arbitrator shall be shared equally by the SELLER and the BUYER, unless otherwise awarded by the Arbitration Tribunal. In the event of a vacancy caused in the office of the arbitrator, the parties which nominated such arbitrator shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.

In the event of both parties failing to nominate arbitrator within sixty (60) days of the place of arbitrator falling vacant, then the other party shall be entitled after due notice of at least thirty (30) days to request dispute resolution institutions in India like Indian Council of Arbitration or ICADR to nominate another arbitrator as above.

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 arbitrator proceedings.

The language(s) of the arbitration shall be English.

“Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of (all /both) parties.”

In case of technical disputes involving confidential matters, the issue shall be referred to a high level technical authority for each party, appointed for this purpose.

For 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 for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-Charge of the Department of Public Enterprises.

The Arbitration and Conciliation Act, 1996 (amended time to time) shall not be applicable to the disputes, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to be Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so

authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator. If the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

- 3.27. Indemnity against Patent rights: The Seller shall at all times protect, indemnify and save/ keep harmless the Buyer, its successors, assigns, , any claim made by a third party against all liability, including costs, expenses, claims, suits or proceedings at law, in equity or otherwise, arising out of, or in connection with, any actual or alleged patent infringement (including process patents, if any), or violation of any license with respect of the stores covered by the order.
- 3.28. Bribes: 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 for borne to do any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government. Any breach of the aforesaid undertaking by the seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the seller) or the commission of any offers by the seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988 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.

- 3.29. Sub-contracting/Sub-letting with the permission of the Buyer: Seller shall not be entitled without buyer's prior written consent to Sub-contract/Sublet to a third party all or part of the benefits or obligations of the Contract (even by way of change of ownership or control), except as expressly permitted in this Contract if any, to sub-contract any of its rights and interest under this Contract.
- 3.30. Works & Payments during Arbitration: Work under the Contract shall be continued by the Seller during the arbitration proceeding, unless otherwise directed in writing by the Buyer or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrators is obtained, and save as those which are otherwise expressly provided in the Contract, no payment due or payable by the Buyer shall be withheld on account of such arbitration proceedings, unless it is the subject matter or one of the subject matters thereof.
- 3.31. Fall Clause: The price quoted shall be in no event exceed the lowest price at which you sell the stores or offer to sell stores of identical description to any person(s) / organization including the purchases by any department of the Govt. of India, the State Govt. or any statutory undertaking of the Govt. of India / State Govt., as the case may be during the period till the completion of the performance of the order placed and during currency of the order. If at any time during the said period, the Seller reduces the sales price, sells or offers to sell such stores to any person/

organization including the Buyer or any department of Central Govt. or any Dept. of State Govt., or any statutory undertaking of the Central or State Govt., as the case may be at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction/sale or offer to sale to the Buyer and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer to sale shall stand correspondingly reduced with due allowance for quantities and intervening time period.

3.32. Export License: Foreign Seller making proposals should ensure availability of export licenses as per their Govt. regulations for export to India. Seller shall be required to obtain and maintain all Export/Import licenses and permits etc., as the case may be, required for performing supplies against this tender. Obtaining export license shall be entire responsibility of the Seller and he shall discharge this within a reasonable time. End User Certificate will be issued by the Buyer.

3.33. Immunity to the Government of India: It is expressly understood and agreed by and between Seller & buyer that buyer is entering into this contract solely on its own behalf and not on behalf any other person or entity. In particular, it is expressly understood and agreed that Government of India is not a party to this contract and has no liabilities, obligations or right hereunder. It is expressly understood and agreed that buyer is an independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of India and general principles contract law. Seller expressly agreed acknowledges and understand that buyer is not an agent, representative or delegate to the Government of India. It is further agreed and understood that Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly, Seller hereby expressly waives releases and foregoes any and all actions, including counterclaims, impleader claims or counter claims against the Government of India arising out of this contract and covenants as to any manner, claim cause or action or this whatsoever arising out of or under this contract.

3.34. Intellectual Property Rights:

(a) If any Patent design, trademark, copyright or any other intellectual property rights apply to the delivery or accompanying documentation, Buyer shall be entitled to the legal use thereof free of charge by means of a non-exclusive, worldwide, perpetual license. All intellectual property rights that arise due to the execution of the delivery by the Seller and by its employees or third parties involved by the Seller for performance of the agreement belong to Buyer.

(b) The Seller shall be obligated to do everything necessary to obtain or establish the above mentioned rights. The Seller guarantees that the delivery does not infringe on any of the intellectual property rights of third parties. The Seller shall also be obligated to do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of any (alleged) claims by third parties. The Seller shall indemnify the Buyer against any (alleged) claims by third parties in this regard and shall reimburse Buyer for any damages suffered as a result thereof.

3.35. Amendment & Waiver:

Any amendment to Purchase Orders / Contracts would be enforceable only if made in writing and duly signed by authorized representatives of the parties hereto. Failure of either Party at any time to enforce any of the provisions of this Contract shall not per se constitute a waiver by that Party of any such provisions nor in any way affect the validity of the Contract or any part hereof.

3.36. Classified/Confidentiality: The conditions are as follows:-

- (a) This Contract and its annexure(s) shall be treated as confidential by the Parties and their officers and employees.
- (b) Unless otherwise specified herein, neither Party or any of their affiliated companies shall make any news release, public announcement, advertisement, denial or confirmation, disclose of some or any part of this Contract or transactions contemplated under this Agreement to any third party without the prior consent of the other Party.
- (c) The Party Disclosing information is termed as Disclosing Party and the Party receiving information is termed as Receiving Party, Each Party undertakes:
  - i) to keep the other Party's Confidential Information confidential using the same degree of care as the receiving Party uses to protect its own Proprietary Information against public disclosure but in no case any less degree than reasonable care; and
  - ii) not to make any disclosure of the other Party's Confidential Information to any third party and to use the same only for the Purpose; and
  - iii) not to make any copies of the other Party's Confidential Information, or translation or transfer of the same to other documents or media nor to disseminate the same within its own organisation save as is strictly necessary for the Purpose; and
  - iv) not to assign the rights and obligations of the Parties without their prior written consent thereto.
- (d) Provided, however, that the foregoing restrictions and obligations shall not apply to any information which it can be shown:
  - i) is already or hereafter becomes published otherwise than through the fault or negligence of the receiving Party; or
  - ii) is lawfully obtained by the recipient from a third party having rights to disclose to the receiving Party, without restrictions as to use or disclosure, or
  - iii) is already known to the receiving Party at the date of receipt of the information pursuant to this Agreement, or
  - iv) is independently developed by the receiving Party.
  - v) is required to be disclosed under any law, judicial order or Government order or regulation provided receiving Party gives disclosing Party timely notice, where possible, of the contemplated disclosure so as to give the disclosing Party an opportunity to intervene to preserve the confidentiality of the information. Or such disclosure is limited to those persons to whom the Receiving Party is legally compelled to disclose the information to; and
- (e) The technical information provided by SELLER under this Contract shall be treated as confidential by the BUYER and shall be used by BUYER only for purpose intended and shall not be disclosed to any third party.
- (f) The provisions of this clause shall survive and remain in force notwithstanding the termination or expiry of this Contract.
- (g) The BUYER shall limit access of technical documentation being provided under this Contract only to such of its employees involved in relevant operations concerning the equipment on a need to know basis.
- (h) Non-adherence to this Clause by the Seller shall be treated, amongst others, as a material breach of this Contract.

3.37. Agents / Agency Clause : The seller confirms and declares to the buyer that the seller is the original manufacturer or authorized distributor / stockiest of original manufacturer or Govt. Sponsored / Designated Export Agencies (applicable in case of countries where domestic laws do not permit direct export by OEMs) of the stores referred to in this offer / contract / Purchase order and has not engaged any individual or firm, whether Indian or Foreign whatsoever, to intercede, facilitate or in any way to recommend to Buyer or any of its functionaries, whether officially or unofficially, to the award of the contract / purchase 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 contract / purchase order, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from participating in any RFQ / Tender for new projects / program with Buyer for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract / Purchase order either wholly or in part, without any entitlement or compensation to the Seller who shall in such event be liable to refund all payments made by the Buyer in terms of the Contract / Purchase order along with interest at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors). The Buyer will also have the right to recover any such amount from any contracts / Purchase order concluded earlier with Buyer.

3.38. Force Majeure:

- (a) If at any time during the execution of the supply order, the performance in whole or in part by either Buyer or and by the Seller(s) is / are delayed by any reason of force majeure situations such as acts of civil war, civil commotion, sabotage, hostilities, war, fires, explosions, epidemics, natural calamities like floods, earthquakes, volcanoes, storms, acts of God & laws of respective governments or any other causes beyond the control of either parties, hereinafter referred to as "events", provided notice of the occurrence of such event/s is / are communicated by either party, to the other party within 21 days from the date of occurrence thereof, neither party shall by reason such events be entitled to terminate the contract nor shall either party have any claim for damages against the other in respect of such non performance and or delay in performance of the contract / order. Executions on either side shall be resumed as soon as practicable after such event has come to an end or ceased to exist and the decision of Buyer as to whether activities can resume or not, shall be conclusive and final. Occurrence of the events to be certified by Chamber of Commerce / Indian High Commission or Embassies / Government in that Country.
- (b) The performance in whole or in part under the captioned tender / contract is prevented or delayed by reason of any such event for a period exceeding sixty days either party may at its option terminate the contract / further processing of the tender. The relative obligations of both the parties remain suspended during the actual period of force majeure.
- (c) The Buyer may extend the delivery schedule as mutually agreed, on receipt of written communication from the Seller regarding occurrence of 'Force Majeure' conditions, but not exceeding six months from the scheduled delivery date. If the 'Force Majeure' conditions extend beyond this period, the Buyer shall have the right to cancel the order without any financial implication to the Buyer or on terms mutually agreed to.

3.39. Exit Criteria: The contract/order may be terminated under the following circumstances:

- (a) In the event of unsatisfactory performance by the Seller during the contract period, or any of

the information provided by the Seller is found to be untrue, or Seller is found to have attempted to influence any person involved with the contract through unethical means, the contract shall be terminated with \_\_\_\_ month's advance notice without any financial implication to Buyer. Notwithstanding, the foregoing, in cases where it is found that a Seller is engaged in unethical practices, the same shall be barred from participating in the future contracts for a period of \_\_\_\_ years.

- (b) If there is change in Buyer requirement, contract shall be terminated with \_\_\_\_ months advance notice. The liability of Buyer in this case will be agreed mutually. In the event of termination of contract by either party the Seller shall ensure following:-
  - i) IPR's are transferred to Buyer to enable Buyer to proceed on the work with other Seller. Seller also will render all assistance till the other Seller fully take over the balance work.
  - ii) Transfer title and deliver all or any part thereof of the supplies, materials, work-in-progress, finished Products, Tooling, drawings and data produced or acquired by Seller specifically for the Product being terminated.
  - iii) Supply of products and its components / spares at least for a period of \_\_\_\_ years from the date of such termination.
- (c) The Seller is declared bankrupt or becomes insolvent.
- (d) The delivery of material is delayed due to causes of Force Majeure by more than ( \_\_\_\_ months).
- (e) Based on the decision of the Arbitration Tribunal.

#### 3.40. Cartel Formation:

- a) Cartel formation or quoting of pool rates or quoting in collusion is against the basic principle of competitive bidding and shall attract penal and punitive measures; including suspension/banning of such Bidders for a specific period as per Procedure for Penal Action in OFs/Units of AWEIL under the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities in vogue, apart from reporting to the Competition Commission of India, other Regulatory Authorities, Chambers / Association of Commerce, etc.
- b) Firms are expected to quote for full quantity or part thereof but not less than 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be considered unresponsive and liable to be rejected if CARTEL Formation is suspected. The management (CFA), reserves the right to order any quantity on one or more firms.
- c) Whenever all or most of the approved firms quote equal rates in CARTEL, the purchaser reserves the right to place order on any one or more firms with exclusion of the rest. The selection of firms for placement of order would be based on a pre-determined ranking of the firms.
- d) The purchaser reserves the right to place order on two or three firms: in such cases tender quantity will be distributed between Rank 1(R1) and Rank 2(R2) firms in the ratio of 60:40 or among R1, R2 and Rank 3(R3) firms in the ratios 50:30:20 respectively.
- e) The purchaser reserves the right to delete the registered firms who quote in CARTEL from list of approved/registered sources or to debar them for competing for a period to be decided by the purchaser.
- f) The name of the newly registered firm which enters into CARTEL on getting registered will be summarily deleted from the list of registered suppliers.
- g) New firms will have to submit an undertaking that they will not be part of a cartel with other vendors and will quote competitive rates in the tenders; otherwise would face expulsion from the list of vendor.

- 3.41. Access to Books of Accounts: In case it is found to the satisfaction of the Buyer that the Bidder 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 Bidder, on a specific request of the Buyer, shall provide necessary information / inspection of the relevant financial documents / information.
- 3.42. Non-disclosure: Except with the written consent of the Buyer/Bidder, the other Party shall not disclose the TE or consequent Contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

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## PART IV – SPECIAL CONDITIONS OF TE

Part IV of the TE contains the Special Conditions of the TE that will form part of the contract with the successful Bidder

- 4.1. Pre-bid Conference: In certain procurements of specialised *or* complex nature, turn-key contract, etc., the Buyer may consider it necessary to hold a Pre-bid Conference with prospective Bidders for clarifying the requirement, specification *or* other allied technical/ evaluation/ commercial details of the procurement and also clearing doubts, if any, the Bidders may have on the TE. All eligible Bidders are requested to participate in the Pre-bid Conference. In procurements necessitating Pre-bid Conference, the notice for the Pre-bid Conference shall be given in the TE.
- 4.2. Notices: Any notice required *or* permitted by the consequent Contract shall be written in English language and may be delivered personally *or* sent by FAX *or* registered /speed post/e-mail, addressed to the last known address of the Party to whom it is sent.
- 4.3. Special conditions for Source Development Open Tenders:
  - (a) Established sources for an item will not be eligible to participate in the SDOTE for that item. The status whether a firm is established *or* not shall be reckoned as on the last date of the previous month in which vendor selection TPC is held.
  - (b) Freak Rates: Any quote that is less than 70% of simple average of the basic rate (LTE and successfully executed SDOTE/OTE) at which orders (excluding import orders) have been placed over the preceding three years (reckoned from the date of tender opening) shall be deemed as freak rate and rejected.
  - (c) To have more firms developing an item and thereby improve the probability of developing new sources, in SDOTE the L-2 firm may be given 40% of the tendered quantity on accepting the L-1 rates, provided this was indicated in the tender.
  - (d) Vendors become established source for a particular item after securing order by participation in a SDOTE for the item and successfully delivering at least 60% of ordered quantity against the supply order, and the same being accepted on conformity to the qualitative requirements. However, supplies against subsequent LTE orders shall be accepted subject to completion of the supplies under the SDOTE. Established vendors for aggregates, assemblies and sub-assemblies shall be considered as established vendors for components and sub-assemblies that go into making of the aggregate, assembly and sub-assembly.
  - (e) The firm having one SDOTE supply order is also not allowed to participate in other SDOTE for same item, floated by same *or* any other Factory. An Undertaking in this regard may be obtained from firms.
  - (f) If a firm on which source development order has been placed, is unable to develop the item within the specified time frame, existing provision of AWEIL DFP should be followed for DP extension/re-fixation.
  - (g) In the retender, the firm that was unable to develop the particular item even with the extended timeframe that resulted in the retender shall not be allowed to participate.
  - (h) System Integrators may also be considered for participation having facility/capabilities of integration with testing facilities. These firms may not have manufacturing facilities but have agreement (self-declared by vendors) for supplying of components/assemblies/sub-assemblies. The warranty of the integrated product shall be given by the integrator.
- 4.4. Applicable Currency: Domestic Bidders shall quote and be paid only in Indian Rupees (INR). Foreign Bidders may quote in US Dollars *or* Euros and may be paid in the same currency. If the offer of foreign Bidders includes some portion of the allied work/ services to be undertaken by Indian

purchaser (*e.g. installation, commissioning, etc.*) such portion shall be quoted and paid only in INR. Authorised Indian dealers of foreign OEMs participating in the TE shall quote and be paid only in INR. The foreign exchange rates applied for conversion from one currency to another shall be the exchange rate (*BC Selling Rate*) notified by the Parliament Street Branch of SBI, New Delhi / RBI on the last date of submission of Bids.

- 4.5. Stage Payments: Stage payments are admissible, as well as relevant, only in rare cases involving very high value and where the throughput time for manufacture of the stores under procurement is very long. The Buyer, if satisfied that the throughput time and the value of procurement are very high, may then allow stage payment only against satisfactory completion of clearly identifiable physical milestones with the quantum of the stage payment being commensurate with the quantum of work completed up to the milestone, subject to the Seller submitting a Bank Guarantee in the prescribed format(enclosed) from a Commercial Bank of India (for Indigenous Sellers)/ Bank of International repute for which counter guarantee is given by Indian Bank (for Foreign Sellers), with validity up to additional period of 60 days beyond the delivery date of the completion of all contractual obligations, for an amount equivalent to the stage payment to be released. The physical milestones/ stages and the admissible stage payment as percentage of the total contract value are given in the table below. When stage payments are made in contracts with Price Variation formula, no price variations shall be admissible on such portions of the price, after the dates of such stage payments.

Stage Number	Physical Activity to be completed for claiming the stage payment	Stage payment as % of the total contract value

- 4.6. Mode of Payment:

Indigenous Bidders: It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details to enable payments through ECS/ NEFT 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 enclosed as annexure.

Foreign Bidders:

- a) If the value of the contract is up to US \$ 100,000, payments shall 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 consequent 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

- b) The payment shall be through Letter of Credit from State Bank of India/ any other Indian Public Sector Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller shall give a notification within a specified period of.....days about the readiness of goods. Letter of Credit shall be opened by the Buyer within ..... days on receipt of notification of readiness from the firm. The Letter of Credit shall be valid for ninety days from the date of its opening, on extendable basis by mutual consent of both the Seller and the Buyer. All expenses related to Letters of Credit outside India shall be borne by the foreign vendor. In case of extension of delivery period the LC extension charges shall be borne by the Seller, if the extension is due to reasons attributable to the Seller.

- 4.7. Paying Authority: The organization of the Principal Controller/ Controller of Finance & Accounts concerned or their subordinate offices or any paying authority authorized to make payment for such procurements will be the Paying Authority. The name, address and contact details of the Paying Authority are:

.....  
.....

4.8. Document to be submitted for Effecting Payments: The Seller submit the requisite documents to the Paying Authority to enable effecting the payment.

(a) Indigenous Sellers: 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 Sellers Bill/ Commercial Invoice/ Contingent Bill
- ii) Inspection Note (*and User Acceptance, if applicable*)
- iii) Copies of Supply Order/ Contract along with all amendments to the Supply Order/ Contract.
- iv) If DP was extended, copy of the amendment (s) to the Supply Order/ Contract duly indicating whether the extension was granted with *or* without LD
- v) Claim for statutory and other levies to be supported with requisite documents/ proof of payment, like GST Invoice, Excise Duty Challan (wherever applicable), Customs Duty Clearance Certificate, ,proof of payment for EPF/ ESIC contribution with nominal roll of beneficiaries, etc., as applicable
- vi) Exemption Certificate, if applicable.
- vii) UAM number of MSEs for availing benefits of Procurement Policies for MSEs Order 2012
- viii) Bank Guarantee for advance, if any, paid
- ix) Performance Bank Guarantee/ Indemnity bond (*only for PSUs*), as applicable
- x) Guarantee / Warranty certificate
- xi) Name and address, Account type, Account number, IFSC code, MICR code (*if these details are not incorporated in supply order/contract*)
- xii) Any other document / certificate that may be provided for in the consequent Supply Order/ Contract

*(Note – From the above indicative list, the documents relevant to the procurement undertaken shall be included in the TE)*

(b) Foreign Sellers: Paid Shipping documents shall be provided to the Bank, by the Seller, as proof of dispatch of goods as per consequential Contractual terms to enable the Seller to get payment from the LC. The Bank will forward these documents to the Buyer for getting the Stores released from the Port/ Airport. Documents shall include:

- i) Clean on Board Airway Bill/ Bill of Lading
- ii) Original Invoice
- iii) Packing List
- iv) Certificate of Quality and current manufacture from OEM
- v) Performance Bond/ Warranty Certificate
- vi) Dangerous Cargo certificate, if applicable
- vii) Insurance policy for 110% of the CIF/ CIP contract
- viii) Certificate of Conformity & Acceptance Test at PDI, if applicable
- ix) Fumigation Certificate, if any
- x) Any other document/ certificate provided for in the Supply Order/ Contract

*(Note – From the above indicative list, the documents relevant to the procurement undertaken shall be included in the TE).*

4.9. Quantity Tolerance: Normally no quantity variation in the supplies under the consequent Contract shall be permitted. However, in justified cases, such excess/ short supplies may be accepted by the Buyer, subject to the value of such excess/ short supplies not exceeding five percent of the original value of the contract, and the payment being admitted only for the actually quantity supplied.

- 4.10. Capacity Constraints of L1: Firms are expected to quote for full quantity or part thereof but not less than 50% of tendered quantity. The management (CFA), reserves the right to order any quantity on one or more firms. If the L1 Bidder has not quoted for the entire tendered quantity, then the supply order shall be placed for the balance quantity on L2 provided the L2 accepts the L1 rates. If the L2 is not agreeable to the L1 rate or if the L1 and L2 Bidders together cannot meet the tendered requirement, then the order for the balance quantity shall be placed on the next ranking supplier (L3) at the L1 rates provided L3 accepts the L1 rates. If the situation so warrants, this process shall be repeated in the order of the ranking (*i.e. L1, L2, L3... so on*) till the entire tendered quantity is covered or no Bidder is left.
- 4.11. Distribution of Quantity for Strategic Reasons: As a strategic requirement the Buyer may need multiple sources, in such cases the Buyer may conclude orders on more than one firm in the order of ranking on financial evaluation (*in the distribution ratio clearly specified in the TE Part II*). The ratios of splitting may be either (a) 60:40 if two sources are necessary (provided at least three sources were issued tenders and have also quoted). Or (b) 50:30:20 if three sources are necessary (provided at least four sources were issued tenders and have also quoted). The distribution shall be done between L1 and L2 (on the L2 accepting the L1 rates) or between L1, L2 and L3 (on the L2 and L3 accepting the L1 rates) depending on whether 60:40 or 50:30:20 is specified as the distribution ratio. If the L2 or L3 Bidder (s) does not accept the counter-offered L1 rate then such undistributed quantity shall revert back to the L1 Bidder. If the distribution ratio is not specified hereunder then the supply order shall be concluded only on the L1 Bidder.
- 4.12. Acceptable Year of Manufacture: Unless stated other-wise in the TE, the goods supplied shall be of current manufacture. Quality/ Life certificate will need to be enclosed by the Seller along with the Bill.
- 4.13. Transportation: Standard transportation instructions are as follows:
- (a) CIF/CIP (*Port of Destination*): Seller will bear the costs and freight charges necessary to bring the goods to the port of destination. The Seller shall also procure Marine Insurance against the Buyers risk for loss or damage during the carriage. In this regard the Seller shall contract for the insurance and pay the insurance premium. Seller shall obtain the necessary clearances for export of the goods. 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 may be shipped through Indian vessels. Seller will be required to convey the following information 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:
  - iv) Number of Packages and Weight:
  - v) Nomenclature and details of major equipment:
  - vi) Special instructions, if any, to be provided by the Buyer:
- OR
- (b) FOB/ FAS (*Port of Shipment*): The stores may be shipped through Indian Ships in case of FOB/ FAS contracts. 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 and courier, to Factory concerned. Within 3 (*three*) weeks of receipt of the advance notice, as above, the Factory Concerned will advise the supplier, through Fax 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 or Trans-shipment of goods would be permitted. In case it becomes inevitable to do so, the Sellershall not arrange part-shipments/ trans-shipment without the express/prior written consent of the Buyer. The Seller may contact Factory concerned.

OR

- (c) FCA (*Airport*): The dispatch of goods shall be made by air to the port of the 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 at the Buyers expense. Delays in advising or delays by the Buyers freight forwarders shall not be the responsibility of the Seller. The date of issue of the Air Way Bill shall be the considered as the date of delivery.

- 4.14. Air lift: 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.
- 4.15. Quality: The quality of the stores offered shall strictly comply with the technical parameters contained in the Technical Specifications & its related standards and shall be new & of current manufacture. The mode of Inspection may be Buyers Inspection/ Joint Inspection/ Self-certification. The inspection of the stores may be Pre-dispatch Inspection (*and/ or*) Joint Receipt Inspection/ Buyers Receipt Inspection to check their compliance with the Technical Specification.
- 4.16. Pre-Dispatch Inspection (PDI): The Buyer will send his authorized representative(s) to attend the PDI. 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 list of Buyers Representatives along with their details like, Name, title, date & place of birth, passport number (*including date of issue & expiry*), address, etc., shall be communicated to the Seller, by the Buyer, reasonably in advance of the PDI date.

Upon successful completion of such PDI, the Seller and Buyer will issue a Certificate of Conformity in the specified format enclosed in annexure.

The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the 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 for such period of

postponement. 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 shall be signed by the Sellers Quality Assurance Representative alone, which will have the same value as if they were signed by both the Parties. In case Buyer does not elect to attend the PDI, the same shall be intimated to the Seller in writing.

The Seller shall provide all reasonable facilities, access and assistance to the Buyers Representatives for safety and convenience in performance of their duties in the Sellers country.

All costs associated with the stay of the Buyers PDI Representative (s) in the country of PDI, including travel expenses, boarding & lodging, accommodation, daily expenses shall be borne by the Buyer.

4.17. Joint Receipt Inspection (JRI): The Joint Receipt Inspection (JRI) of delivered goods shall be conducted jointly by the Buyers Representative (s) and the Sellers Representative (s), on arrival in India, at the location to be nominated by the Buyer. JRI shall be completed within ..... days of arrival of good at the Consignee Port. The JRI shall consist of:

- a) Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
- b) Complete functional checking of the stores as per specifications in the contract and as per procedures and tests laid down by Buyer.
- c) Check proof and firing, if required.
- d) Any other checks (*to be specified*)

The Buyer shall give the Seller a prior notice of at least fifteen (15) days for attending the JRI. The bio-data of the Sellers Representatives shall be communicated at least fifteen (15) days prior to the dispatch of goods to the Buyer for obtaining necessary security clearance, etc.

Upon completion of each JRI, the JRI proceedings and Acceptance Certificate shall be jointly signed by the Buyers Representative (s) and the Sellers Representative (s). In case the Seller does not depute his Representative for JRI on the scheduled date, then the Buyer Representative (s) shall carryout the Inspection alone and the same shall have the effect of theregular JRI and shall be fully binding on the Seller.

Copy of the JRI proceedings and Acceptance Certificate shall be dispatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and (or) quality or defects, details of these shall be recorded in the JRI proceedings, however, Acceptance Certificate shall not be issued. Further, necessary claims shall be raised by the Buyer as per the Article on Claims in the contract.

4.18. Claims: Claims may be presented either on (a) quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) qualityof the stores, where quality does not correspond to the quality mentioned in the contract. Thetime frame for raising claims shall be as follows:

- (a) 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) 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) Quality Claims on account of Defects or Deficiencies in JRI: The quality claims for defects or deficiencies in quality noticed during the JRI/PDI shall be presented within forty five days of completion of JRI/PDI 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 enclosed in annexures.

The Seller shall settle the claims within 45 days from the date of receipt of the claim at the Sellers 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.

The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replacement goods at the same location under the Sellers arrangement.

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 Paying Authority.

- 4.19. Market Exploration: If the Buyer intends to explore the Market prior to finalisation of the requirement, then the Buyer may through a separate Expression of Interest explore the Market for the current availability and trends.

#### 4.20. Buy-Back Offer:

In case the Buyer desires to trade the existing old goods while purchasing new ones, the details of the old goods to be traded and other relevant details in this regard shall be indicated hereunder, whereupon the Bidders may formulate and submit their tenders accordingly. Bidders can also inspect the old goods to be traded through this TE. Buyer, however, reserves the right to trade *or* not to trade the old goods while purchasing the new ones, therefore, Bidders are required to frame their bids covering both the options, i.e. with buy-back and without buy-back. Handling charges and transportation expenses to take out the old items will be on account of the successful Bidder. Factory may fix reserve price for the items to be offered for the buyback well before the TE opening. In case, the firm quoted the buy back price below than the reserve price then buyback offer of the firm may not be considered. In the rankings the buy back price may not be considered. Details for the buy-back are:

- a) Details of Items for buy-back: (*make/model, specifications, 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) Handing over details: (*date & time, place, mode of handing-over, etc.*)
- d) Timings for Inspection: All weekdays between ..... hours to ..... hours
- e) Last date for inspection: 1 day before the last date of submission of bids

#### 4.21. Exchange Rate Variation (ERV):

ERV is applicable only in contracts involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract). The bidder should indicate the import

content(s) and the currency (currencies) used for calculating the value of import content(s) in their total quoted price, which (i.e. the total quoted price) will be in Indian Rupees. The bidder should also indicate the Base Exchange Rate for each such foreign currency used for converting the FE content into Indian Rupees and the extent of foreign exchange rate variation risk they are willing to bear. To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the last date of submission of commercial bid. The variation may be allowed between the above base date and the date of remittance to the foreign principal/ mid-point of manufacture of the foreign component/.....

(Purchaser shall decide an appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange of SBI, Parliament Street Branch, New Delhi/RBI on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus 2.5 percent. Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case delivery period is extended due to default of the vendor, any increase in exchange rate will not be admissible and exchange rate on the last date of original DP shall be considered. In case there is decrease in exchange rate during extended DP, lower exchange rate will be considered. The following documents would need to be submitted by Seller in support of the claim on account of ERV:

- (i) A bill of ERV claim enclosing working sheet
- (ii) Banker's Certificate/ debit advice detailing FE paid, date of remittance and exchange rate
- (iii) Copies of import order placed on supplier
- (iv) Invoice of supplier for the relevant import order.

4.22. Public Procurement (Preference to Make in India) Policy: Provisions contained in Public Procurement (Preference to Make in India), Order 2017 issued by DIPP, Ministry of Commerce & Industries vide letter No. P-45021/2/2017-B.E-II dated 15-06-2017 along with MoD I.D No. 59011/8/2015-D(HAL-II) dated 19-07-2017 and subsequent amendment issued by DIPP dated 28.05.2018 shall be followed. No such restrictive clauses should be mentioned in terms and conditions of tender enquiries including matter like turnover, production capability and financial strength for the bidders that would be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods. The minimum local content shall ordinarily be 50%. The Requirement of Purchase Preference under PPP-MII, Order 2017 is as follows:-

- (a) If the estimated value of procurement is Rs. 50 lakhs or less for which sufficient local capacity and local competition available, only local suppliers shall be eligible to participate.
- (b) In the procurement of goods more than Rs. 50 lakhs and which are divisible in nature, following procedure shall be followed:-
  - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract for full quantity will be awarded to L1.
  - ii. If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity subject to the local suppliers quoted price falling within the margin (20%) of purchase preference, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the L1 price for the remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.

- (c) In the procurement of goods more than Rs. 50 lakhs and which not divisible in nature, following procedure shall be followed:-
- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.
  - ii. If L1 is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local suppliers quoted price falling within the margin (20%) of purchase preference and the contract shall be awarded to such local supplier subject to matching the L1 price.
  - iii. In case such lowest eligible local supplier fails to match the L1 price, the local supplier with the next higher bid within the margin of preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.

#### 4.23. Public Procurement Policy for MSEs Order, 2012:

Any order issued by Central Government in relation to Micro, Small or other sections of Industries relevant to procurement shall be followed by Factories / Units. One such Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 is in force w.e.f 01.04.2012 and should be strictly adhered to. The Public Procurement Policy shall apply to Micro and Small Enterprises (MSEs) registered with District Industries Centres or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises (MSME). Declaration of Udyog Aadhaar Memorandum (UAM) number by the MSME vendors on CPPP/OFB e-procurement portal should be made. The MSE bidders who fail to submit UAM number will not be able to avail the benefits available to MSEs as contained in Public Procurement Policy for MSEs Order, 2012 for tenders invited electronically through CPPP/OFB e-procurement portal as follows:-

- (a) Tender set free of cost
- (b) Exemption from the payment of Earnest Money (EMD)
- (c) In tender, participating MSEs quoting price within price band of L1+15% shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE(s) shall be allowed to supply up to 20% of the total tendered value.
- (d) 358 items are also reserved for exclusive procurement from MSEs.

#### 4.24. Safeguard while Taking Support from Private Companies in RFP Cases – Conflict of Interest Clause:

Any company and or their group/associate company who are participating in the < Details of the RFP Proposal issued by the Service HQrs >\* will not be eligible to participate in this Tender Enquiry. An undertaking to the effect that the firm or its group associate is not participating in < Details of the RFP Proposal issued by the Service HQrs > \* is to be provided by the firm. At any stage during the period of the contract, if the aforesaid undertaking is found to be false the BUYER (OFs) to take all or any one or more of the following actions, wherever required: -

- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue

- (ii) The Earnest Money Deposit/Performance Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.
- (iv) To recover all sums already paid by the Buyer (OFs), and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of 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 (OFs) in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum of interest.
- (v) To encash the advance bank guarantee and performance-bank-warranty bond, if furnished by the Bidder, in order to recover the payments, already made to by the Buyer (OFs), along with interest.
- (vi) To cancel all or any other Contracts with the Bidder.
- (vii) To ban the Bidder from entering into any bid from the AWEIL organization and/or MoD and/or other Ministries/Departments of Government of India for a minimum period of five years and not more than ten years at the discretion of the Buyer (OFs) as per Procedure for Penal Action in OFs/Units of AWEIL under the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities in vogue (or amended time to time).

[\*Details of such RFP/TE No & Date; Details of item/service being procured' Details of the procurement agency of Service HQrs]

\*\*\*\*

## PART V – EVALUATION CRITERIA & PRICE BID FORMAT

### 5.1. Evaluation Criteria: The broad guidelines for evaluation of Bids will be as follows:

- a) Only Bids that fulfill all the eligibility & qualifying requirements of the TE, both technically and commercially, shall be considered for evaluation.
- b) In Two-Bid system, the Technical Bids shall be evaluated with reference to the technical requirements of the stores/ service prescribed in the TE. The Buyer may obtain technical clarifications during the evaluation of the Technical Bids. Further, if considered necessary during the course of Technical evaluation, the Buyer may invite the vendors who meet the essential parameters for technical presentation/ clarification.
- c) The Price Bids of only the technically compliant Bidders shall be opened.
- d) The Lowest Bid (L1) will be decided, from out of the Technically & Commercially compliant Bids, based on the lowest price quoted. Consideration of Taxes & Duties in evaluation process shall be as follows:
  - i) When competition is only among Indian Suppliers, the F.O.R Prices at destination (*Consignee's premises*) shall be the basis for ranking of the quotations.
  - ii) If the competition is amongst foreign suppliers, the basis for comparison shall only be the landed price at the destination (*designated port*).
  - iii) When the competition is amongst indigenous and foreign suppliers, the basic cost (CIF) quoted by the foreign suppliers shall be the basis for comparison with the basic cost offered by the indigenous suppliers, after offloading the GST & Excise Duty (if applicable). Therefore, to enable evaluation of the Bid, it is important for foreign Bidders to ensure that they duly quote, both on, CIF as well as FOB basis. Similarly, it is important for the Indian Bidders to duly indicate the GST & Excise Duty (if applicable) in their quote as separate elements.
- e) The quotes of foreign suppliers in foreign currency shall be brought to a common denomination in Indian Rupees by adopting the exchange rate as BC Selling Rate of the Parliament Street Branch of State Bank of India, New Delhi/RBI on the date of the closing of Bids.
- f) If there is any 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 accordingly. 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 (DCF) method. If this method is applied the discounting rate shall be the lending rate of the Government of India on loans given to the State Government as notified annually by the Budget Division of Ministry of Finance. The DCF may be applied for converting differing Payment Terms of Bidders to a common basis and thereby determine L1 status.
- h) The Lowest Acceptable Bid will be considered for placement of contract/ Supply Order, after complete clarifications and price negotiations, if so necessary. The Buyer also reserves the right to award contracts to different Bidders for being lowest in particular items. The Buyer further reserves the right to apportion the quantity, if it is convinced that Lowest Bidder will not be able to supply the full tendered quantity in stipulated time.
- i) Any other criteria as applicable to suit a particular case.

### 5.2. Price Bid Format: The Price Bid Format is enclosed as annexure. Bidders are required to quote as per the format duly providing complete details.

\*\*\*\*\*

## COMPLIANCE STATEMENT (OTE)

Clause No.	Commercial & General Terms.	Compliance to TE Specification (Yes/No)	If not complied, Specify deviations
	Quoted for at least 50 % of tender quantity		
	Tender Fee sent by post( if not exempted).		
	EMD sent by post ( if not exempted) and Copy enclosed with the technical bid.		
	Application form for Vendor Registration sent by post , in case not registered already for tendered item		
	Registration Fee for Vendor Registration sent by post, in case not registered already for tendered item & mention the detail of registration fee.		
	Details of technical capability including list of Plant & Machineries, test equipments, manpower attached		
	Details of Quality Systems, ISO- 9000 certifications etc attached (For unregistered firm)		
	Documents in support of financial capability attached.(Balance sheet for last 3 years) (For unregistered firm)		
	Copies of valid registrations with Ordnance Factories/ DGQA/NSIC/DIC/KVIC etc attached . In case of MSEs, UAM no. and relevant documents		
	GSTIN No. and relevant documents attached.		
	Undertaking that the firm will not be part of CARTEL and confirm that firm will quote competitive rate in future tenders in the format attached.		
	Price quoted firm and fixed		
	Delivery & Prices on F.O.R destination basis.		

	Whether the offered store is as per specifications mentioned in TE.		
	Inspection at Buyer's premises.		
	Delivery as per Delivery Period mentioned In TE.		
	Payment Terms of the TE acceptable.		
	Agreed for Option Clause as mentioned in TE.		
	Agreed for Submission of Security Deposit/ Performance Security Deposit.		
	Liquidated Damages Clause accepted.		
	Arbitration Clause accepted.		
	Jurisdiction Clause accepted.		
	Access to Books of Accounts clause accepted.		
	Cartel Formation Clause accepted.		
	Agents / Agency Commission Clause accepted.		
	Agreed for condition of Non-disclosure of Contract documents		
	Agreed for condition of Evaluation Criteria		
	Validity of offer-as per tender.		
	Guarantee/ Warranty Clause accepted.		
	Pre-Integrity Pact Clause accepted.		
	Risk Purchase Clause accepted		
	Bribes Clause accepted		
	Classified /Confidentiality Clause accepted		
	Intellectual Property Right Clause accepted		
	Force Majeure Clause accepted		
	Immunity to Govt of India Clause accepted		
	Termination Clause accepted		
	Appropriation Clause accepted		
	Obsolescence Clause accepted		
	Product Liability Clause accepted		
	Indemnity against Patent Rights accepted		

	Export License Clause accepted		
	Amendment & Waiver Clause accepted		
	Exit Criteria Clause accepted		
	Insolvency Clause accepted		
	Product Support Clause accepted		
	Packing Conditions Clause accepted		
	Price Variation Clause accepted		
	Conflict of Interest Clause accepted		

## COMPLIANCE STATEMENT (LTE/STE CASES)

Clause No.	Commercial & General Terms.	Compliance to TE Specification (Yes/No)	If not complied, Specify deviations
	Quoted for at least 50 % of tender quantity		
	Price quoted Firm and Fixed		
	Delivery & Prices on F.O.R destination basis.		
	Whether the offered store is as per specifications mentioned in TE.		
	Inspection at Buyer's premises acceptable.		
	Delivery as per Delivery Period mentioned In TE acceptable.		
	Payment Terms of the TE acceptable.		
	Agreed for Option Clause as mentioned in TE.		
	Agreed for Submission of Security Deposit/ Performance Security Deposit.		
	Liquidated Damages Clause accepted.		
	Arbitration Clause accepted.		
	Jurisdiction Clause accepted.		
	Access to Books of Accounts Clause accepted.		
	Cartel Formation Clause accepted.		
	Agents / Agency Commission Clause accepted.		
	Agreed for condition of Non-disclosure of Contract documents		
	Agreed for condition of Evaluation Criteria		
	Validity of offer-as per tender.		
	Guarantee/ Warranty Clause accepted.		
	Pre-Integrity Pact Clause accepted.		
	Risk Purchase Clause accepted		

	Bribes Clause accepted		
	Classified /Confidentiality Clause accepted		
	Intellectual Property Right Clause accepted		
	Force Majeure Clause accepted		
	Immunity to Govt of India Clause accepted		
	Termination Clause accepted		
	Appropriation Clause accepted		
	Obsolescence Clause accepted		
	Product Liability Clause accepted		
	Indemnity against Patent rights accepted		
	Export License Clause accepted		
	Amendment & Waiver Clause accepted		
	Exit Criteria Clause accepted		
	Insolvency Clause accepted		
	Product support Clause accepted		
	Packing conditions Clause accepted		
	Price Variation Clause accepted		
	Conflict of Interest Clause accepted		
	Copies of valid registrations with Ordnance Factories attached. In case of MSEs, UAM no. and relevant documents		
	GSTIN No. and relevant documents attached.		

## IMPORTANT TERMS &amp; CONDITIONS TO BE DECIDED BY THE VSL TPC BEFORE FLOATING OF T.E

S.No.	Term	Options	Remarks
1.	Type of TE	GTE OTE(All bidders including Established sources allowed) Source Development OTE(Established sources not allowed) LTE (Established and registered sources allowed) STE	
2.	No of bids	One/Two	
3.	Tender Fee	Applicable/Not-Applicable If applicable, then amount	
4.	EMD Amount (2-5%)	Applicable/Not-Applicable If applicable, then amount	
5.	Option Clause	Applicable/Not-Applicable If applicable, then proportion ( _____ % )	
6.	Pre-Bid Conference	Yes/No If Yes, then date	
7.	Pre-contract Integrity Pact	Applicable/Not-Applicable If applicable, then amount & Name of IEM	
	Name and address of IEM		
8.	Inspection type	PDI followed by JRI (Normally in import cases) PDI at firm's premises and final inspection at Buyer's premise Final Inspection at Buyer's premise	
9.	Inspection Authority		
10.	Inspection Officer		
11.	Price Variation Clause	Applicable / Not Applicable If applicable, then – Text of PV formula	
12.	Distribution of tender Quantity	No 60:40 50:30:20	The CFA reserves the right to order any quantity on one or more firms.
13.	Delivery a) Mode b) Terms c) Schedule		
14.	Public Procurement (Preference to Make in India), Order 2017	Applicable/Not-Applicable If not applicable, then reason with justification	
15.	Public Procurement for MSEs, Order 2012	Applicable/Not-Applicable If not applicable, then reason with justification	
16.	Conflict of Interest Clause	Applicable/Not-Applicable	

## 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."

(.....)  
Signature of Customer

Date :

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

Bank's Stamp : (.....)

Date:

Signature of the Authorized Official from the Bank

## BANK GUARANTEE FORMAT FOR FURNISHING EMD

Whereas ..... (hereinafter called the "tenderer") has submitted their offer dated .....for the supply of .....(hereinafter called the "tender" know all men by these presents that we..... of .....having our registered office at..... (hereinafter called the "bank" are bound unto .....in the sum of..... ( hereinafter called the "Purchaser") for which payment will be truly to be made to the said purchaser, 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 THIS OBLIGATION ARE:

- (1) If the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of the tender.
- (2) If the tenderer having been notified of the acceptance of his tender by the purchaser during the period of its validity.
  - a) If the tenderer fails to furnish the Performance Security for the due performance of the contract.
  - b) Fails or refuses to execute the contract.

We undertake to pay the purchaser up to the above amount upon receipt of its first written demand, without the purchaser having to substantiate its demand, provided that in its demand the Purchaser 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 up to 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 Bank)

## PERFORMANCE BANK GUARANTEE FORMAT

From:

Bank \_\_\_\_\_

To,

The Chairman & Managing Director  
AWEIL, Ordnance Factory Kanpur,  
Kalpi Road, Kanpur – 208009

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.

5. 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.

6. 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 \_\_\_\_\_

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

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).

6. The following parts are required for the repair of the equipment (or its parts)

.....

7. The defect occurred ..... within the guarantee period from the reason as follows .....

8. The costs of the repair of the equipment or its parts .....

.....

9. The defect occurred ..... within the guarantee period from the reason as follows.....

.....The costs of the repair will be debited to (.... manufacturer/owner )

10. To settle the claim, the Seller has to replace the equipment and dispatch the unit and other parts, 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

.....

.....

## SUPPLY ORDER FORMAT

Name and Address of Buyer  
 Contact details like Telephone, Fax, e-mail  
 File number:  
 Date:

To  
 Name of Seller  
 Address

Placement of Supply Order Number \_\_\_\_\_ dated \_\_\_\_\_  
 Against RFP/TE Number \_\_\_\_\_ dated \_\_\_\_\_

## Part I

Dear Sir/Madam

1. This is to inform you that a formal Supply Order is being placed on you for supply of items/services at price mentioned in Part-II. The Commercial terms and conditions are contained in Part-III and Part-IV of this Supply Order (S.O in short). The word "Seller" in this S.O is meant for your organisation/company while the word "Buyer" is meant for this organisation acting on behalf of President of India.

2. Following documents shall be the sole responsibility of this transaction:

- a) Our RFP number \_\_\_\_\_ dated \_\_\_\_\_
- b) Your Bid number \_\_\_\_\_ dated \_\_\_\_\_
- c) Our letters numbers \_\_\_\_\_ dated \_\_\_\_\_
- d) Your letters numbers \_\_\_\_\_ dated \_\_\_\_\_
- e) Five Parts of this Supply Order as under:-

- i. Part I – Communication of acceptance of Seller's Bid as finalised by Buyer.
- ii. Part II – Buyer agrees to buy and Seller agrees to sell items/services mentioned in Part II at the prices mentioned therein. This Part also contains essential details of the items/services required, such as the Technical specifications, Delivery Period, Place of Delivery and Consignee details agreed by Seller.
- iii. Part III – Buyer and Seller agree to abide the Standard Conditions of Supply Order mentioned in Part III.
- iv. Part IV – Buyer and Seller agree to abide the Special Conditions of Supply Order mentioned in Part IV.

- v. 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 authorised signatory. One copy of Supply Order duly signed and stamped on all pages should be returned to this office along with your acknowledgement 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 CMD, AWEIL

#### Part-II – Essential Details of Items/Services Supply Ordered

1. Schedule of Prices - List of items/ services Supply Ordered is as follows :-

Sl. No	Denomination of items / services	Quantity	Unit Price	Total price	Remarks
Grand Total					

#### 2. Technical Details

- Functional characteristics of items Supply Ordered.
- Specifications/drawings, as applicable
- Technical details within technical parameters
- Details of training/on-job training
- Details of installation/commissioning
- Details of Factory Acceptance Trials (FAT), Harbour Acceptance Trails (HAT) and Sea Acceptance Trials (SAT)

- g. Details of technical documentation
- h. Nature of assistance required after completion of warranty
- i. Details of pre-site/equipment inspection
- j. Any other details, as considered necessary.

3. Delivery Period - Delivery period for supply of items would be .....from the effective date of Supply Order. Please Note that Supply Order can be cancelled unilaterally by the Buyer in case items are not received within the Supply Ordered delivery period. Extension of Supply Ordered delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

4. INCOTERMS for Delivery and Transportation - ("E" / "F" / "C" / "D" Terms). The definition of Delivery Period for this Supply Order will be -----

5. Consignee details: .....

### Part III – Standard Conditions of Supply Order

Note: To be mentioned as per standard terms & conditions of T.E

### Part IV – Special Conditions of Supply Order

Note: To be mentioned as per special conditions of T.E

### 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 ensure 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

(Full Name and Designation)  
For and on behalf of  
CMD, AWEIL

Address , Telephone, Fax, e-mail details address,  
Telephone, Fax-e-mail details

BUYER

(Full Name and Designation)

ACKNOWLEDGEMENT OF ACCEPTANCE OF TENDER

(This slip should be completed, signed and returned to the office from which the Acceptance of Tender is received, immediately on its receipt)

Ref. Tender No. .... For supply of .....

-----

Received Acceptance of \_\_\_\_\_ in respect of the above Tender No. \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20... Station

Date of Receipt

Signature of Contractor

## STANDARD FORM FOR INTIMATING FIRMS REGARDING REJECTION OF THEIR OFFER

M/s .....

Sub : Tender Enquiry No. .... opened on .....

Ref: Your quotation No. ....dated .....

Dear Sir/Madam,

It is hereby informed that your above mentioned quotation could not be considered as :

- i) It was received late.
- ii) It was not furnished with EMD as required in the Tender Enquiry.
- iii) It was deficient of documents (to be specified).
- iv) It contained inconvenient / unacceptable terms and conditions in the tenders.
- v) Stores offered were not as per the tender enquiry specification.
- vi) Delivery schedule offered was not as per tender enquiry requirements.
- vii) You are not registered with \_\_\_\_\_ indicated in the enquiry.
- viii) Past performance was not meeting the required performance level.
- ix) Price quoted were not within the acceptable range.
- x) Due to revision of your original offer after tender opening.
- xi) Any other reason (to be specified as applicable)

(Tick mark whichever is applicable)

Yours faithfully,

---

 For Executive Director

CLOSURE OF SUPPLY ORDER

No.  
Government of India  
Ministry of Defence

To,

M/s .....  
.....

Sub : S.O No. .... dated..... for supply of  
.....

Dear Sir/Madam,

Please confirm that you have received 100% payment against the subject supply order and you have nothing due whatsoever so that this office may close the case.

Your reply should reach this office latest by ..... failing which it will be presumed that you have no claim whatsoever in respect of the above contract and the case will be closed accordingly.

Yours faithfully,

(.....)  
For Executive Director

INTER FACTORY DEMAND NO. \_\_\_\_\_

To

The Executive Director

\_\_\_\_\_ Factory (Through Inspector of.....)

Store	Specification Drawing or Pattern	Number or Qty required	Inspection by Factory or Inspection	Date by which required	(a) Open Extract	PDC
					(b) Issue Order	
					(c) Purchase & Issue	

The above mentioned stores are required.

Director Only when I.S Inspection is required in which case an additional  
copy for retention by Inspector will be necessary

Executive  
Factory  
Indenter

-----  
Concurred in

F&amp;A

..... Factory (Indenter)

-----  
II

No. \_\_\_\_\_ Date \_\_\_\_\_

To The GM/ED

.....

Factory  
(Indenter)

Accepted and returned

GM/ED..... Factory  
(Supplier)

Copy to: The F&amp;A,

..... Factory (Supplier)

## 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 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 the 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 of 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 up to 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 of 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 forbearance 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

**GUIDELINES ON CONFIRMATION OF BANK GUARANTEE OF FOREIGN  
BANKS BY INDIAN BANKS**

1. In terms of RBI's guidelines issued vide letter No. AP( DIR Series) Circular No. 15 dated 17<sup>th</sup> 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 foreign 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 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 then 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.

FORM OF LETTER TO BE ADDRESSED TO BANK FOR VERIFICATION OF BANK

GUARANTEE REGISTERED ACKNOWLEDGEMENT DUE

To

..... i) Bank concerned

..... ii) Head Office of the

BankSub: Bank Guarantee – Verification of.

Sir,

With reference to our Contract No. .... placed on ..... a  
Bank Guarantee No. .... dated ..... for Rs ..... Issued  
from ..... Bank located at ..... (Photostat copy of Bank  
Guarantee enclosed) has been received.

2. It is requested that the genuineness of the Bank Guarantee may be verified  
and intimated to the undersigned at the earliest.

Encl: As above.

Yours faithfully,

( )  
For and on behalf of Purchaser

## FORMAT FOR REFUND OF SECURITY DEPOSIT

To  
The \_\_\_\_\_  
(Purchase Officer)

Sir,

This refund of Performance Security Deposit amounting to Rs. \_\_\_\_\_ (Rupees ..... only) against us and therefore its repayment may please be arranged. Necessary receipt duly stamped is given hereunder in Part-B.

It is certified that I/We, have not received any complaints from the consignees regarding non-receipt, shortage or defects in the stores supplied under the contract.

(Signature of the Contractor)

## PART-B

Received from ..... the sum of Rs ..... amount in refund of may / our Performance Security Deposit in full in respect of :

Contract No \_\_\_\_\_ Station \_\_\_\_\_ Dated \_\_\_\_\_

(Contractor's dated signature)

(Revenue stamp for sums exceeding Rs. 5000/- should be affixed)

## PART-C

(TO BE FILLED BY THE PURCHASE OFFICER)

It is certified that no demands against the above contractor are outstanding in the record of this office and that the instant Security Deposit (PSD) is free from the Government claims in terms of clause \_\_\_\_\_ of General Conditions of Contracts as far as A/TNo. \_\_\_\_\_ is concerned and can be refunded to the Contractor by A/c Payee Cheque.

Signature ..... Designation .....

## Part-D

(FOR USE IN ACCOUNTS OFFICE)

Pay Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)

PERFORMANCE NOTICE FOR NOT SUBMITTING ADVANCE SAMPLE  
SUPPLY ORDER NO.

No.  
Government of India  
Ministry of Defence

To,

M/s .....

Sub:

Ref:

Dear Sir/Madam,

Your attention is invited to the acceptance of Supply Order cited above, according to which advance samples ought to have been submitted by you on or before \_\_\_\_\_. In spite of the fact that the time for submission of acceptable advance samples stipulated in the supply order is all along of the essence of the contract. It appears that the acceptable advance samples are still outstanding even though the date of submission has expired.

2. Although not bound to do so, I hereby extend the date of submission of acceptable advance samples up to ..... and you are requested to note that the submission of acceptable of advance samples by the said date is of the essence of contract and in the event of your failure to submit the samples within the date as hereby extended the contract shall be cancelled and the stores shall be purchased at your risk and cost.

3. Please communicate your acceptance of the aforesaid extension up to \_\_\_\_\_ and your readiness to act upon it within a week of the receipt of this letter failing which it shall be resumed that you are not interested in performance of the contract and the contract will be cancelled at your risk and cost. If having communicated the acceptance of the aforesaid extension, you fail to submit the acceptable advance samples, the contract will be cancelled at your risk and cost.

4. All other terms and conditions of the contract remain unaltered and shall be applicable.

Yours faithfully,

( )

For and on behalf of the CMD, AWEIL

MODEL FORMAT FOR PERFORMANCE NOTICE  
Registered Acknowledgement Due

No.  
Government of India  
Ministry of Defence

To,

M/s .....

Sub: Contract No..... dated .....

For supply of .....

Dear Sir/Madam,

Your attention is invited to the Supply Order cited above according to which supplies ought to have been submitted by you on or before\_\_. In spite of the fact that the time of delivery of 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 risks and cost.

3. ....

Yours faithfully,

( )  
For and on behalf of the CMD, AWEIL

## CORRESPONDENCE WITH SELLER AFTER BREACH OF CONTRACT

No.  
Government of India  
Ministry of Defence

To,

M/s .....

Sub: Contract No..... dated .....

For supply of .....

Dear Sir/Madam,

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 dispatched and the quantity so far not tendered for inspection before the expiry of the date of records and is not intended to keep the contract alive and does not waive the breach.

This is without the prejudice to the rights and remedies available to the Buyer in terms of the contract and law applicable in this behalf.

Yours faithfully,

( )  
For and on behalf of the CMD, AWEIL

SHORT CLOSURE AND CANCELLATION OF SUPPLY ORDER  
Registered Acknowledgement Due

No.  
Government of India  
Ministry of Defence

To,

M/s .....

Sub: Contract No..... dated .....

For supply of .....

Dear Sir/Madam,

Since you have failed to supply outstanding quantity of \_\_\_ of the above store as per subject contract, the contract is hereby cancelled for the balance quantity at your risk and cost in terms of clause no..... of the General terms and conditions of the contract. The amount of recovery involved, if any, as a result of the cancellation will be intimated to you in due course.

This is without the prejudice to the rights of the purchaser in accordance to the terms and conditions of the contract.

Yours faithfully,

( )  
For and on behalf of the CMD, AWEIL

Copy to:

1. The Controller of Inspection .....
- 2.
- 3.

## LETTER FOR FINAL PAYMENT

No.  
Government of India  
Ministry of Defence

To,

M/s .....

Sub: Contract No..... dated .....

For supply of .....

Dear Sir/Madam,

Please furnish the following information to enable this office to finalise the abovecase for your 5% payment:

- (a) Please intimate reasons for delay in supply and furnish details of dispatches.
- (b) Please confirm that you have received payment in full for all quantities supplied by you against the above contract, except 5% referred to above.
- (c) Please certify that you have no claims in connection with on arising out of the said contract by any of duties or otherwise whatsoever. Your reply should reach this office latest by ..... failing which it will be presumed that you have no claims whatsoever in respect of the above contract and the case will be finalized accordingly.

Yours faithfully,

( )  
For Executive Director

## MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

New Delhi, the 23<sup>rd</sup> March 2012

## ORDER

Whereas, the Central Government Ministries, Departments and Public Sector Undertakings shall procure minimum of 20 percent of their annual value of goods or services from Micro and Small Enterprises.

And whereas, the Public Procurement Policy shall apply to Micro and Small Enterprises registered with District Industries Centers or Khadi and Village Industries Commission or Khadi and Village Industries Commission or Khadi or Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises.

And whereas, the Public Procurement Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost effective; and

And whereas, for facilitating promotion and development of micro and small enterprises, the Central Government or the State Government, as the case may be, by Order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or Departments, as the case may be, or its aided institutions and public sector enterprises.

Now, therefore, in exercise of the powers conferred in section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006, the Central Government, by Order, notifies the Public Procurement Policy (hereinafter referred to as the Policy) in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries, Departments and Public Sector Undertakings.

2. Short title and commencement –

(1) This Order is titled as 'Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012'.

(2) It shall be come into force with effect from 1<sup>st</sup> April 2012.

3. Mandatory procurement from Micro Small and Enterprises

(1) Every Central Ministry or Department or Public Sector Undertakings shall set an annual goal of procurement from Micro and Small Enterprises from the financial year 2012-13 and onwards, with the objective of achieving an overall procurement of minimum of 20 percent, of total annual purchases of products produced and services rendered by Micro and Small Enterprises in a period of three years.

(2) Annual goal of procurement also include sub-contracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by National Small Industries Corporation.

(3) After a period of three years i.e from 1<sup>st</sup> April 2015, overall procurement goal of minimum of 20 percent shall be made mandatory.

The Central Ministries, Departments and Public Sector Undertakings which fail to meet the annual goal shall substantiate with reasons to the Review Committee headed by Secretary (MSME), constituted in Ministry of MSME, under this Policy.

4. *Special provisions for Micro and Small Enterprises owned by Scheduled Castes or Scheduled Tribes:* Out of 20 percent target of annual procurement from Micro and Small Enterprises, a sub-target of 20 per cent (i.e, 4 per cent out of 20 per cent) shall be earmarked

for procurement from Micro and Small Enterprises owned by the Scheduled Caste and Scheduled Tribe entrepreneurs. Provided that, in event of failure of such Micro and Small Enterprises to participate in tender process or meet tender requirements and L1 price, 4 per cent sub-target for procurement earmarked for MSEs owned by Scheduled Caste and Scheduled Tribe entrepreneurs shall be met from other Micro and Small Enterprises.

5. *Reporting of targets in Annual Report.*

(1) The data on Government procurements from Micro and Small Enterprises is vital for strengthening the Policy and for this purpose, every Central Ministry or Department or Public Sector Undertaking shall report goals set with respect to procurement to be met from MSEs and achievement made thereto in their respective Annual Reports.

(2) The annual reporting shall facilitate in better understanding of support being provided by different Ministries or Departments or Public Sector Undertakings to Micro and Small Enterprises.

6. *Price quotation in tenders.*

(1) In tender, participating MSEs quoting price within price band of L1+15% per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such Micro and Small Enterprise shall be allowed to supply up to 20 per cent of total tendered value.

(2) In case of more than one such Micro and Small Enterprise, the supply be shared proportionately (to tendered quantity).

7. *Developing Micro and Small Enterprise Vendors –* The Central Ministries or Department or Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes or Buyer-Seller Meets and entering into Rate Contracts with Micro and Small Enterprises for a specified period in respect of periodic requirements.

8. *Annual Plan for Procurement from Micro and Small Enterprises on Website –* The Ministries or Departments or Public Sector Undertakings shall also prepare Annual Procurement Plan for purchases and upload the same on their official website so that Micro and Small Enterprises may get advance information about requirement of procurement agencies.

9. *Enhancing participations of Micro and Small Enterprises including those owned by Scheduled Castes or Scheduled Tribes in Government Procurements.*

For enhancing participation of Scheduled Castes or Scheduled Tribes in Government procurement, the Central Government Ministries, Departments or Public Sector Undertakings shall take following steps, namely:-

- a) Special Vendor Development Programmes or Buyer-Seller Meets shall be conducted by Department/Public Sector Undertakings for Scheduled Castes or Scheduled Tribes.
- b) Outreach programmes shall be conducted by National Small Industries Corporation to cover more and more Micro and Small Enterprises from Scheduled Castes or Scheduled Tribes under its schemes or consortia formation; and
- c) National Small Industries Corporation shall open a special window for Scheduled Castes or Scheduled Tribes under its Single Point Registration Scheme (SPRS).

10. *Reduction in transaction cost.* To reduce transaction cost of doing business, MSEs shall be facilitated by providing them tender sets free of cost, exempting Micro and Small Enterprises from payment of earnest money, adopting e-procurement to bring in transparency in tendering process and setting up a Grievance Cell in the Ministry of MSME.

11. *Reservation of specific items for procurement.* To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries

or Departments or Public Sector Undertakings shall continue to procure 358 items (Appendix) from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. This will help them in promotion and growth of Micro and Small Enterprises, including Khadi and village industries, which play a crucial role in fostering inclusive growth in the country.

12. *Review Committee.*

(1) A Review Committee has been constituted under the Chairmanship of Secretary, MoMSME for monitoring and review of Public Procurement Policy for Micro and Small Enterprises vide Order No. 21(1)/2017-MA dated the 21<sup>st</sup> June 2010.

(2) This Committee shall, inter alia, review list of 358 items reserved for exclusive purchase from Micro and Small Enterprises on a continuous basis, consider requests of the Central Ministries or Departments or Public Sector Undertakings for exemption from 20 per cent target on a case to case basis and monitor achievements under the Policy.

13. *Setting up of Grievance Cell.* In addition, a 'Grievance Cell' will be set up in MoMSME for redressing grievances of Micro and Small Enterprises for redressing grievances of Micro and Small Enterprises in Government procurement. This cell shall take up issues related to Government procurement raised by Micro and Small Enterprises with Departments or agencies concerned, including imposition of unreasonable conditions in tenders floated by Government Departments or agencies that put Micro and Small Enterprises at a disadvantage.

14. *Special Provisions for Defence Procurements.* Given their unique nature, defence armament imports shall not be included in computing 20 per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles etc. shall remain out of purview of such Policy of reservation.

15. *Monitoring of Goals.* The monitoring of goals set under the Policy shall be done, in so far as they relate to the Defence sector, by Ministry of Defence itself in accordance with suitable procedures to be established by them.

16. *Removal of difficulty.* Any difficulties experienced during the course of implementation of the above Policy shall be clarified by MoMSME through suitable Press releases which would be kept on the public domain.

[F.No. 21(1)/2011-MA]

AMARENDRA SINHA, Additional Secretary and  
Development Commissioner (MSME)

**GOVERNMENT OF INDIA**  
**DEPARTMENT OF DEFENCE PRODUCTION**  
**MINISTRY OF DEFENCE**  
**Defence Innovation Organisation (DIO)**  
**Scheme for Innovations for Defence Excellence (iDEX)**

### **1. Background**

A special effort was required to reach out and engage the smaller enterprises, startups and innovators, which have the competence, flexibility and adaptability to supply the Indian military with innovative and ingenious technological solutions. In order to operationalize and institutionalize this effort, the Innovations for Defence Excellence (iDEX) framework was formulated and approved by the Ministry of Defence. In order to implement the iDEX framework, Defence Innovation Organization (DIO) was set up as a Section 8 Company. iDEX was formally launched during DefExpo 2018 by the Hon'ble Prime Minister.

iDEX–DIO with the primary objective of self-reliance and indigenization in Defence & aerospace sector of the country bolsters the “Atmanirbhar Bharat Abhiyan” of the Government. Moreover, iDEX-DIO is relevant to further the objectives laid out for this Department under the “Atmanirbhar Bharat” package, mainly self-reliance in Defence Production and reduction in Defence Import Bill.

### **2. The scheme**

A scheme of the Department of Defence Production, Ministry of Defence, to be implemented through DIO, with budgetary support of Rs. 498.8 crore for the next 5 years from 2021-22 to 2025-26 to provide financial support to nearly 300 startups/ MSMEs/ individual innovators and about 20 partner incubators under the DIO framework in consultation with other stakeholders including DST.

### **3. Objectives**

Defence Innovation Organization (DIO) aims at creation of an ecosystem to foster innovation and technology development in Defence and Aerospace by engaging Industries including MSMEs, startups, individual innovators, R&D institutes and academia and provide them grants/funding and other support to carry out R&D development which has good potential for future adoption for Indian defence and aerospace needs.

The core objectives of the scheme are:

- a. Facilitate rapid development of new, indigenized, and innovative technologies for the Indian defence and aerospace sector, to meet needs for these sectors in shorter timelines
- b. Create a culture of engagement with innovative startups, to encourage co-creation for defence and aerospace
- c. Empower a culture of technology co-creation and co-innovation within the defence and aerospace sectors
- d. Boost innovation among the start-ups and encourage them to be a part of Indian defence and aerospace ecosystem.

#### **4. Implementation**

The Defence Innovation Organization with its team will enable the creation of channels for innovators to engage and interact with the Indian defence production industry. The long-term effect to be realized by the group is the establishment of a culture, where enlisting the effort of innovators by the Indian military is commonplace and frequent.

Department of Defence Production (DDP) will release funds to DIO for undertaking the following activities: -

- i. Setting up and managing the iDEX network in the form of Partner Incubators.
- ii. Communicating with innovators/start-ups/technology centres of MSMEs through the Partner Incubators (PIs) including the PIs of Department of Science and Technology regarding defence and aerospace needs.
- iii. Organizing various challenges/ hackathons to shortlist potential technologies and entities for defence and aerospace use.
- iv. Evaluating technologies and products coming from innovators/ startups in terms of their utility and impact on the Indian defence and aerospace setup.
- v. Enabling and funding pilots using innovation funds dedicated to the purpose.
- vi. Interfacing with the military (Army/Navy/Airforce) top brass about key innovative technologies and encouraging their adoption into the defence establishment with suitable assistance (financial, if required).
- vii. Facilitating scale-up, indigenization and integration in manufacturing facilities for successfully piloted technologies.
- viii. Organising outreach activities all across the country.
- ix. Any other activity required to promote the objectives of the scheme.

#### **5. Quantum and Nature of Financial Assistance**

At the beginning of the financial year DDP will release the funds to DIO through PFMS.

The funds will be utilised by DIO as follows:

- i. Applicants showing capability, intent, and promise to be able to produce functional prototypes or to productize existing technologies will be awarded maximum grants of up to Rs. 1.5 crores per applicant, strictly on a milestone basis and starting, in the form of grant/equity/debt/other relevant structures.
- ii. The exact amount and mode of each grant shall be decided by a high-powered committee based on the application, as per the prevailing scheme. In special cases, if deemed necessary by the high-powered committee, the funding amount may be increased beyond the prescribed limit, on a case by case basis. (refer Annexure A)
- iii. Innovation activities like accelerator programs, challenges, etc. will be carried by the iDEX Partners along with their outreach and candidate sourcing.
- iv. These programs will target locations or clusters focused around specific military platforms, components, or requirements as decided in consultation with the iDEX (DIO) team.
- v. If the proposed program is deemed worthwhile by the iDEX team, it will disburse funding of up to 40 lakhs depending on the activity.
- vi. There will be no establishment funding provided to any DIO-affiliated incubators; only programs will be funded. (refer Annexure B)

## 6. Eligible Organisations/ Beneficiaries

To avail the grants under Support for Prototype and Research Kickstart (SPARK) the eligibility is as follows:

- i. Startups, as defined and recognized by Department of Industrial Policy Promotion (DIPP), Ministry of Commerce and Industry, Government of India.
- ii. Any Indian company incorporated under the Companies Act 1956/2013, primarily a Micro, Small and Medium Enterprises (MSME) as defined in the MSME Act, 2006.
- iii. Individual innovators are also encouraged to apply (research & academic institutions can use this category to apply)

To avail the grants as iDEX Partners the eligibility is as follows:

- iv. The applicant incubator should be registered in India as a legal entity in public, private or public – partnership mode, and should have received establishment or grant support from a government of India ministry/department in the past.
- v. The incubator must have been in operation for a minimum of 3 years before application for affiliation with DIO, and experience of having supported at least 25 startups.
- vi. It should have successfully graduated at least 5 startups in the past 3 years that are running as ‘a going concern’ as of the date of application for affiliation with DIO.
  - a. A startup’s graduation is to be defined as any of the following: (a) having raised a series A round of at least Rs 1 crore, valuing the firm at least Rs 10 crore; (b) or acquired by another large company, at a valuation of at least Rs 10 crore; (c) a viable firm with at least Rs 5 crore in annual revenue, or (d) employee 20 full time-equivalent staff.
  - b. Experience of having supported defence or aerospace related startups will be given extra consideration.
- vii. It should have at least 25 mentors for startups affiliated with it, at least 5 of whom should have some connection with the defence or aerospace domain.
- viii. Experience of having run sector-focused accelerator programs in at least two sectors, with investable startups having come out of each of them.
- ix. Experience of having partnered with academia and research sector
- x. Extensive corporate, investor, academic, vendor, mentor and government relationships to support start-ups.

## 7. Scheme Components and Cost

The scheme with budgetary support of Rs. 498.8 crore for the next five years (from 2021-22 to 2025-26) is aimed at providing financial support to nearly 300 startups/ MSMEs/ individual innovators and 20 partner incubators under the DIO framework in consultation with other stakeholders including DST.

The component wise cost for five years (FY 2021-22 to FY 2025-26) would be as follows:

S.No.	Component	Outlay for five years (FY 2021-22 to FY 2025-26)
1	Grants to iDEX winners (to selected entities via challenges like the Defence India Startup Challenge)	Rs 450 crore
2	Partner Incubators	Rs 29.6 crore
3	DIO internal operations (Administrative and Management cost, Monitoring & Evaluation etc)	Rs 19.18 crore
	Total	Rs 498.8 Cr

Year-wise and component-wise cost details are mentioned below.

Financial Year  (a)	No of iDEX winners to be awarded SPARK grants in each year  (b)	Budget required for SPARK grants (Rs crore)  (c)	No of Partner incubators (active PIs =9; assuming -a maximum of 3 new partner incubators added each year)  (d)	Budget Required for PIs (Rs crore)  (e)	Budget required for DIO internal operations (4%) (Rs crore)  (f)	Total Budget required each year for iDEX winners and PIs (Rs crore)  (g)=(c)+(e)+(f)
FY 21-22	40	60	9	3.60	2.54	<b>66.10</b>
FY 22-23	40	60	12	4.80	2.59	<b>67.40</b>
FY 23-24	60	90	15	6.00	3.84	<b>99.80</b>
FY 24-25	70	105	18	7.20	4.49	<b>116.70</b>
FY 25-26	90	135	20	8.00	5.72	<b>148.70</b>
<b>Total for 5 years</b>	<b>300</b>	<b>450</b>	<b>20</b>	<b>29.60</b>	<b>19.18</b>	<b>498.80</b>

iDEX will operate through the budgetary support by the Department of Defence Production, Ministry of Defence through channelization of resources. The Ministry of Finance will allocate the budget head as well as the resources for iDEX on a yearly basis as per the above table. The iDEX processes as per the existing guidelines will continue. To oversee the utilization of funds by DIO, guidelines will be continually updated by DIO as per the need to bring more stringency in due-diligence and financial compliance.

## 8. Procedure for selection

- Defence India Startup Challenge (DISC) with problem statements from Armed Forces, DPSUs, AWEIL and from any other agency under MoU with DIO are launched under iDEX and applications are invited from startups/ MSMEs/ individual innovators.
- The received applications will be screened by a duly constituted high- powered committee of defence, technology, and innovation deployment experts for screening and selection of applications for the Defence India Startup Challenge (for more details refer Annexure A)
- The scheme is continually monitored by DDP through the DIO team with DIO Board at the helm, under which CEO is authorized for disbursement of funds and all such acts, deeds & things as may be necessary.
- Existing technology centres and tool rooms under the Ministry of MSME could be leveraged for project/product development and rapid prototyping of the prototypes of the startups.
- The disbursement of grants to the winners of iDEX challenges is based upon the set guidelines under iDEX. These guidelines stipulate payment in tranches based on milestones.
- An elaborate monitoring mechanism exists as per the guidelines to oversee the utilization of

funds/grants to the startups/ incubators. The C&AG audit of DIO is being conducted at the end of each year thus providing sufficient check on behalf of the Government.

## **9. Expected outcomes**

The expected benefits from the proposed scheme are:

- i. Fostering innovation and technology development in Defence by engaging R&D institutes, academia, industries, startups and individual innovators.
- ii. Increased awareness in the Indian innovation ecosystem about defence needs and, conversely, in the Indian defence establishment about the potential of the Indian innovation eco-system to deliver innovative solutions to meet their needs. An indirect measure of this is the increase in Suo-moto proposals for the Make-II scheme of the Defence Procurement Procedure.
- iii. Expansion of MSME and start-ups base by extending financial support will be provided to nearly 300 startups/ MSMEs/ individual innovators and 20 partner incubators under the DIO framework in consultation with other stakeholders including DST.
- iv. At least 60 solutions will be taken up for Productionization by creating a linkage between the Start-up and the industry, including both in public as well as private sector.

## **10. Monitoring & evaluation**

- i. Continuous monitoring will be taken by DDP & DIO team.
- ii. Third party monitoring would also be taken up.
- iii. The scheme will be evaluated in fourth year of its implementation through an independent agency.

	<b>ORDNANCE FACTORY BOARD</b> <b>10 A, S. K. BOSE ROAD</b> <b>KOLKATA 700 001</b>  <b>( MM DIVISION)</b>	
Telephone: 033 22130278, Email: <a href="mailto:ofbmm.ofb@ofb.gov.in">ofbmm.ofb@ofb.gov.in</a>		FAX: (033) 2248-6903

No. 554/5/MoD/MM(P&amp;C)

Date : 16.04.2019

The Sr. General Manager/General Manager  
 All Ordnance & Ordnance Equipment Factories  
 The Sr.PD/PD of OFILs, NADP & OFRC  
 The Regional Directors of RCSs & RMCs  
 HODs/OFBHQ, AVHQ, OEFHQ, OFBND, OFBMO  
 The Head of ODCs

Sub : Implementation Plan of 'Make-II' Procedure at OFB

Ref : (i) MoD I.D No. 18(1)/17/Make-II/DP(Plg-MS) dated 11.02.2019  
 (ii) OFB letter No. 554/5/MoD/MM(P&C) dated 20.03.2019  
 (iii) MoD I.D No. 1(18)/02/Indigenization/DP(Plg-ES)/818 dated 08.03.2019  
 (iv) MoD I.D No. 18(2)/18/MII-OFB&DPSUs/DP(Plg-MS) dated 08.04.2019

It is brought out that MoD vide I.D No. 18(1)/17/Make-II/DP(Plg-MS) dated 11.02.2019 has forwarded the procedure for 'Make-II' subcategory notified by the Government of India in Chapter – IIIA of DPP-2016 for development of equipments. In order to implement a similar procedure at OFB for input material items as an effort towards import substitution and indigenization of defence products, the Government of India has approved a framework for implementation at OFB.

2. The Framework has been examined by OFB and required changes/modification has been made to align with revenue procurement procedure of OFB as per OFBPM 2018 keeping into consideration other statutory requirements without sacrificing the key feature of the framework. The modified framework was forwarded to DDP on 20.03.2019 for perusal and necessary approval.

3. The same has been approved by competent authority of DDP and the approved Framework is enclosed herewith for information and necessary implementation with immediate effect. The detailed guidelines mentioned in this Make-II Procedure needs to be followed in conjunction with the revenue procurement procedure of OFB as per OFBPM 2018.

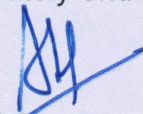
4. It is intimated that policy for Indigenization of components and spares in Defence Platforms for DPSUs/OFB has been notified on 08.03.2019 and has been communicated by MoD vide their I.D No. 1(18)/02/Indigenization/DP(Plg-ES)/818 dated 08.03.2019. The Indigenization policy was circulated to Factories by OFB/R&D on 25.03.2019 for information and necessary action. As per para 3.16 of the Indigenization policy, DPSUs/OFB shall adopt Make-II, mutatis-mutandis for their own requirement. While such adoption would be for any procurement being done by them, this would especially for indigenization.

Contd.....page 2/-

5. It is also intimated that as per para 1.21 of OFBPM 2018, no modifications / amendments will be made to the OFB Procurement Manual 2018 (OFBPM 2018) without prior approval of Department of Defence Production, Ministry of Defence. However, changes in policies issued by MoD necessitating amendments in OFBPM 2018 may be implemented immediately under intimation to DDP.

6. Secretary (DP) has directed OFB to prepare an implementation action plan for the next six months, for indigenization of such items under Make II procedure. This action plan should invariably include the items presently being imported by OFB and in which there is visibility of orders in the near future.

7. In view of above, Factories are requested to identify the items for indigenisation under Make-II procedure in consultation with OFB/R&D immediately and status of project shall be intimated to OFB/MM & OFB/R&D on quarterly basis.

  
(Atul Gupta)  
DDG/MM

For Director General, Ordnance Factories

**Encl:** Framework for implementation of 'Make-II' procedure at OFB

**Copy to:-**

- |                            |  |
|----------------------------|--|
| 1) All Members             | - For information please.  |
| 2) PCA(Fys) Kol            | - For information and necessary action please.                     |
|                            | - Request to circulate a copy of letter to Gp. Controllers & LAOs. |
| 3) DDG/Operating Divisions | - For information please.  |
| 4) DDG/R&D                 | - For information and necessary action please.                     |

**Copy to for information pls**

- 1) Shri BB Patel, OSD(LS)  
Ministry of Defence  
Department of Defence  
Production/D(Prod-II)  
Sena Bhavan  
New Delhi – 110 011
- 2) Shri Chandandeep Singh  
Planning Officer (MS)  
Dte (Planning & Coordination)  
Department of Defence Production  
Ministry of Defence  
Room No. 41, H Block, New Delhi – 11

**FRAMEWORK FOR  
IMPLEMENTATION  
OF  
'MAKE-II' PROCEDURE  
AT OFB**

## FRAMEWORK FOR IMPLEMENTATION OF 'MAKE-II' PROCEDURE AT OFB

### **Introduction:**

1. The 'Make' procedure for indigenous design, development and manufacture of defence equipment/ weapon systems, was simplified in 2016 and promulgated as Chapter-III of DPP-2016. Subsequently, a simplified procedure for sub-category 'Make-II' was notified in Feb 2016 with an objective of wider participation of Indian industry, impetus for MSME(Micro, Small and Medium Enterprises)/Startup sector, simplified implementation, and timely induction of equipment into the Indian Armed Forces. Number of industry friendly provisions such as relaxation of eligibility criterion, minimal documentation, provision for considering proposals suggested suo-moto by industry etc., have been introduced in the Make-II Procedure.
2. With the emerging dynamism of private sector and with the aim of achieving substantive self-reliance in defence production/ manufacturing, it is imperative that OFB/DPSUs harness the potential of private sector by implementing Make-II procedure at their level for indigenously developing products.
3. OFB may incorporate the procedure prescribed in succeeding paras in their Procurement procedure for this purpose. *Under this procedure, no funding will be provided by OFB to Development Agencies (DAs) for prototype development purposes but there will be assurance of orders on successful development and trials of the prototype.*
4. Indian vendors as detailed in **Annexure-I** to this framework, are eligible for participation for prototype development process.
5. Successful development under this framework would result in procurement, from successful Development Agency/Agencies (DA/DAs), through the Procurement procedure/ Manual of OFB, by inviting commercial bids which is to be submitted prior to Commencement of Trials. Thereafter, the procedure as detailed in Procurement Manual of OFB will be followed except for the procedure outlined in subsequent paras. The requirement of indigenous content for prototype development and subsequent procurement phase shall be in sync with the requirement stipulated in 'Buy (Indian-IIDM)' category of Defence Procurement Procedure-2016.
6. Projects under this framework will involve prototype development of equipment/system/ platform or their upgrades or their sub-systems/sub-assembly/assemblies/components/material, primarily for import substitution/innovative solutions, for which no funding will be provided by OFB for prototype development purposes.
7. Projects with estimated cost of prototype development phase not exceeding **Rs 2 Cr**, will be earmarked for MSMEs/Startups. However, if no MSME (Micro, Small and Medium Enterprises)/Startup expresses interest for such proposal, the same may be opened up for all.

### **Development Process Steps:**

8. The development & procurement process under this scheme would involve the following functions: -

- i. Formulation of Proposal by Indigenization Committee
- ii. Approval of Proposal by Competent Authority
- iii. Issue of Expression of Interest (Eoi)
- iv. Evaluation of Eoi responses
- v. Award of Project Sanction Order
- vi. Design and Development of Prototype
- vii. Solicitation of Commercial Offer
- viii. Trials & evaluation of prototype
- ix. Commercial negotiations by Contract Negotiation Committee (CNC)
- x. Award of Procurement Contract

### **Formulation of Proposal:**

9. On the basis of requirement of the Armed forces, Indigenization plan of OFB or otherwise (including projects suggested by industry or individual), OFB will identify the potential Make-II projects. An Indigenization Committee shall be constituted at each Production Unit (OF) with concerned stakeholders as members (Production, Quality Assurance, Finance, Procurement, Certification agency, etc, as required) for this purpose. List of projects/components/assemblies/sub-assemblies shall be hosted on OFB/Make in India websites, along with Project Briefs, inviting the willingness of Industry to participate in the aforesaid potential projects.

### **Approval of Proposal:**

10. Indigenization Committee will formulate the proposal indicating the quantities required, estimated project cost (Cost of development of prototype and cost of subsequent procurement) and technical specifications/preliminary specifications. In case technical specifications are not known, the same will be formulated by Indigenization Committee. The quantities for the subsequent procurement will be structured around following considerations:

- i. Visibility of orders
- ii. Economic viability of the project

11. Approval for the proposal shall be obtained from Competent Authority (*Sr.GM/GM – up to Rs. 5 Cr, Operating Member – up to Rs. 30 Cr, DGOF & Chairman – Full power*) for quantities required, Estimated Project Cost (Cost of development of prototype and cost of subsequent procurement) & Technical/Preliminary specifications. Following would be highlighted while seeking approval: -

- i. Estimated development cost & procurement cost.
- ii. Quantities required post the successful development of prototype.
- iii. Acceptability of Multiple Technological Solutions, if any
- iv. Single vendor situation for cases where an innovative solution has been offered by an individual or a firm.

12. Approval for proposals will be valid for six months. For cases where Eol is not issued within six months from accord of approval, Head of the Production Unit (Sr.GM/GM) will revalidate the approval after due justification by Indigenization Committee.

13. Indigenization Committee shall, inter-alia, carry out the following important functions: -

- i. Preparing and issue of EOI
- ii. Receipt & evaluation of EOI responses
- iii. Issue of Project Sanction Order
- iv. Monitoring and reporting of aspects relating to prototype development including generation of Intellectual Property
- v. Any other responsibilities as entrusted by the Head of the Production Unit

#### **Issue of Eol:**

14. Indigenization Committee shall get the Eol hosted in OFB/Make in India Website, inviting Company(ies) to participate in development process. The Eol will contain the following:

- i. Technical specifications/ Preliminary specifications
  - ii. Scope of the project including number of Prototypes required.
  - iii. Time frames and critical activities.
  - iv. Cost sharing mechanism for trials may be specified with the objective to facilitate the development process.
- or
- List of trials/items/facilities/consumables that will be provided free of cost and also specify 'number of times' such free trials will be allowed.
- v. Quantities in procurement phase.
  - vi. Acceptability of Multiple Technological Solutions, if any and splitting of procurement quantities between L1 & L2
  - vii. Details of Evaluation Criteria for assessment of EOI response

#### **Evaluation of Eol Responses:**

15. Responses to Eol shall be evaluated as per criteria given in Eol and shall be approved by the Competent Authority. All the shortlisted companies will be called Development Agencies (DAs).

16. Project/components/assemblies/sub-assemblies shall be progressed ahead, even if only one Eol respondent is found meeting the evaluation criteria.

17. Project Sanction Order with 'Nil' financial implications shall be issued after obtaining approval of the competent authority.

#### **Time Overrun:**

18. The approval of extension of timelines for any 'Make-II' project may be accorded by Competent Authority, on recommendations of Indigenization Committee. In case, only one vendor has offered the prototype within timelines stipulated in the Project Sanction Order, the other Development Agencies (DAs) will not be accorded more than two time-extensions, and thereafter, the case will be progressed as resultant Single Vendor Case (RST).

**Design and Development of Prototype:**

19. Indigenisation Committee will act as the primary interface for Development Agencies (DAs) during the design and development stage and will facilitate the following: -

- i. Provision of requisite professional inputs/documentation/samples to industry
- ii. Providing clarifications related to functional or operational aspects of the equipment.
- iii. Coordinate trials including provisioning of trial range/platforms/ test facilities/consumables, etc., as mentioned in the EoI.

**Solicitation of Commercial Offers:**

20. A commercial Request for Proposal (RFP) for 'Procurement Phase', as per extant Procurement procedure of OFB, will be issued to all Development Agencies (DAs) for submission of their commercial offer prior to commencement of trials.

21. The quantities in Procurement Phase cannot be reduced from the quantities indicated in EoI issued for the prototype development phase.

**User Trials & Evaluation:**

22. User trials would be carried out by the OFs to validate the performance of the prototype offered by Development Agencies (DAs).

23. Projects, where prototype of only a single firm/individual clears the trials, shall be progressed as resultant single vendor.

**Commercial Negotiations by Contract Negotiation Committee (CNC):**

24. The Estimated Project cost at the time of approval, will be calculated on the basis of last purchase price of the imported item being substituted. The CNC will carry out all processes from opening of commercial bids till conclusion of contract. Negotiations in case of multivendor projects having procurement cost less than Rs. 25 crore shall be carried out only in special circumstances with reasons to be recorded. However, CNC will carry out negotiations for all single vendor cases, other than resultant single vendor, irrespective of value of the project. The products which are being developed as an import substitute and their prices are known, no benchmarking & no negotiation will be carried out, even in single vendor cases, if the offered price is lower than AoN cost by 20% or more. However, in such cases, the Competent Financial Authority (CFA) will satisfy himself/herself that the price of the selected offer is reasonable with respect to the approved cost and consistent with the quality required.

25. After CNC, the extant procurement procedure of OFB would be followed and the Procurement contract would be signed as per delegated financial powers. The Pre-Contract Integrity Pact (PCIP), if required, shall also be signed with DAs as per existing OFB Procurement Procedure.

**Multiple Technological Solutions:**

26. In cases involving large quantities and where multiple technological solutions are acceptable, an option may be provided in the EoI and subsequently in the Commercial RFP for the 'procurement' phase for procurement of specified quantities (in the ratio of 60:40) from L2 vendor who have successfully developed the prototype/product, on the condition that this second vendor accepts the price and terms & conditions quoted by the L1 vendor.

27. In case, multiple technological solutions are not acceptable, the successful other vendors will be issued a certificate indicating that the product has been successfully trial evaluated, to facilitate such vendors to explore other markets and remain in the production of the product.

**Intellectual Property Rights (IPRs):**

28. DA and OFB shall be co-owner of Intellectual Property generated during the development of project and each of the co-owners will have independent rights to exploit the IP rights, to his own benefit, without the consent of co-owner.

**Project Management, Review and Monitoring:**

29. The progress of the project would be monitored by Indigenization Committee on regular basis. OFB may engage services of independent consultants/experts for assessing the physical and/or financial progress of the project.

30. Review of the projects shall be carried out on Quarterly basis at OFB (MM and R&D) and Quarterly Report shall be sent to DDP.

**Foreclosure:**

31. No Foreclosure of the Project will be done after issue of Project Sanction Order, other than for reasons of default/ non-adherence to Project Sanction Order by Vendors. However, if rates quoted by the DA in procurement phase are found to be abnormally high, OFB will reserve the right to foreclose the procurement process.

32. All deviations on matters concerned with 'Make-II' cases not covered under this framework, shall require prior approval DGOF & Chairman.

33. Any grievance during the process shall be redressed through extant mechanism existing at OFB level.

\*\*\*

**Indicative Eligibility Criteria for Responding to Eol**

1. All the entities (except Startups/ MSMEs) satisfying all of the following criteria shall be considered as an eligible 'Indian Vendor' for evaluation of Eol by Indigenization Committee: -
  - i. Public limited company, private limited company, partnership firms, limited liability partnership, one Person Company, sole proprietorship registered as per applicable Indian laws. In addition, such entity shall also possess or be in the process of acquiring a license/development of products if the product under project requires license as per DIPP's licensing policy.
  - ii. The entity has to be owned and controlled by resident Indian citizens; entity with excess of 49% foreign investment will not be eligible to take part in Make-II.
2. **Criteria for Startups/ MSMEs:**
  - i. Startups recognized by Department of Industrial Policy & Promotion (DIPP) under the eligible Domain/Category **as per Annexure-II**, shall be eligible to participate.
  - ii. For projects with estimated cost of prototype development phase not exceeding Rs. 2 Cr and Procurement Cost not exceeding Rs.10 Cr, no separate technical/ financial criteria be defined for both 'Startups' and 'MSMEs', to encourage their participation.

\*\*\*\*

**Annexure-II****Categories & Domains of Startups eligible for Participation in Make-II**

<b>Sl. No.</b>	<b>Category</b>
(i)	Engineering
(ii)	Manufacturing
(iii)	Research
(iv)	Government

<b>Sl. No.</b>	<b>Industry Domain</b>
(i)	Aeronautics/Aerospace & Defence
(ii)	Analytics
(iii)	Augmented/Virtual Reality
(iv)	Automotive
(v)	Computer Vision
(vi)	IT Services
(vii)	Telecommunications and Networking
(viii)	Green Technology
(ix)	Internet of Things
(x)	Nanotechnology
(xi)	Renewable Energy
(xii)	Robotics
(xiii)	Security Solutions
(xiv)	Technology Hardware

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**(Extract from Ministry of Finance, Department of Expenditure, Procurement Policy Division  
L.No.F.1/1/2021-PPD dated 29.10.2021)**

contract (say 25%). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.

**11.8 Rejection of Single Bid:** It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of re-tendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid.

Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied:

- (i) the procurement was satisfactorily advertised and sufficient time was given for submission of bids;
- (ii) the qualification criteria were not unduly restrictive; and
- (iii) prices are reasonable in comparison to market values.

**11.9 Electronic-Measurement Books(e-MBs):** Project executing authorities should, as early as possible, implement e-MBs and the same should be integrated with IT based project monitoring system, being used by the procuring entities.

**11.10 Extension of time for completion of projects:** Procuring entity may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

**11.11 Delay in taking timely decisions:** Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilization/ idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse

(Appendix)

LIST OF ITEMS RESERVED FOR PURCHASE FROM SMALL SCALE INDUSTRIAL UNITS  
INCLUDING HANDICRAFT SECTOR

Sl.No.	Item Description	Sl.No.	Item Description
1	AAC/and ACSR Conductor upto 19 strands	2	Agricultural Implements (a) Hand Operated tools and implements (b) Animal driven implements
3	Air/Room Coolers	4	Aluminum builder's hardware
5	Ambulance stretcher	6	Ammeters/ohm meter/volt meter (Electromagnetic upto Class I accuracy)
7	Anklets Web Khadi	8	Augur (Carpenters)
9	Automobile Head lights Assembly	10	Badges cloth embroidered and metals
11	Bags of all types i.e made of leather, cotton, canvas and jute etc including kit bags, mail bags, sleeping bags and water-proof bag.	12	Bandage cloth
13	Barbed Wire	14	Basket can (Procurement can also be made from State Forest Corpn and State Handicrafts Copn)
15	Bath tubs	16	Battery Charger
17	Battery Eliminator	18	Beam Scales (upto 1.5 tons)
19	Belt leather and straps	20	Bench Vices
21	Bituminous Paints	22	Blotting Paper
23	Bolts and Nuts	24	Bots Sliding
25	Bone Meal	26	Boot Polish
27	Boots and Shoes of all types 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 Wax Carriage	40	Cane valves / stock valves (for water fittings only)
41	Cans metallic (for milk and measuring)	42	Canvas Products: (a) Water Proof Deliver, Bags to spec. No. IS-1422/70 (b) Bonnet Covers and Radiators Muff to spec Drg Lv7/NSN/1A/130295
43	Capes Cotton and Woolen	44	Capes Waterproof
45	Castor Oil	46	Ceiling roses upto 15 amps
47	Centrifugal steel plate blowers	48	Centrifugal Pumps suction and delivery 150mm x 150 mm
49	Chaff Cutter Blade	50	Chains lashing
51	Chappals and sandals	52	Chamois Leather
53	Chokes for light fitting	54	Chrome Tanned leather (Semi-finished Buffalo and Cow)
55	Circlips	56	Claw Bars and Wires

57	Cleaning Powder	58	Clinical Thermometers
59	Clothe Covers	60	Cloth Jaconet
61	Cloth Sponge	62	Coir fiber and Coir yarn
63	Coir matters cushions and matting	64	Coir Rope hawser laid
65	Community Radio Receivers	66	Conduit pipes
67	Copper nail	68	Copper Naphthenate
69	Copper sulphate	70	Cord Twine Maker
71	Cordage others	72	Corrugated Paper Board and 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 Singlets
83	Cotton Sling	84	Cotton Straps
85	Cotton tapes and laces	86	Cotton Wool (non-absorbent)
87	Crates Wooden and plastic	88	(a) Crucibles upto No. 200 (b) Crucibles Graphite upto No. 500 (c) Other Crucibles upto 30 Kgs
89	Cumblies and blankets	90	Curtains mosquito
91	Cutters	92	Dibutyl phthalate
93	Diesel engines upto 15 H.P	94	Dimethyl Phthalate
95	Disinfectant Fluids	96	Distribution Board upto 15 amps
97	Domestic Electric appliances as per BIS specification: - Toaster Electric, Elec Iron, Hot Plates, Elect Mixer Grinders, Room heaters and convectors and ovens	98	Domestic (Hose wiring) P.V.C. Cables and Wires (Aluminium) Conforming to the prescribed BIS specifications and upto 10.00 mm sq. nominal cross section
99	Drawings and mathematical instruments	100	Drums and Barrels
101	Dust Bins	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 Soldering Iron
107	Electronic Transmission Line Hardware items like steel cross bars, cross arms clamps arching horn, brackets etc	108	Electronic door bell
109	Emergency light (Rechargeable type)	110	Enamel Wares and Enamel Utensils
111	Equipment camouflage Bamboo support	112	Exhaust Muffier
113	Expanded Metal	114	Eyelets
115	Film Polythene – including wide width film	116	Film spools and cans
117	Fire Extinguishers (wall type)	118	Foot Powder
119	French polish	120	Funnels
121	Fuse Cut outs	122	Fuse Unit
123	Garments (excluding supply from Indian Ordnance Factories)	124	Gas metals
125	Gauze cloth	126	Gauze surgical all types
127	Ghamellas (Tasllas)	128	Glass Ampules
129	Glass and Pressed Wares	130	Glue
131	Grease Nipples and Grease guns	132	Gun cases
133	Gun Metal Bushes	134	Gumtape

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 Corpn and State Handicrafts Corpn)	144	Harness Leather
145	Hasps and 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 and Mule Shoes	154	Hydraulic Jacks below 30 ton capacity
155	Insecticides Dust and Sprayers (Manuals only)	156	Invalid wheeled chairs
157	Inverter domestic type upto 5 KVA	158	Iron (dhobi)
159	Key board wooden	160	Kit Boxes
161	Kodali	162	Lace leather
163	Lamp holders	164	Lamp signal
165	Lanterns Posts and bodies	166	Lanyard
167	Latex foam sponge	168	Lathies
169	Letter Boxes	170	Lighting Arresters – upto 22 KV
171	Link Clip	172	Linseed Oil
173	Lint Plain	174	Lockers
175	Lubricators	176	L.T Porcelain KITKAT and Fuse Grips
177	Machine screws	178	Magnesium Sulphate
179	Mallet Wooden	180	Manhole covers
181	Measuring Tapes and Stick	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	Naphthalene Balls
191	Newar	192	Nickel Sulphate
193	Nylon Stocking	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	Palma Rosa Oil	200	Palmgur
201	Pans Lavatory Flush	202	Paper conversion products – paper bags, envelops, ice-cream cup, paper cup and saucers and paper plates
203	Paper Tapes (Gunmed)	204	Pappads
205	Pickles and Chutney	206	Piles fabric
207	Pillows	208	Plaster of Paris
209	Plastic Blow Moulded Containers upto 20 litre excluding Poly Ethylene Terphthalate (PET) containers	210	Plastic cane
211	Playing Cards	212	Plugs and 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 footwear
223	PVC pipes upto 100 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	Rubber Tubing (excluding braided tubing)
239	Rubberised Garments Cap and Caps etc	240	Rust/Scale Removing composition
241	Safe meat and 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 glass wares (barring sophisticated items)
247	Scissors cutting (ordinary)	248	Screws of all types including High Tensile
249	Sheet skin all types	250	Shellac
251	Shoe laces	252	Shovels
253	Sign Boards painted	254	Silk ribbon
255	Silk Webbing	256	Skiboots and 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 KW 440 volts 3 phase
273	Stapling machine	274	Steel Almirah
275	Steel beds stead	276	Steel Chair
277	Steel desks	278	Steel racks/shelf
279	Steel stools	280	Steel trunks
281	Steel wool	282	Steel and 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 and Salitah Jute for Tentage	298	Textiles manufacturers other than N.E.C (not elsewhere classified)
299	Tiles	300	Tin Boxes for postage stamp
301	Tin can unprinted upto 4 gallons capacity	302	Tin Mess

	(other than can O.T.S)		
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 band	308	Transistorized Insulation – Testers
309	Trays	310	Trays for postal use
311	Trolley	312	Trolleys – drinking water
313	Tubular Poles	314	Tyres and Tubes (Cycles)
315	Umbrellas	316	Utensils all types
317	Valves Metallic	318	Varnish Black Japan
319	Voltage Stabilizers including C.V.Ts	320	Washers all types
321	Water proof covers	322	Water proof paper
323	Water tank upto 15,000 litres capacity	324	Was sealing
325	Waxed paper	326	Weighing Scale
327	Welded Wiremesh	328	Wheel barrows
329	Whistle	330	Wicks cotton
331	Wing Shield Wipers (Arms and Blades only)	332	Wire brushes and Fibre Brushes
333	Wire Fencing and Fittings	334	Wire nails and Horse shoe nails
335	Wire netting 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	Woolen hosiery
349	Zinc Sulphate	350	Zip Fasteners

Sl.No.	Description	Source of Supply
351	Cane furniture Handlooms	North Eastern Handicrafts and Development Corporation
		Assam Govt. Marketing Corpn.
		Craft Society of Manipur, Nagaland Handicrafts and
		Handlooms Development Corpn.
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 and grass jute of wood	-do-
356	Jute furniture	West Bengal Handicrafts Dev. Corpn
		Jute Dev. Corpn
		Orissa State Handicrafts Dev. Corpn
357	Jute bags, file cover	-do-
358	Woolen and silk carpets	U.P Export Corporation
		J & K Sale and Export Corporation

